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PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD

6 CFR Part 1000

[PCLOB; Docket No. 2013–0005; Sequence 2]

RIN 0311–AA02

Organization and Delegation of Powers and Duties; Correction

AGENCY: Privacy and Civil Liberties Oversight Board.

ACTION: Final rule; correction.

SUMMARY: The Privacy and Civil Liberties Oversight Board is issuing a correction to fix a duplicate section designation published in a final rule in the **Federal Register** on June 5, 2013.

DATES: This correction is effective June 28, 2013.

FOR FURTHER INFORMATION CONTACT: Susan Reingold, Chief Administrative Officer, Privacy and Civil Liberties Oversight Board, at 202–331–1986.

SUPPLEMENTARY INFORMATION:

Correction

In rule FR Doc. 2013–13166 published in the **Federal Register** at 78 FR 33690, June 5, 2013, an incorrect section heading was codified.

Accordingly, the Privacy and Civil Liberties Oversight Board amends 6 CFR part 1000 by making the following correcting amendment:

PART 1000—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES OF THE PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD

■ 1. The authority citation for part 1000 continues to read as follows:

Authority: 5 U.S.C. 552.

§ 1000.3 Corrected.

■ 2. The second and erroneous occurrence of § 1000.3 (Delegations of authority) is correctly redesignated as § 1000.5.

Dated: June 24, 2013.

Diane M. Janosek,

Chief Legal Counsel.

[FR Doc. 2013–15538 Filed 6–27–13; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121, 124, 125, 126, and 127

RIN 3245–AG23

Small Business Size and Status Integrity

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: This rule implements provisions of the Small Business Jobs Act of 2010 (Jobs Act) pertaining to small business size and status integrity. This rule amends the U.S. Small Business Administration's (SBA or Agency) program regulations to implement statutory provisions establishing that there a presumption of loss equal to the value of the contract or other instrument when a concern willfully seeks and receives an award by misrepresentation. The rule implements statutory provisions that provide that: The submission of an offer or application for an award intended for small business concerns will be deemed a size or status certification or representation in certain circumstances; an authorized official must sign in connection with a size or status certification or representation for a contract or other instrument; and concerns that fail to update their size or status in the Online Representations and Certifications Application (ORCA) database or a successor thereto (such as the System for Award Management (SAM) database) at least annually shall no longer be identified in the database as small or some other socioeconomic status, until the representation is updated. The rule also amends SBA's regulations to clarify when size is determined for purposes of entry into the 8(a) Business Development, HUBZone and Small Disadvantaged Business (SDB) programs.

DATES: This rule is effective August 27, 2013.

FOR FURTHER INFORMATION CONTACT: Dean R. Koppel, Office of Government Contracting, 409 Third Street SW., Washington, DC 20416; (202) 205–7322; *dean.koppel@sba.gov.*

SUPPLEMENTARY INFORMATION: On September 27, 2010, Congress amended the Small Business Act to provide that if a concern willfully seeks and receives an award by misrepresenting its small business size or status, there is a presumption of loss to the United States equal to the value of the contract, subcontract, cooperative agreement, cooperative research and development agreement or grant. The Small Business Act was also amended to provide that certain actions, such as submitting an offer in response to a solicitation set aside for small business concerns, will be deemed a representation of small business size or status. The Small Business Act was amended to provide that the signature of an authorized official of a concern is required in making a small business size or status representation in connection with certain actions, such as submitting an offer. The Small Business Act now provides that concerns must update their size and status certifications in SAM at least annually, or the status will be lost until such time as the update is made. Finally, the Small Business Act provides that SBA must promulgate regulations to protect individuals and concerns from liability in cases of unintentional errors, technical malfunctions and other similar situations.

SBA published a proposed rule regarding these statutory provisions in the **Federal Register** on October 7, 2011 (76 FR 62313), inviting the public to submit comments on or before November 7, 2011. This comment period was extended through December 8, 2011 by notice in the **Federal Register** published on November 8, 2011 (76 FR 69154).

Summary of Comments and SBA's Responses

SBA received and considered twenty comments on the proposed rule. Two commenters fully supported the rule as proposed. One comment addressed the proposed Small Business Subcontracting Rule published at 76 FR 61626 on October 5, 2011. This comment was outside the scope of this proposed rulemaking and was not

considered in adopting this final rule. The remaining comments, as well as SBA's response to them, are discussed below.

Presumption of Loss

SBA received several comments regarding SBA's proposal that the presumption of loss to the United States for a willful misrepresentation of size or status be irrefutable. 13 CFR §§ 121.108(a), 121.411(d), 124.521(a), 124.1015(a), 125.29(a), 126.900(a), and 127.700(a). As noted in the proposed rule, SBA based its proposed imposition of an irrefutable presumption of loss on Senate Report language indicating that the presumption shall be ''irrefutable.'' Senate Rep. No. 111–343, p. 8, available at: *http://www.gpo.gov.*

One commenter suggested that SBA eliminate ''irrefutable'' from the regulatory text. This commenter stressed that: (1) Irrefutable presumptions deny due process of law; and (2) Senate Report language does not possess statutory authority. Another commenter argued that the cited Senate Report was not the Senate Report for the legislation in question, but was instead a Senate Report for a prior piece of proposed legislation. Upon additional reflection, SBA has decided to remove the term ''irrefutable'' from the regulations, rendering the presumption rebuttable. SBA notes that the presumption of loss provisions will be utilized in civil and criminal Federal court proceedings, where due process will be provided. Further, SBA's regulations limit liability in the case of unintentional error, technical malfunction, or other similar situations. 13 CFR §§ 121.108(d), 121.411(g), 124.521(d), 124.1015(d), 125.29(d), 126.900(d), and 127.700(d). As such, an ''irrefutable'' presumption would be inappropriate in these instances.

Another commenter suggested that SBA ensure firms have sufficient due process to contest a finding of willful misrepresentation before penalties are imposed. This commenter made several suggestions as to how SBA could ensure protection of business concerns' due process—these suggestions included: (1) Provision of an agency level response period; and (2) empowering SBA's Office of Hearings and Appeals (OHA) to hear appeals of determinations under the proposed rule. As discussed above, the statutory presumption of loss provisions will be applied in Federal civil and criminal court proceedings where due process will be provided and as explained above, in certain instances, SBA's regulations limit liability. 13 CFR §§ 121.108(d), 121.411(g), 124.521(d), 124.1015(d), 125.29(d), 126.900(d), and 127.700(d). As such, SBA does not believe that this provision requires modification.

One commenter suggested that SBA impose a rebuttable presumption where a size determination finds that a firm is small by itself (i.e., absent the firm's affiliates) that the firm did not willfully misrepresent its size. Likewise, this commenter suggested that SBA impose a rebuttable presumption that the firm willfully misrepresented its size when a size determination finds the firm to be other than small by itself (i.e., absent the firm's affiliates). As discussed above, the rule now provides that the presumption is rebuttable. The question of whether a firm has willfully misrepresented its size is a factual determination best made by a judge, jury, or other decider of fact. Given the fact-specific nature of such a finding, SBA declines to impose a presumption as to an actor's intent.

Two commenters suggested clarification of the language in proposed 13 CFR §§ 121.108(a), 121.411(d), 124.521(a), 124.1015(a), 125.29(a), 126.900(a), and 127.700(a) which provide that the presumption of loss applies ''whenever it is established'' that a firm willfully misrepresented its status. Specifically, the commenters requested clarification of who makes the finding of willful misrepresentation, how a firm is notified of such a finding, whether the determination is appealable, and how a company may defend its representation. Consistent with the intent of the Jobs Act, it is SBA's intent that the presumption of loss shall be applied in all manner of criminal, civil, administrative, contractual, common law, or other actions, which the United States government may take to redress willful misrepresentation. As such, the finder of fact, notice requirements, and means of defense must depend on the specific action taken against a business concern. SBA does not believe any changes to the proposed rule or other clarification would be appropriate and adopts the proposed provisions as final in this rule.

Another commenter requested clarification as to whether an adverse size determination automatically leads to a presumption that the relevant firm willfully misrepresented its size. SBA recognizes that an unsophisticated firm or one new to the Federal government arena may certify its status as a small business in good faith, but may ultimately be found to be other than small. Similarly, a firm may incorrectly apply an ownership or control requirement for the service-disabled veteran-owned (SDVO) or women-owned small business (WOSB) programs in good faith, and ultimately be found not to qualify as a SDVO or WOSB small business. In either case, if the situation truly is a good faith misinterpretation of SBA's rules, SBA does not believe that action should be taken against the firm or its principals. Again, the question of whether a firm submitted a misrepresentation in good faith or intentionally (or recklessly) submitted a false size or status representation or certification is a factual determination best made by a judge, jury, or other decider of fact.

One commenter recommended that SBA amend the proposed rule to include a provision requiring the government to ''prominently mark'' any solicitation set aside as contemplated by the proposed rule. Currently, solicitations issued under the Federal Acquisition Regulation (FAR) must contain specific clauses providing notice regarding set-asides, reserves, partial set-asides, price evaluation preferences, source selection factors, and other mechanisms which somehow classify a solicitation as intended for award to specific entities. 48 CFR §§ 52.219–3, 52.219–4, 52.219–6, 52.219–7, 52.219–13, 52.219–18, 52.219–23, 52.219–27, 52.219–29, and 52.219–30. Therefore, SBA does not believe any change to the rule is necessary.

One commenter requested clarification of situations where an offer may be ''otherwise classified as intended for award to small business'' without being specifically identified as set aside for small business. Consistent with the underlying statutory text, it is SBA's intent that the rule be broadly inclusive of set-asides, reserves, partial set-asides, price evaluation preferences, source selection factors, and any other mechanisms which are not specifically addressed by the FAR. SBA does not feel that additional clarification is necessary and has adopted the proposed rule as final.

Deemed Certifications

One commenter expressed concern that proposed §§ 121.108(b)(2), 121.411(e)(2), 124.521(b)(2), 124.1015(b)(2), 125.29(b)(2), 126.900(b)(2), and 127.700(b)(2) are too broad and could permit attenuated acts or omissions to give rise to a deemed certification. SBA disagrees. Federal agencies are statutorily required to establish goals for the participation of small business concerns, SDVO small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and WOSB concerns. 15 U.S.C. 644(g). At the conclusion of each fiscal year, Federal agencies must

compile reports as to the agencies' performance in attaining their contracting goals. 15 U.S.C. 644(h). It is SBA's intention that §§ 121.108(b)(2), 121.411(e)(2), 124.521(b)(2), 124.1015(b)(2), 125.29(b)(2), 126.900(b)(2), and 127.700(b)(2) shall be applied in cases where a specific offer encourages the procuring agency to classify the award as an award to a small business or other concern for the purposes of the agencies' contracting goals. Under 48 CFR § 4.1201, a Federal agency shall rely on a business concern's ORCA representations and certifications in determining how to classify the award. Accordingly, in most cases, it will be a firm's ORCA/SAM representations and certifications which would encourage a Federal agency to classify an award as having gone to a small business. Therefore, SBA believes that in practice, proposed §§ 121.108(b)(2), 121.411(e)(2), 124.521(b)(2), 124.1015(b)(2), 125.29(b)(2), 126.900(b)(2), and 127.700(b)(2) have a narrow application and the provisions have been adopted as final in this rule.

Another commenter recommended that SBA eliminate proposed §§ 121.108(b)(3), 121.411(e)(3), 124.521(b)(3), 124.1015(b)(3), 125.29(b)(3), 126.900(b)(3), and 127.700(b)(3), which provide that registration on any Federal electronic database for the purpose of being considered for award shall be deemed an affirmative, willful, and intentional certification as to the relevant concern's small business size and status. This is a statutory requirement that SBA cannot eliminate. The Jobs Act specifically deems registration on a Federal electronic database as a willful certification as to size and status. 15 U.S.C. § 632(w)(2)(C). As such, SBA is precluded by statute from eliminating these provisions and they remain in this final rule.

Signature Requirement

SBA received two comments regarding proposed §§ 121.108(c), 121.411(f), 124.521(c), 124.1015(c), 125.29(c), 126.900(c), 127.700(c), which require an authorized official to sign the small business size and status certification page of any solicitation, bid or proposal for a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement reserved for small business concerns. The first commenter suggested that the rule specifically give electronic signatures the same effect as wet signatures. For the purpose of Government contracts, such a provision already exists at 48 CFR § 4.502(d) which provides that agencies may accept electronic signatures and records. However, SBA lacks the statutory authority to enact such a rule and has not adopted this comment.

The second commenter questioned whether the signature requirement is superfluous given that a signature on an offer is meant to certify all the offer's contents. SBA considered this comment, but has adopted the proposed provisions as final in this rule. The Jobs Act specifically requires that a certification as to a firm's small business size or other status shall contain the signature of an authorized official on the same page as the certification. 15 U.S.C. 632(w)(3)(B). As such, SBA is precluded by statute from eliminating the signature requirement. Further, the Federal Acquisition Council will implement the signature requirement in the Federal Acquisition Regulation and associated clauses. SBA has made minor wording changes in these provisions for clarity. The word ''solicitation'' has been replaced by the words ''offer'' and ''proposal'' to clarify that it is the offer that a contractor is signing, not the solicitation.

Limitation of Liability

Two commenters suggested that SBA amend proposed §§ 121.108(d), 121.411(g), 124.521(d), 124.1015(d), 125.29(d), 126.900(d), and 127.700(d) to adopt the statutory language which protects firms from liability where misrepresentation was the result of ''unintentional errors, technical malfunctions, or other similar situations.'' SBA feels that the addition of ''or other situations'' more accurately captures the breadth of situations in which liability is to be limited and has therefore adopted this comment in the final rule.

Two commenters suggested that SBA clarify the standard of care required in making representations. Under proposed §§ 121.108(a), 121.411(d), 124.521(a), 124.1015(a), 125.29(a), 126.900(a), and 127.700(a), the presumption of loss applies only where a firm willfully misrepresents its small business size or other status. Sections 121.108(d), 121.411(g), 124.521(d), 124.1015(d), 125.29(d), 126.900(d), and 127.700(d) further provide that misrepresentations which are the result of ''unintentional errors, technical malfunctions, or other similar situations'' are not considered to be willful. In addition, the statute and implementing regulations provide that certain actions are deemed to be willful and require an official to sign on the same page as size or status representation. As discussed above, whether a representation is willful or should result in liability or criminal penalty is a fact-based decision that will be made by a judge, jury or other decider of fact. SBA has made minor wording changes in the limitation of liability provisions to make clear that the question of whether a misrepresentation is willful is a fact-based decision that will be made, not by SBA, but by a judge, jury or other decider of fact. To clarify that the limitation of liability provisions convey discretion to the finder of fact, the phrase ''shall not apply'' has been amended as ''may be determined not to apply.'' Further, the phrase ''consideration shall be given to'' has been changed to ''relevant factors to consider in making this determination may include.''

One commenter asked if SBA would agree that thirty days is a reasonable amount of time in which to correct an erroneous representation. It is SBA's view that the question of whether an erroneous representation was corrected in a timely manner is dependent on the facts of a given case. SBA believes such a determination is best made by a judge, jury, or other decider of fact.

Two commenters suggested that business concerns be protected from liability when their misrepresentation resulted from ambiguity in SBA's regulations. As discussed above, SBA believes that a good faith misinterpretation of SBA's rules should not be considered a willful misrepresentation of size or status. Whether a regulation is ambiguous and whether a misinterpretation is reasonable and made in good faith is a fact- specific determination that will be made by a judge, jury, or other decider of fact.

Two commenters suggested that the list of mitigating factors set forth in the proposed rule be clarified and expanded. It is not SBA's intent that the list of mitigating factors included in the proposed rule be exhaustive. Again, the question of whether a firm willfully misrepresented its size or status is a factual determination best made by a judge, jury, or other decider of fact. SBA does not believe any additional changes or clarification is warranted.

Annual Recertification

One commenter argued that annual recertification is too burdensome. SBA disagrees. This rule does not impose new reporting requirements—concerns must certify their size and status annually in order to be identified as a small business or other socioeconomic concern in ORCA under existing regulations. 48 CFR § 4.1201(b).

Moreover, annual certification of size and status is statutorily required. 15 U.S.C. 632(x). In addition, a firm is expected to verify its representation in SAM every time it submits an offer on a government contract. SBA has, however, identified SAM as the current successor to ORCA and has amended all references to ORCA in the proposed rule to instead reference SAM. As such, SBA adopts the annual SAM verification requirement in this final rule.

Two commenters recommended that firms awarded contracts longer than five years be required to recertify only on the fifth year. SBA considered this comment but has adopted the proposed provisions as final. For purposes of establishing continuing eligibility for previously awarded long term contracts, recertification is required within 60 to 120 days prior to the end of the fifth year of the contract. 48 CFR § 52.219–28; 13 CFR § 121.404(g)(3). However, this requirement is distinct from the annual recertification requirements in the proposed rule. The annual recertification requirement contemplated in the proposed rule is for purposes of being considered for award of future contracts. Such a requirement already exists under 48 CFR § 4.1201(b). Accordingly, SBA has not adopted this comment in the Final rule.

One commenter suggested that SBA provide notification and an opportunity for business concerns to comply with the annual certification requirement. SBA does not believe such notification is necessary given that concerns are already required to certify their size and status annually under 48 CFR § 4.1201(b). Further, SBA lacks the statutory authority to implement such a notification system. Accordingly, SBA has not adopted this comment in the Final rule.

Another commenter suggested that SBA issue additional guidance to clarify the annual certification requirement as applied to business concerns operating in industries with a revenue-based size standard. This commenter expressed concern that an annual certification requirement would not take into consideration revenue fluctuations common to many small business concerns. SBA disagrees. At any given time, a firm's size may be determined under a revenue-based size standard by dividing the sum of firm's annual receipts from the past three completed fiscal years by three. 13 CFR § 121.104(c). This method is specifically designed to account for revenue fluctuations and SBA does not believe the annual recertification requirement has any implications specific to those firms operating in industries with revenue-based size standards.

Another commenter suggested that the annual recertification requirement be applied to 8(a) Business Development and HUBZone program participants. As noted in the proposed rule, SBA did not impose the recertification requirement for these programs because SBA is responsible for providing certification designations in federal procurement databases for these programs. Therefore, SBA has not adopted this comment in the final rule.

Other Comments

One commenter recommended that SBA provide clarification as to the rule's application to misrepresentations by subcontractors. It is SBA's intent that the presumption of loss shall apply to subcontractors who willfully misrepresent their size or status in order to receive a subcontract award. Accordingly, proposed §§ 121.108(a), 121.411(d), 124.521(a), 124.1015(a), 125.29(a), 126.900(a), and 127.700(a) explicitly provided that a presumption of loss to the United States shall be imposed whenever it is established that a business concern willfully sought and received award of a subcontract by misrepresentation. SBA does not believe any additional clarification is necessary. The same commenter also requested clarification of the prime contractor's liability when a subcontractor misrepresents its status to the prime contractor. Pursuant to 48 CFR § 19.703(b), a prime contractor acting in good faith may rely on the written representation of its subcontractor regarding the subcontractor's small business size or status. When read in conjunction with the final rule, SBA believes this insulates prime contractors acting in good faith from liability for misrepresentations made by their subcontractors. In response to this comment, SBA has clarified this point in the limitation of liability sections of the Final rule.

One commenter suggested that SBA provide clarification as to a contracting officer's duty to stop work on a contract if it becomes clear that the awardee misrepresented its status before completion of the contract. Under SBA's existing regulations, contracting officers have the authority to file a size protest at any time, even after award. 13 CFR §§ 121.1004(b), 124.1010(c)(1)(iii), 125.25(d)(3), 126.801(d)(3), and 127.603(c)(3). SBA's regulations also address the effect of a negative eligibility determination on the procurement in question. 13 CFR §§ 121.1009(g), 124.1013(h), 125.27(g), 126.803(d), and 127.604(f).

Another commenter suggested that SBA amend its regulations to impose suspension and debarment only when misrepresentation resulted in actual award. SBA does not believe that receipt of an award should be a prerequisite for debarment, suspension or any other penalty outlined in the Small Business Act or SBA's regulations. Firms have an obligation to accurately represent their size and/or status. Any fraudulent misrepresentation which inhibits the government's ability to rely on future statements made by the contractor should be subject to possible suspension and debarment actions. Accordingly this comment has not been adopted in the final rule. However, for clarity and accuracy, the title ''debarring official'' has been changed to ''suspension and debarment official'' in 13 CFR §§ 121.108(e)(1), 121.411(h)(1), 124.1015(e)(1), 125.29(e)(1), 126.900(e)(1), and 127.700(e)(1).

One commenter recommended that ORCA/SAM be modified to require the contractor to make an affirmative acknowledgment that the software interface correctly determined the business's size. Proposed §§ 121.108(c), 121.411(f), 124.521(c), 124.1015(c), 125.29(c), 126.900(c), 127.700(c) require an authorized official to sign the small business size and status certification page of any solicitation. SBA does not believe any additional clarification or changes to the proposed rule are necessary and adopts the provisions in the Final rule as proposed.

Another commenter suggested that SBA address situations where a firm claims to be small under its primary NAICS code and submits an offer on a procurement issued under a different NAICS code with a more restrictive size standard. SBA believes its regulations are clear on this point. 13 CFR § 121.402(a) provides that ''a concern must not exceed the size standard for the NAICS code specified in the solicitation,''and 13 CFR § 121.405(a) further provides that ''a concern must self-certify it is small under the size standard specified in the solicitation.'' As such, SBA has not made additional changes to the rule in response to this comment.

One commenter recommended the creation of an IRS portal through which relevant parties may look up a business's tax returns for purposes of determining size. Tax returns are not public documents and SBA lacks the statutory authority to implement such a system.

One commenter proposed that footnote 18 to 13 CFR § 121.201 be applied to all value-added resellers. The proposed rule did not address specific

size standards and, therefore, this comment is beyond the scope of the proposed rulemaking.

Another commenter suggested that SBA eliminate all programs based on sex, race or minority status. The proposed rule did not address the elimination of any SBA programs and, therefore, this comment is beyond the scope of the proposed rulemaking.

Compliance with Executive Orders 12866, 13563, 12988, 13132, 13272, the Paperwork Reduction Act (44 U.S.C., Chapter 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is a significant regulatory action for purposes of Executive Order 12866. In the proposed rule, SBA set forth its initial regulatory impact analysis, which addressed the following: Necessity of the regulation; the potential benefits and costs of the regulation; and alternative approaches to the proposed rule. SBA did not receive any comments which specifically addressed this regulatory impact analysis. Therefore, SBA adopts as final its initial regulatory impact analysis.

Executive Order 13563

This final rule implements important statutory provisions intended to prevent and deter fraud and misrepresentation in small business government contracting and other programs. SBA has amended all applicable Parts of its regulations to put participants in those programs on notice of the penalties associated with misrepresentation, and to the extent practicable, utilized identical language in each Part. SBA has also included in each Part other relevant applicable statutory provisions concerning the penalties for misrepresentation. The costs associated with these rules, requiring a signature in connection with a size or status representation and requiring concerns to update online certifications annually, are minimal and required by statute. As part of its implementation of this executive order and consistent with its commitment to public participation in the rulemaking process, SBA held public forums around the country to discuss implementation of the Jobs Act, including the provisions in this rule.

Executive Order 12988

For the purpose of Executive Order 12988, this final rule meets applicable standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. This rule has no preemptive or retroactive effect.

Executive Order 13132

This final rule does not have federalism implications as defined in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various layers of government, as specified in the order. As such it does not warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act, 44 U.S.C., Ch. 35

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Chapter 35, SBA has determined that this rule does not impose new reporting requirements and does not require new recordkeeping requirements. In accordance with 48 CFR §§ 4.1202, 52.204–8, 52.219–1 and 13 CFR §§ 121.404(a), 121.411, concerns must submit paper or electronic representations or certifications in connection with prime contracts and subcontracts. The Jobs Act requires that each offeror or applicant for a Federal contract, subcontract, or grant shall contain a certification concerning the small business size and status of a business concern seeking the Federal contract, subcontract or grant. The Jobs Act mandates that an authorized official must sign the certification on the same page containing the size and status claimed by the concern. Offerors are already required to sign their offers, bids or quotes (Standard Forms 18, 33, and 1449), so this provision does not create new reporting or recordkeeping requirements.

Regulatory Flexibility Act

SBA has determined that this rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Accordingly, SBA set forth an Initial Regulatory Flexibility Act (IRFA) analysis in the proposed rule. The IRFA addressed the impact of the proposed rule in accordance with 5 U.S.C. 603. The IRFA examined the objectives and legal basis for the proposed rule; the kind and number of small entities that may be affected; the projected recordkeeping, reporting, and other requirements; whether there were any Federal rules that may duplicate, overlap, or conflict with the proposed rule; and whether there were any significant alternatives to the proposed rule. The Agency's final regulatory flexibility analysis (FRFA) is set forth below.

(a) Need for, Objectives, and Legal Basis of the Rule

These regulatory amendments implement Sections 1341 and 1342 of the Small Business Jobs Act of 2010, Public Law 111–240, 124 Stat. 2504, September 27, 2010 (Jobs Act); 15 U.S.C. 632(w), (x). The purpose of the statute and implementing regulations is to prevent or deter firms from misrepresenting their size or socioeconomic status.

(b) Estimate of the Number of Small Entities to Which the Rule Will Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of entities that may be affected by the proposed rules, if adopted. The RFA defines ''small entity'' to include ''small businesses,'' ''small organizations,'' and ''small governmental jurisdictions.'' SBA's programs do not apply to ''small organizations'' or ''small governmental jurisdictions'' because they are non-profit or governmental entities and do not generally qualify as ''business concerns'' within the meaning of SBA's regulations. SBA's programs generally apply only to for-profit business concerns. Therefore, the regulation will not impact small organizations or small governmental jurisdictions.

In fiscal year 2010, there were approximately 1.6 million small business contract actions (out of 3.36 million total small business eligible contract actions). This final rule's presumption of loss will only impact small business concerns that misrepresent their size or status in connection with a contract, subcontract, cooperative agreement, cooperative research and development agreement or grant in such a way that criminal prosecution or other action is taken by the Government in order to redress the misrepresentation. In fiscal year 2010, SBA found approximately 200 firms to be ineligible for a contract (14 HUBZone, 33 Service-Disabled Veteran-Owned, 0 Women-Owned Small Business, 151 size). Not all of these firms would be criminally prosecuted or have others actions taken against them. Thus, the regulations concerning presumption of loss will impact very few concerns, and some of these concerns are not actually small.

There are in approximately 348,000 concerns listed as small business concerns in the Dynamic Small Business Search (DSBS) database. The regulations concerning deemed certifications and the requirement for a

signature apply to all of these concerns, to the extent the concerns submit an offer for a prime contract that is set aside for small business concerns. In addition, there are small business concerns that are not registered in DSBS that submit offers or responses for grants, subcontracts, and other agreements. The annual certification requirement applies to all of the 348,000 firms registered in DSBS.

(c) Projected Reporting, Recordkeeping and Other Compliance Requirements

This final rule does not impose a new information collection, recordkeeping or compliance requirement on small businesses. A firm's size or socioeconomic status is generally based on records that it already possesses, such as payroll records and annual tax returns. Firms currently must represent their size or status in connection with contracts and subcontracts, either electronically or in paper form. 48 CFR §§ 4.1202, 52.204–8, 52.219–1 and 13 CFR §§ 121.404(a), 121.411. The rule requires an authorized official to sign on the page containing a concern's size or status representation. Offerors are already required to sign their offers, so the burden on small business concerns to also sign their size or status representation or certification is minimal. Standard Forms 18, 33, 1447 and 1449.

(d) Federal Rules Which May Duplicate, Overlap or Conflict With the Rule

Section 1342 of the Jobs Act requires that firms that fail to meet the annual certification or representation requirement shall lose their status in the database. Firms will not be able submit offers for small business contracts based on their online representations or certifications (48 CFR § 4.1201(c)), but instead must have an authorized official sign in connection with the firm's size or status. Firms must already sign offers, so the impact will be negligible. Standard Forms 18, 33, 1447 and 1449.

(e) Steps Taken To Minimize Impact on Small Entities

This final rule implements Sections 1341 and 1342 of the Jobs Act. The final rule is directed at small business concerns seeking government contracts, subcontracts, grants, and cooperative agreements. The final rule is intended to prevent or deter firms from misrepresenting their size or socioeconomic status. The impact on firms that accurately represent their size or status will be minimal. An authorized official will have to sign an offer where the firm represents its size and status, but authorized officials are currently required to sign offers. Firms will have to update their size and socioeconomic status in ORCA/SAM at least annually, but that too is already required. 48 CFR § 4.1201(b)(1).

(f) Issues Raised by Public Comments in Response to the Initial Regulatory Flexibility Analysis and the Agency's Assessment

The SBA received one comment that addressed the IRFA or the subjects discussed in the IRFA. This commenter expressed concern regarding a portion of the IRFA which read: ''The proposed regulations concerning presumption of loss will only impact small business concerns that misrepresent their size or status in connection with a contract, subcontract, cooperative agreement, cooperative research and development agreement or grant in such a way that criminal prosecution or other action is taken by the Government.'' Specifically, the commenter felt that SBA's reference to ''other action'' requires clarification. As noted above, it is SBA's intent that the presumption of loss shall be applied in all manner of criminal, civil, administrative, contractual, common law, or other actions, which the United States government may take to redress willful misrepresentation. In fiscal year 2010, SBA found approximately 200 firms to be ineligible for a contract (14 HUBZone, 33 Service-Disabled Veteran-Owned, 0 Women-Owned Small Business, 151 size). Not all of these firms willfully misrepresented their size or status. Thus, SBA continues to believe that the regulations concerning presumption of loss will impact very few concerns, most of which will not qualify as small.

List of Subjects

13 CFR Part 121

Administrative practice and procedure, Reporting and recordkeeping requirements, and Small businesses.

13 CFR Part 124

Administrative practice and procedure, Minority businesses, Reporting and recordkeeping requirements, and Technical assistance.

13 CFR Part 125

Government contracts, Reporting and recordkeeping requirements, Small businesses, and Technical assistance.

13 CFR Part 126

Administrative practice and procedure, Penalties, Reporting and recordkeeping requirements and Small businesses.

13 CFR Part 127

Government procurement, Reporting and recordkeeping requirements, and Small businesses.

For the reasons stated in the preamble, SBA amends parts 121, 124, 125, 126 and 127 of title 13 of the Code of Federal Regulations as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 637(a), 644 and 662(5); and Pub. L. 105–135, sec. 401 et seq., 111 Stat. 2592.

■ 2. Revise § 121.108 to read as follows:

§ 121.108 What are the requirements for representing small business size status, and what are the penalties for misrepresentation?

(a) *Presumption of Loss Based on the Total Amount Expended.* In every contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant which is set aside, reserved, or otherwise classified as intended for award to small business concerns, there shall be a presumption of loss to the United States based on the total amount expended on the contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant whenever it is established that a business concern other than a small business concern willfully sought and received the award by misrepresentation.

(b) *Deemed Certifications.* The following actions shall be deemed affirmative, willful and intentional certifications of small business size and status:

(1) Submission of a bid, proposal, application or offer for a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement reserved, set aside, or otherwise classified as intended for award to small business concerns.

(2) Submission of a bid, proposal, application or offer for a Federal grant, contract, subcontract, cooperative agreement or cooperative research and development agreement which in any way encourages a Federal agency to classify the bid or proposal, if awarded, as an award to a small business concern.

(3) Registration on any Federal electronic database for the purpose of being considered for award of a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and

development agreement, as a small business concern.

(c) *Signature Requirement.* Each offer, proposal, bid, or application for a Federal contract, subcontract, or grant shall contain a certification concerning the small business size and status of a business concern seeking the Federal contract, subcontract or grant. An authorized official must sign the certification on the same page containing the size status claimed by the concern.

(d) *Limitation of Liability.* Paragraphs (a) through (c) of this section may be determined not to apply in the case of unintentional errors, technical malfunctions, and other similar situations that demonstrate that a misrepresentation of size was not affirmative, intentional, willful or actionable under the False Claims Act, 31 U.S.C. §§ 3729, et seq. A prime contractor acting in good faith should not be held liable for misrepresentations made by its subcontractors regarding the subcontractors' size. Relevant factors to consider in making this determination may include the firm's internal management procedures governing size representation or certification, the clarity or ambiguity of the representation or certification requirement, and the efforts made to correct an incorrect or invalid representation or certification in a timely manner. An individual or firm may not be held liable where government personnel have erroneously identified a concern as small without any representation or certification having been made by the concern and where such identification is made without the knowledge of the individual or firm.

(e) *Penalties for Misrepresentation.*

(1) *Suspension or debarment.* The SBA suspension and debarment official or the agency suspension and debarment official may suspend or debar a person or concern for misrepresenting a firm's size status pursuant to the procedures set forth in 48 CFR subpart 9.4.

(2) *Civil Penalties.* Persons or concerns are subject to severe penalties under the False Claims Act, 31 U.S.C. 3729–3733, and under the Program Fraud Civil Remedies Act, 331 U.S.C. 3801–3812, and any other applicable laws.

(3) *Criminal Penalties.* Persons or concerns are subject to severe criminal penalties for knowingly misrepresenting the small business size status of a concern in connection with procurement programs pursuant to section 16(d) of the Small Business Act, 15 U.S.C. 645(d), as amended, 18 U.S.C. 1001, 18 U.S.C. 287, and any other applicable laws. Persons or concerns are subject to criminal penalties for knowingly making false statements or misrepresentations to SBA for the purpose of influencing any actions of SBA pursuant to section 16(a) of the Small Business Act, 15 U.S.C. 645(a), as amended, including failure to correct ''continuing representations'' that are no longer true.

■ 3. Add new § 121.109 to read as follows:

§ 121.109 What must a concern do in order to be identified as a small business concern in any Federal procurement databases?

(a) In order to be identified as a small business concern in the System for Award Management (SAM) database (or any successor thereto), a concern must certify its size in connection with specific size standards at least annually.

(b) If a firm identified as a small business concern in SAM fails to certify its size within one year of a size certification, the firm will not be listed as a small business concern in SAM, unless and until the firm recertifies its size.

§ 121.404 [Amended]

■ 4. Amend § 121.404(b) by removing ''and the date of certification by SBA'' and adding in its place ''and, where applicable, the date the SBA program office requests a formal size determination in connection with a concern that otherwise appears eligible for program certification.''

■ 5. Amend § 121.411 by adding new paragraphs (d) through (i) to read as follows:

§ 121.411 What are the size procedures for SBA's section 8(d) Subcontracting Program?

* * * * *

(d) *Presumption of Loss Based on the Total Amount Expended.* In every contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant which is set aside, reserved, or otherwise classified as intended for award to small business concerns, there shall be a presumption of loss to the United States based on the total amount expended on the contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant whenever it is established that a business concern other than a small business concern willfully sought and received the award by misrepresentation.

(e) *Deemed Certifications.* The following actions shall be deemed affirmative, willful and intentional certifications of small business size and status:

(1) Submission of a bid, proposal, application or offer for a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement reserved, set aside, or otherwise classified as intended for award to small business concerns.

(2) Submission of a bid, proposal, application or offer for a Federal grant, contract, subcontract, cooperative agreement or cooperative research and development agreement which in any way encourages a Federal agency to classify the bid or proposal, if awarded, as an award to a small business concern.

(3) Registration on any Federal electronic database for the purpose of being considered for award of a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement, as a small business concern.

(f) *Signature Requirement.* Each offer, proposal, bid, or application for a Federal contract, subcontract, or grant shall contain a certification concerning the small business size and status of a business concern seeking the Federal contract, subcontract or grant. An authorized official must sign the certification on the same page containing the size status claimed by the concern.

(g) *Limitation of Liability.* Paragraphs (d) through (f) of this section may be determined not to apply in the case of unintentional errors, technical malfunctions, and other similar situations that demonstrate that a misrepresentation of size was not affirmative, intentional, willful or actionable under the False Claims Act, 31 U.S.C. §§ 3729, et seq. A prime contractor acting in good faith should not be held liable for misrepresentations made by its subcontractors regarding the subcontractors' size. Relevant factors to consider in making this determination may include the firm's internal management procedures governing size representation or certification, the clarity or ambiguity of the representation or certification requirement, and the efforts made to correct an incorrect or invalid representation or certification in a timely manner. An individual or firm may not be held liable where government personnel have erroneously identified a concern as small without any representation or certification having been made by the concern and where such identification is made without the knowledge of the individual or firm.

(h) *Penalties for Misrepresentation.*

(1) *Suspension or debarment.* The SBA suspension and debarment official or the agency suspension and debarment official may suspend or debar a person or concern for misrepresenting a firm's size status pursuant to the procedures set forth in 48 CFR subpart 9.4.

(2) *Civil Penalties.* Persons or concerns are subject to severe penalties under the False Claims Act, 31 U.S.C. 3729–3733, and under the Program Fraud Civil Remedies Act, 331 U.S.C. 3801–3812, and any other applicable laws.

(3) *Criminal Penalties.* Persons or concerns are subject to severe criminal penalties for knowingly misrepresenting the small business size status of a concern in connection with procurement programs pursuant to section 16(d) of the Small Business Act, 15 U.S.C. 645(d), as amended, 18 U.S.C. 1001, 18 U.S.C. 287, and any other applicable laws. Persons or concerns are subject to criminal penalties for knowingly making false statements or misrepresentations to SBA for the purpose of influencing any actions of SBA pursuant to section 16(a) of the Small Business Act, 15 U.S.C. 645(a), as amended, including failure to correct ''continuing representations'' that are no longer true.

■ 6. Revise paragraph (f) of § 121.1009 to read as follows:

§ 121.1009 What are the procedures for making size determinations?

* * * * *

(f) *Notification of determination.* SBA will promptly notify the contracting officer, the protester, and the protested concern. SBA will send the notification by verifiable means, which may include facsimile, electronic mail, or overnight delivery service.

* * * * *

PART 124—8(a) BUSINESS DEVELOPMENT/SMALL DISADVANTAGED BUSINESS STATUS DETERMINATIONS

■ 7. The authority citation for part 124 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(j), 637(a), 637(d) and Pub. L. 99–661, Pub. L. 100–656, sec. 1207, Pub. L. 101–37, Pub. L. 101–574, section 8021, Pub. L. 108–87, and 42 U.S.C. 9815.

■ 8. Add new § 124.521 to read as follows:

§ 124.521 What are the requirements for representing 8(a) status, and what are the penalties for misrepresentation?

(a) *Presumption of Loss Based on the Total Amount Expended.* In every contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant which is set aside, reserved, or otherwise classified as intended for award to 8(a) Participants, there shall be a presumption of loss to the United States based on the total amount expended on the contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant whenever it is established that a business concern other than an 8(a) Participant willfully sought and received the award by misrepresentation.

(b) *Deemed Certifications.* The following actions shall be deemed affirmative, willful and intentional certifications of 8(a) status:

(1) Submission of a bid or proposal for an 8(a) sole source or competitive contract.

(2) Registration on any Federal electronic database for the purpose of being considered for award of a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement, as a small disadvantaged business (SDB).

(c) *Signature Requirement.* Each offer for an 8(a) contract shall contain a certification concerning the 8(a) status of a business concern seeking the contract. An authorized official must sign the certification on the same page containing the 8(a) status claimed by the concern.

(d) *Limitation of Liability.* Paragraphs (a)–(c) of this section may be determined not to apply in the case of unintentional errors, technical malfunctions, and other similar situations that demonstrate that a misrepresentation of 8(a) status was not affirmative, intentional, willful or actionable under the False Claims Act, 31 U.S.C. 3729, et seq. A prime contractor acting in good faith should not be held liable for misrepresentations made by its subcontractors regarding the subcontractors' 8(a) status. Relevant factors to consider in making this determination may include the firm's internal management procedures governing representation or certification as an eligible 8(a) Participant, the clarity or ambiguity of the representation or certification requirement, and the efforts made to correct an incorrect or invalid representation or certification in a timely manner. An individual or firm may not be held liable where government personnel have erroneously identified a concern as an eligible 8(a) Participant without any representation or certification having been made by the concern and where such identification is made without the knowledge of the individual or firm.

■ 9. Add new § 124.1015 to read as follows:

§ 124.1015 What are the requirements for representing SDB status, and what are the penalties for misrepresentation?

(a) *Presumption of Loss Based on the Total Amount Expended.* In every contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant which is set aside, reserved, or otherwise classified as intended for award to SDB concerns, there shall be a presumption of loss to the United States based on the total amount expended on the contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant whenever it is established that a business concern other than a SDB willfully sought and received the award by misrepresentation.

(b) *Deemed Certifications.* The following actions shall be deemed affirmative, willful and intentional certifications of SDB status:

(1) Submission of a bid, proposal, application or offer for a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement reserved, set aside, or otherwise classified as intended for award to SDBs.

(2) Submission of a bid, proposal, application or offer for a Federal grant, contract, subcontract, cooperative agreement or cooperative research and development agreement which in any way encourages a Federal agency to classify the bid or proposal, if awarded, as an award to a SDB.

(3) Registration on any Federal electronic database for the purpose of being considered for award of a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement, as a SDB.

(c) *Signature Requirement.* Each offer, proposal, bid, or application for a Federal contract, subcontract, or grant shall contain a certification concerning the SDB status of a business concern seeking the Federal contract, subcontract or grant. An authorized official must sign the certification on the same page containing the SDB status claimed by the concern.

(d) *Limitation of Liability.* Paragraphs (a) through (c) of this section may be determined not to apply in the case of unintentional errors, technical malfunctions, and other similar

situations that demonstrate that a misrepresentation of SDB status was not affirmative, intentional, willful or actionable under the False Claims Act, 31 U.S.C. 3729, et seq. A prime contractor acting in good faith should not be held liable for misrepresentations made by its subcontractors regarding the subcontractors' SDB status. Relevant factors to consider in making this determination may include the firm's internal management procedures governing SDB status representation or certification, the clarity or ambiguity of the representation or certification requirement, and the efforts made to correct an incorrect or invalid representation or certification in a timely manner. An individual or firm may not be held liable where government personnel have erroneously identified a concern as a SDB without any representation or certification having been made by the concern and where such identification is made without the knowledge of the individual or firm.

(e) *Penalties for Misrepresentation.*

(1) *Suspension or debarment.* The SBA suspension and debarment official or the agency suspension and debarment official may suspend or debar a person or concern for misrepresenting a firm's status as a SDB pursuant to the procedures set forth in 48 CFR subpart 9.4.

(2) *Civil Penalties.* Persons or concerns are subject to severe penalties under the False Claims Act, 31 U.S.C. 3729–3733, and under the Program Fraud Civil Remedies Act, 331 U.S.C. 3801–3812, and any other applicable laws.

(3) *Criminal Penalties.* Persons or concerns are subject to severe criminal penalties for knowingly misrepresenting the SDB status of a concern in connection with procurement programs pursuant to section 16(d) of the Small Business Act, 15 U.S.C. 645(d), as amended, 18 U.S.C. 1001, 18 U.S.C. 287, and any other applicable laws. Persons or concerns are subject to criminal penalties for knowingly making false statements or misrepresentations to SBA for the purpose of influencing any actions of SBA pursuant to section 16(a) of the Small Business Act, 15 U.S.C. 645(a), as amended, including failure to correct ''continuing representations'' that are no longer true.

■ 10. Add new § 124.1016 to read as follows:

§ 124.1016 What must a concern do in order to be identified as a SDB in any Federal procurement database?

(a) In order to be identified as a SDB in the System for Award Management (SAM) database (or any successor thereto), a concern must certify its SDB status in connection with specific eligibility requirements at least annually.

(b) If a firm identified as a SDB in SAM fails to certify its status within one year of a status certification, the firm will not be listed as a SDB in SAM, unless and until the firm recertifies its SDB status.

PART 125—GOVERNMENT CONTRACTING PROGRAMS

■ 11. The authority citation for part 125 is revised to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 637, 644 and 657f.

■ 12. Revise § 125.29 to read as follows:

§ 125.29 What are the requirements for representing SDVO SBC status, and what are the penalties for misrepresentation?

(a) *Presumption of Loss Based on the Total Amount Expended.* In every contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant which is set aside, reserved, or otherwise classified as intended for award to SDVO SBCs, there shall be a presumption of loss to the United States based on the total amount expended on the contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant whenever it is established that a business concern other than a SDVO SBC willfully sought and received the award by misrepresentation.

(b) *Deemed Certifications.* The following actions shall be deemed affirmative, willful and intentional certifications of SDVO SBC status:

(1) Submission of a bid, proposal, application or offer for a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement reserved, set aside, or otherwise classified as intended for award to SDVO SBCs.

(2) Submission of a bid, proposal, application or offer for a Federal grant, contract, subcontract, cooperative agreement or cooperative research and development agreement which in any way encourages a Federal agency to classify the bid or proposal, if awarded, as an award to a SDVO SBC.

(3) Registration on any Federal electronic database for the purpose of being considered for award of a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement, as a SDVO SBC.

(c) *Signature Requirement.* Each offer, proposal, bid, or application for a Federal contract, subcontract, or grant shall contain a certification concerning the SDVO SBC status of a business concern seeking the Federal contract, subcontract or grant. An authorized official must sign the certification on the same page containing the SDVO SBC status claimed by the concern.

(d) *Limitation of Liability.* Paragraphs (a) through (c) of this section may be determined not to apply in the case of unintentional errors, technical malfunctions, and other similar situations that demonstrate that a misrepresentation of SDVO SBC status was not affirmative, intentional, willful or actionable under the False Claims Act, 31 U.S.C. §§ 3729, et seq. A prime contractor acting in good faith should not be held liable for misrepresentations made by its subcontractors regarding the subcontractors' SDVO SBC status. Relevant factors to consider in making this determination may include the firm's internal management procedures governing SDVO SBC status representations or certifications, the clarity or ambiguity of the representation or certification requirement, and the efforts made to correct an incorrect or invalid representation or certification in a timely manner. An individual or firm may not be held liable where government personnel have erroneously identified a concern as a SDVO SBC without any representation or certification having been made by the concern and where such identification is made without the knowledge of the individual or firm.

(e) *Penalties for Misrepresentation.*

(1) *Suspension or debarment.* The SBA suspension and debarment official or the agency suspension and debarment official may suspend or debar a person or concern for misrepresenting a firm's status as a SDVO SBC pursuant to the procedures set forth in 48 CFR subpart 9.4.

(2) *Civil Penalties.* Persons or concerns are subject to severe penalties under the False Claims Act, 31 U.S.C. 3729–3733, and under the Program Fraud Civil Remedies Act, 331 U.S.C. 3801–3812, and any other applicable laws.

(3) *Criminal Penalties.* Persons or concerns are subject to severe criminal penalties for knowingly misrepresenting the SDVO SBC status of a concern in connection with procurement programs pursuant to section 16(d) of the Small Business Act, 15 U.S.C. 645(d), as amended, 18 U.S.C. 1001, 18 U.S.C. 287, and any other applicable laws. Persons or concerns are subject to criminal penalties for knowingly making false statements or misrepresentations to SBA

for the purpose of influencing any actions of SBA pursuant to section 16(a) of the Small Business Act, 15 U.S.C. 645(a), as amended, including failure to correct ''continuing representations'' that are no longer true.

■ 13. Add new § 125.30 to read as follows:

§ 125.30 What must a concern do in order to be identified as a SDVO SBC in any Federal procurement databases?

(a) In order to be identified as a SDVO SBC in the System for Award Management (SAM) database (or any successor thereto), a concern must certify its SDVO SBC status in connection with specific eligibility requirements at least annually.

(b) If a firm identified as a SDVO SBC in SAM fails to certify its status within one year of a status certification, the firm will not be listed as a SDVO SBC in SAM, unless and until the firm recertifies its SDVO SBC status.

PART 126—HUBZONE PROGRAM

■ 14. The authority citation for part 126 continues to read as follows:

Authority: 15 U.S.C. 632(a), 632(j), 632(p) and 657a.

■ 15. Revise § 126.900 to read as follows:

§ 126.900 What are the requirements for representing HUBZone status, and what are the penalties for misrepresentation?

(a) *Presumption of Loss Based on the Total Amount Expended.* In every contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant which is set aside, reserved, or otherwise classified as intended for award to HUBZone SBCs, there shall be a presumption of loss to the United States based on the total amount expended on the contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant whenever it is established that a business concern other than a HUBZone SBC willfully sought and received the award by misrepresentation.

(b) *Deemed Certifications.* The following actions shall be deemed affirmative, willful and intentional certifications of HUBZone SBC status:

(1) Submission of a bid, proposal, application or offer for a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement reserved, set aside, or otherwise classified as intended for award to HUBZone SBCs.

(2) Submission of a bid, proposal, application or offer for a Federal grant, contract, subcontract, cooperative agreement or cooperative research and development agreement which in any way encourages a Federal agency to classify the bid or proposal, if awarded, as an award to a HUBZone SBC.

(3) Registration on any Federal electronic database for the purpose of being considered for award of a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement, as a HUBZone SBC.

(c) *Signature Requirement.* Each offer, proposal, bid, or application for a Federal contract, subcontract, or grant shall contain a certification concerning the HUBZone SBC status of a business concern seeking the Federal contract, subcontract or grant. An authorized official must sign the certification on the same page containing the HUBZone status claimed by the concern.

(d) *Limitation of Liability.* Paragraphs (a)–(c) of this section may be determined not to apply in the case of unintentional errors, technical malfunctions, and other similar situations that demonstrate that a misrepresentation of HUBZone status was not affirmative, intentional, willful or actionable under the False Claims Act, 31 U.S.C. §§ 3729, et seq. A prime contractor acting in good faith should not be held liable for misrepresentations made by its subcontractors regarding the subcontractors' HUBZone status. Relevant factors to consider in making this determination may include the firm's internal management procedures governing HUBZone status representations or certifications, the clarity or ambiguity of the representation or certification requirement, and the efforts made to correct an incorrect or invalid representation or certification in a timely manner. An individual or firm may not be held liable where government personnel have erroneously identified a concern as a HUBZone SBC without any representation or certification having been made by the concern and where such identification is made without the knowledge of the individual or firm.

(e) *Penalties for Misrepresentation.*

(1) *Suspension or debarment.* The SBA suspension and debarment official or the agency suspension and debarment official may suspend or debar a person or concern for misrepresenting a firm's status as a HUBZone SBC pursuant to the procedures set forth in 48 CFR subpart 9.4.

(2) *Civil Penalties.* Persons or concerns are subject to severe penalties under the False Claims Act, 31 U.S.C. 3729–3733, and under the Program Fraud Civil Remedies Act, 331 U.S.C. 3801–3812, and any other applicable laws.

(3) *Criminal Penalties.* Persons or concerns are subject to severe criminal penalties for knowingly misrepresenting the HUBZone status of a concern in connection with procurement programs pursuant to section 16(d) of the Small Business Act, 15 U.S.C. 645(d), as amended, 18 U.S.C. 1001, 18 U.S.C. 287, and any other applicable laws. Persons or concerns are subject to criminal penalties for knowingly making false statements or misrepresentations to SBA for the purpose of influencing any actions of SBA pursuant to section 16(a) of the Small Business Act, 15 U.S.C. 645(a), as amended, including failure to correct ''continuing representations'' that are no longer true.

PART 127—WOMEN-OWNED SMALL BUSINESS FEDERAL CONTRACT PROGRAM

■ 16. The authority citation for part 127 is revised to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 637(m), and 644.

■ 17. Revise § 127.700 to read as follows:

§ 127.700 What are the requirements for representing EDWOSB or WOSB status, and what are the penalties for misrepresentation?

(a) *Presumption of Loss Based on the Total Amount Expended.* In every contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant which is set aside, reserved, or otherwise classified as intended for award to EDWOSBs or WOSBs, there shall be a presumption of loss to the United States based on the total amount expended on the contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant whenever it is established that a business concern other than a EDWOSB or WOSB willfully sought and received the award by misrepresentation.

(b) *Deemed Certifications.* The following actions shall be deemed affirmative, willful and intentional certifications of EDWOSB or WOSB status:

(1) Submission of a bid, proposal, application or offer for a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement reserved, set aside, or otherwise classified as intended for award to EDWOSBs or WOSBs.

(2) Submission of a bid, proposal, application or offer for a Federal grant, contract, subcontract, cooperative agreement or cooperative research and development agreement which in any way encourages a Federal agency to classify the bid or proposal, if awarded, as an award to a EDWOSB or WOSB.

(3) Registration on any Federal electronic database for the purpose of being considered for award of a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement, as an EDWOSB or WOSB.

(c) *Signature Requirement.* Each offer, proposal, bid, or application for a Federal contract, subcontract, or grant shall contain a certification concerning the EDWOSB or WOSB status of a business concern seeking the Federal contract, subcontract or grant. An authorized official must sign the certification on the same page containing the EDWOSB or WOSB status claimed by the concern.

(d) *Limitation of Liability.* Paragraphs (a)–(c) of this section may be determined not to apply in the case of unintentional errors, technical malfunctions, and other similar situations that demonstrate that a misrepresentation of EDWOSB or WOSB status was not affirmative, intentional, willful or actionable under the False Claims Act, 31 U.S.C. §§ 3729, et seq. A prime contractor acting in good faith should not be held liable for misrepresentations made by its subcontractors regarding the subcontractors' EDWOSB or WOSB status. Relevant factors to consider in making this determination may include the firm's internal management procedures governing EDWOSB or WOSB status representations or certifications, the clarity or ambiguity of the representation or certification requirement, and the efforts made to correct an incorrect or invalid representation or certification in a timely manner. An individual or firm may not be held liable where government personnel have erroneously identified a concern as an EDWOSB or WOSB without any representation or certification having been made by the concern and where such identification is made without the knowledge of the individual or firm.

(e) *Penalties for Misrepresentation.*

(1) *Suspension or debarment.* The SBA suspension and debarment official or the agency suspension and debarment official may suspend or debar a person or concern for misrepresenting a firm's status as an EDWOSB or WOSB pursuant to the procedures set forth in 48 CFR subpart 9.4.

(2) *Civil Penalties.* Persons or concerns are subject to severe penalties under the False Claims Act, 31 U.S.C. 3729–3733, and under the Program Fraud Civil Remedies Act, 331 U.S.C. 3801–3812, and any other applicable laws.

(3) *Criminal Penalties.* Persons or concerns are subject to severe criminal penalties for knowingly misrepresenting the EDWOSB or WOSB status of a concern in connection with procurement programs pursuant to section 16(d) of the Small Business Act, 15 U.S.C. 645(d), as amended, 18 U.S.C. 1001, 18 U.S.C. 287, and any other applicable laws. Persons or concerns are subject to criminal penalties for knowingly making false statements or misrepresentations to SBA for the purpose of influencing any actions of SBA pursuant to section 16(a) of the Small Business Act, 15 U.S.C. 645(a), as amended, including failure to correct ''continuing representations'' that are no longer true.

■ 18. Add new § 127.701 to read as follows:

§ 127.701 What must a concern do in order to be identified as an EDWOSB or WOSB in any Federal procurement databases?

(a) In order to be identified as an EDWOSB or WOSB in the System for Award Management (SAM) database (or any successor thereto), a concern must certify its EDWOSB or WOSB status in connection with specific eligibility requirements at least annually.

(b) If a firm identified as an EDWOSB or WOSB in SAM fails to certify its status within one year of a status certification, the firm will not be listed as an EDWOSB or WOSB in SAM, unless and until the firm recertifies its EDWOSB or WOSB status.

Karen G. Mills,

Administrator.

[FR Doc. 2013–15418 Filed 6–27–13; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1214; Directorate Identifier 2011–SW–071–AD; Amendment 39–17482; AD 2013–12–04]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Eurocopter France Model EC 155B, EC155B1, SA–366G1, SA–365N, SA–365N1, AS–365N2, and AS 365 N3 helicopters, which requires modifying the fuel tank draining system. This AD is prompted by a closed fuel tank drain that, in the event of a fuel leak, could result in fuel accumulating in an area containing electrical equipment. The actions are intended to prevent accumulation of fuel in an area with electrical equipment or another ignition source, which may lead to a fire.

DATES: This AD is effective August 2, 2013.

The Director of the Federal Register approved the incorporation by reference of certain documents listed in this AD as of August 2, 2013.

ADDRESSES: For service information identified in this AD, contact American Eurocopter Corporation, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.eurocopter.com/techpub.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

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 AD, any incorporated-by-reference service information, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations Office, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Chinh Vuong, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *chinh.vuong@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On November 26, 2012, at 77 FR 70382, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 to include an AD that would apply to Eurocopter France Model EC 155B, EC155B1, SA–366G1, SA–365N, SA–365N1, AS–365N2, and AS 365 N3 helicopters. The NPRM proposed to require modifying the fuel tank draining system. The proposed requirements were intended to prevent accumulation of fuel in an area with electrical equipment or other ignition source, which may lead to a fire.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, issued EASA AD No. 2011–0190, dated September 30, 2011 (AD No. 2011–0190), to correct an unsafe condition for the Eurocopter France EC 155, SA 366, SA 365, and AS 365 model helicopters, except those with certain modifications. EASA reports that the fuel tank drains were closed with plugs during production to maintain buoyancy during emergency landings in water. EASA states that this closing of the fuel tank drains with plugs ''disregards compliance with an airworthiness certification requirement'' and, in the event of a fuel leak in flight, creates ''the risk of fuel accumulation and/or migration'' to an adjacent area that may contain electrical equipment ''susceptible of constituting a source of ignition.'' EASA states that this condition, if not corrected, could result in ignition of fuel vapors, ''resulting in a fire and consequent damage to the helicopter, or injury to its occupants.'' As a result, EASA required modification of the fuel tank compartments' draining system.

Comments

After our NPRM (77 FR 70382, November 26, 2012) was published, we received comments from one commenter.

Request

The commenter called this ''a health and safety issue'' and stated that the repairs should be done immediately, as the costs of the repair are relatively minor.

We partially agree. We are not requiring that the repairs be accomplished immediately. We evaluated the safety data and determined that allowing helicopter owners and operators time to plan and obtain parts to make the repairs would not adversely affect safety.

FAA's Determination

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, its technical representative, has notified us of the unsafe condition described in its AD. We are issuing this AD because we evaluated all information provided by EASA, reviewed the relevant information, considered the comments received, and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed.

Differences Between This AD and the EASA AD

We require within six months modifying the fuel tank drain system for helicopters with an emergency buoyancy system. EASA requires compliance within 24 months.

Related Service Information

Eurocopter issued Alert Service Bulletin (ASB) No. EC155–53A031 for its B and B1 model helicopters, ASB No. AS366–53.11 for its G1 model helicopters, and ASB No. AS365–53.00.50 for its N, N1, N2 and N3 model helicopters. The ASBs were all dated May 3, 2011, and were all followed with Revision 1 dated September 21, 2011.

For helicopters not equipped with emergency buoyancy fixed parts, the ASBs describe procedures to modify the fuel tank draining system by removing drain plugs in the fuel tanks, to make draining possible. For helicopters equipped with emergency buoyancy fixed parts, the ASBs contain additional procedures to seal one drain plug per fuel tank compartment and to install new drain points and self-sealing drain valves in specified fuel tanks. EASA AD No. 2011–0190 classifies these ASBs as mandatory to ensure the airworthiness of these helicopters.

Costs of Compliance

We estimate that this AD affects 46 helicopters of U.S. Registry and that labor costs average $85 per work-hour. Based on these estimates, we expect the following costs:

Sealing drain plugs, and installing new drain points and self-sealing drain valves at other locations on helicopters equipped with emergency buoyancy fixed parts require 16 work-hours. Parts cost $11,154 for a total cost of $12,514 per helicopter. For helicopters equipped with emergency buoyancy fixed parts and a sixth fuel tank, this work instead requires 17 work-hours for a total cost of $12,599 per helicopter.

Removing drain plugs on helicopters not equipped with emergency buoyancy fixed parts requires one work-hour and no parts for a total cost of $85 per helicopter. For helicopters not equipped with emergency buoyancy fixed parts but equipped with a sixth fuel tank, this work instead requires two work-hours for a total cost of $170 per helicopter.

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 helicopters identified in this rulemaking action.

Regulatory Findings

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

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

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

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

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

We prepared an economic evaluation of the estimated costs to comply with this 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.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2013–12–04 Eurocopter France Helicopters: Amendment 39–17482; Docket No. FAA–2012–1214; Directorate Identifier 2011–SW–071–AD.

(a) Applicability

This AD applies to Eurocopter France Model EC 155B, EC155B1, and SA–366G1 helicopters, except those with modification 365A084485.00, or modifications 0753C98 and 0745C96; and Model SA–365N, SA–365N1, AS–365N2, and AS 365 N3 helicopters, except those with modifications 0753C98, 0745C96, and (if a sixth fuel tank is installed) 365A081003.00, or modification 365A081003.00 and (if a sixth fuel tank is installed) 365A084485.00.

(b) Unsafe Condition

This AD defines the unsafe condition as a closed fuel tank drain that, in the event of a fuel leak, could result in fuel accumulating in an area containing electrical equipment or other ignition source. This condition could result in a fire in the helicopter.

(c) Effective Date

This AD becomes effective August 2, 2013.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

(1) Within 110 hours time-in-service (TIS):

(i) For helicopters *without* an emergency buoyancy system, remove the fuel tank drain plugs listed in the Accomplishment Instructions, paragraph 3.B.2.b., of Eurocopter Alert Service Bulletin (ASB) No. EC155–53A031, Revision 1, dated September 21, 2011 (ASB 155); ASB No. AS365–53.00.50, Revision 1, dated September 21, 2011 (ASB 365), or ASB No. AS366–53.11, Revision 1, dated September 21, 2011 (ASB 366), as appropriate for your model helicopter.

(ii) For the Model SA–365N, SA–365N1, AS–365N2, and AS 365 N3 helicopters, if there is an optional sixth fuel tank installed, install a self-sealing drain valve in accordance with paragraph 3.B.2.c. of ASB 365.

(2) Within six months:

(i) For helicopters with an emergency buoyancy system, modify the fuel tank drain system in accordance with the Accomplishment Instructions, paragraphs 3.B.2.a.1. through 3.B.2.a.3, of the ASB appropriate for your model helicopter.

(ii) For the Model SA–365N, SA–365N1, AS–365N2, AS 365 N3 helicopters, if there is an optional sixth fuel tank installed, install a self-sealing drain valve in accordance with paragraph 3.B.2.c. of ASB 365.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Chinh Vuong, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *chinh.vuong@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

(g) Additional Information

The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2011–0190, dated September 30, 2011. You may view the EASA AD at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2012–1214.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 2810, fuel storage.

(i) Material Incorporated by Reference

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

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

(i) Eurocopter Alert Service Bulletin No. EC155–53A031, Revision 1, dated September 21, 2011.

(ii) Eurocopter Alert Service Bulletin No. AS365–53.00.50, Revision 1, dated September 21, 2011.

(iii) Eurocopter Alert Service Bulletin No. AS366–53.11, Revision 1, dated September 21, 2011.

(3) For Eurocopter service information identified in this AD, contact American Eurocopter Corporation, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.eurocopter.com/techpub.*

(4) You may view this service information at FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued in Fort Worth, Texas, on June 13, 2013.

Kim Smith,

Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2013–14826 Filed 6–27–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1155; Directorate Identifier 2012–NM–115–AD; Amendment 39–17445; AD 2013–09–04]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

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

ACTION: Final Rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model DHC–8–400 series airplanes. This AD was prompted by reports of chafing found on the main landing gear (MLG) yoke. The chafing was attributed to contact between the nacelle fire detection wires and the MLG yoke. This AD requires inspections of the nacelle fire detection wires and the MLG yoke for damage; replacing nacelle fire detection wires, if necessary; repairing the MLG yoke, if necessary; and installing brackets and associated hardware to secure the fire detection wires. We are issuing this AD to prevent chafing between the nacelle fire detection wires and the MLG yoke. Chafing could lead to cracking and subsequent failure of the MLG yoke, which could adversely affect the safe landing of the airplane. In addition, chafing of the nacelle fire detection wires could cause them to fail and prevent the detection of a fire in the nacelle assembly.

DATES: This AD becomes effective August 2, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 2, 2013.

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

FOR FURTHER INFORMATION CONTACT: Assata Dessaline, Aerospace Engineer, Avionics and Services Branch, ANE–171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7301; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on November 5, 2012 (77 FR 66413). That NPRM proposed to correct an unsafe condition for the specified products. The Mandatory Continuing Airworthiness Information (MCAI) states:

> There have been two (2) in-service reports of chafing found on the main landing gear (MLG) yoke. The chafing was attributed to contact between the nacelle fire detection wire and the MLG yoke. This chafing may lead to cracking and subsequent failure of the MLG yoke.
>
> Failure of the MLG yoke could adversely affect the safe landing of the aeroplane. In addition, failure of the fire detection wire could prevent the detection of a fire in the nacelle assembly.
>
> This [Canadian] Airworthiness Directive (AD) mandates the [detailed] inspection of the nacelle fire detection wires and [detailed inspection of the] MLG yoke for damage [chafing, nicks, cracking] and the installation of new brackets to secure the fire detection wire to prevent chafing against the MLG yoke [and corrective actions if necessary].

Corrective actions include replacing damaged wires with new wires and repairing the MLG yoke. You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Request To Allow Reference to Canadian AD

Horizon Air requested that the last sentence in paragraph (g)(2)(ii) of the NPRM (77 FR 66413, November 5, 2012) be deleted. That sentence states, ''The approved repair must specifically reference this AD.'' Horizon Air stated that Bombardier references Transport Canada Civil Aviation ADs on repair drawings and the requirement to reference an FAA AD has not been included in previous ADs issued by the FAA. Horizon noted that a reference to the Canadian AD should be sufficient and the final rule should be changed to allow a reference to the Canadian AD.

For the reasons presented by the commenter we agree to delete the last sentence of paragraph (g)(2)(ii) in this AD. That sentence was inadvertently included in the NPRM (77 FR 66413, November 5, 2012).

Request To Change Certain Reference to Brackets

Horizon Air requested that paragraph (g)(3) of the NPRM (77 FR 66413, November 5, 2012) be revised to delete the word ''new'' from the sentence, ''Install new brackets and associated hardware . . . .'' Horizon acknowledged that this sentence was included in Canadian AD CF–2012–15, dated April 30, 2012, which is referenced in the NPRM, but based on the FAA's policy of strict interpretation of the word ''new'' as a zero-time part, this sentence places an additional requirement on U.S. operators to ensure that only zero-time brackets are installed.

We agree to revise paragraph (g)(3) in this final rule to delete the word ''new.'' This will remove the requirement that operators only install ''new'' brackets. We also deleted the word ''new'' in the **SUMMARY** section of this final rule.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (77 FR 66413, November 5, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 66413, November 5, 2012).

Costs of Compliance

We estimate that this AD will affect 80 products of U.S. registry. We also estimate that it will take about 3 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $332 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $46,960, or $587 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (77 FR 66413, November 5, 2012), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2013–09–04 Bombardier, Inc.:

Amendment 39–17445. Docket No. FAA–2012–1155; Directorate Identifier 2012–NM–115–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective August 2, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes; certificated in any category; serial numbers 4001 through 4382 inclusive.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 26, Fire protection.

(e) Reason

This AD was prompted by reports of chafing found on the main landing gear (MLG) yoke. We are issuing this AD to prevent chafing between the nacelle fire detection wires and the MLG yoke. Chafing could lead to cracking and subsequent failure of the MLG yoke, which could adversely affect the safe landing of the airplane. In addition, chafing of the nacelle fire detection wires could cause them to fail and prevent the detection of a fire in the nacelle assembly.

(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) Inspections and Installation

Within 6,000 flight hours or 36 months after the effective date of this AD, whichever occurs first, accomplish the actions specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–26–11, Revision A, dated January 25, 2012.

(1) Do a detailed inspection of the left and right nacelle fire detection wires for damage (i.e., chafing). If damage is found on any nacelle fire detection wire: Before further flight, remove and replace the damaged wire with a new wire, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–26–11, Revision A, dated January 25, 2012.

(2) Do a detailed inspection of the MLG yoke for damage (e.g., chafing, nicks, cracking).

(i) If any damage is found within the limitations specified in Figure 8 of Bombardier Service Bulletin 84–26–11, Revision A, dated January 25, 2012: Before further flight, repair the MLG yoke, in accordance with Figure 9, steps 1 through 10, of Bombardier Service Bulletin 84–26–11, Revision A, dated January 25, 2012.

(ii) If any damage exceeds the limitations specified in Figure 8 of Bombardier Service Bulletin 84–26–11, Revision A, dated January 25, 2012: Before further flight, repair the MLG yoke using a method approved by either the Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA; or Transport Canada Civil Aviation (or its delegated agent).

(3) Install brackets and associated hardware, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–26–11, Revision A, dated January 25, 2012.

(h) Credit for Previous Actions

This paragraph provides credit for actions required by paragraphs (g)(1), (g)(2), and (g)(3) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 84–26–11, dated December 19, 2011, which is not incorporated by reference in this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, New York ACO, ANE–170, 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 ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. 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 MCAI Canadian Airworthiness Directive CF–2012–15, dated April 30, 2012 (*http://wwwapps3.tc.gc.ca/Saf-Sec-Sur/2/cawis-swimn/attachment.asp?aiid=CF-2012-15&revid=0&cntr=CF&file=CFCF-2012-15.pdf&type=PDE*), for related information.

(2) Service information identified in this AD that is not incorporated by reference in this AD may be obtained at the addresses specified in paragraphs (k)(3) and (k)(4) of this AD.

(k) Material Incorporated by Reference

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

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

(i) Bombardier Service Bulletin 84–26–11, Revision A, dated January 25, 2012.

(ii) Reserved.

(3) For service information identified in this AD, contact Bombardier, Inc., Q Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.*

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

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

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

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–14430 Filed 6–27–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0521; Directorate Identifier 2013–SW–010–AD; Amendment 39–17486; AD 2013–06–51]

RIN 2120–AA64

Airworthiness Directives; Various Helicopter Models

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

ACTION: Final rule; request for comments.

SUMMARY: We are publishing a new airworthiness directive (AD) for various model helicopters with certain part-numbered and serial-numbered Goodrich externally-mounted hoists installed. This AD requires performing a cable conditioning lift and a load inspection test, deactivating or replacing any hoist that fails the load inspection test, and recording the results of the load inspection test. This AD is prompted by a report of a failure of the overload clutch resulting in an in-flight failure of a hoist containing a dummy load during a maintenance flight. These actions are intended to detect conditions that may result in failure of the hoist and injury to persons being lifted.

DATES: This AD becomes effective July 15, 2013 to all persons except those persons to whom it was made immediately effective by Emergency AD (EAD) No. 2013–06–51, issued on March 25, 2013, which contained the requirements of this AD.

The Director of the Federal Register approved the incorporation by reference of a certain document listed in this AD as of July 15, 2013.

We must receive comments on this AD by August 27, 2013.

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

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

For service information identified in this AD, contact: Goodrich Corporation, Sensors & Integrated Systems (SIS–CA), Brea, CA 92821; telephone (714) 984–1461; *http://www.goodrich.com/Goodrich.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Matt Wilbanks, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *matt.wilbanks@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments prior to it becoming effective. However, we invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that resulted from adopting this AD. The most helpful comments reference a specific portion of the AD, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit them only one time. We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking during the comment period. We will consider all the comments we receive and may conduct additional rulemaking based on those comments.

Discussion

We are issuing this AD to publish EAD No. 2013–06–51, issued on March 25, 2013, which was for helicopter models with certain part-numbered and serial-numbered Goodrich externally-mounted hoists. EAD No. 2013–06–51 was prompted by an incident that occurred during a maintenance check of a rescue hoist that lost the ability to hold the load at maximum rated capacity, causing the test load to strike the ground. A Eurocopter Deutschland GmbH (ECD) Model MBB–BK 117 C–2 helicopter picked up a dummy load of 552 lbs. to conduct a ''maximum load cycle'' on the rescue hoist. Initially, the cable reeled out and stopped as commanded by the winch operator; however, the cable continued to reel-out without further command by the winch operator, causing the dummy load to strike the ground. Examination of the affected hoist determined that the overload clutch had failed. EAD No. 2013–06–51 requires performing a cable conditioning lift, performing a load inspection test, and recording the results on the hoist component history card or equivalent record. The actions of EAD No. 2013–06–51 were intended to detect conditions that may result in failure of the hoist and injury to persons being lifted.

EAD No. 2013–06–51 was prompted by AD No. 2013–0065–E, issued March 14, 2013 (2013–0065–E), and superseded with AD No. 2013–0077–E, issued March 22, 2013, by the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union. EASA issued AD 2013–0065–E to correct an unsafe condition for helicopters with certain part-numbered and serial-numbered Goodrich hoists installed. EASA advised of the report that an ECD Model MBB–BK 117 C–2 helicopter experienced an incident of its rescue hoist containing a dummy load of 552 lbs. that reeled-out without command of the operator and impacted the ground during a maintenance check flight. Examination of the affected hoist determined that the overload clutch had failed. The overload clutch design is common to many Goodrich externally-mounted rescue hoists installed on the applicable model helicopters. EASA further stated its AD action is considered an interim action and further AD action may follow.

Since we issued EAD No. 2013–06–51, EASA revised its AD with EASA AD No. 2013–0077R1, dated March 27, 2013 (2013–0077R1). In issuing AD No. 2013–0077R1, EASA changed the initial compliance time, reduced the applicability of certain model helicopters for which no EASA approvals of the hoist installation are known, and partially adopted FAA EAD

No. 2013–06–51 for those helicopter models for which the FAA is the State of Design Authority. EASA continues to consider AD No. 2013–0077R1 an interim action and further AD action may follow. You may view EASA AD 2013–0077R1 at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2013–0521.

In publishing this AD, we are retaining the applicability and required actions of EAD No. 2013–06–51. As we have determined that the MD Helicopters, Inc., Model MD900 helicopter is another model helicopter on which an affected hoist may be installed, we are adding that model helicopter to the applicability. This addition does not increase the economic burden on any operator nor does it increase the scope of the AD.

FAA's Determination

These helicopters have been approved by the aviation authorities of Canada, Italy, France, and Germany and are approved for operation in the United States. Pursuant to our bilateral agreement with the European countries, EASA, their technical representative, has notified us of the unsafe condition described in the EASA AD. We are issuing this AD because we evaluated all known relevant information and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs.

Related Service Information

Goodrich issued Alert Service Bulletin No. 44301–10–15, dated March 8, 2013 (ASB), for certain externally-mounted rescue hoists manufactured by Goodrich Sensors & Integrated Systems. The ASB specifies inspecting and performing an operational check of the hoist. The ASB also specifies recording the performance in the hoist log and reporting the results of the test to UTC Aerospace Systems.

AD Requirements

This AD requires compliance with specified portions of the ASB to do the following before the next flight involving a hoist operation:

- Performing a cable conditioning lift;
- Performing a load inspection test;
- Deactivating or replacing any hoist that fails the load inspection test; and
- Recording the results of the load inspection test on the hoist component history card or equivalent record.

Differences Between This AD and the EASA AD

The EASA AD applies to specific model helicopters. This AD applies to all helicopters with certain Goodrich hoists installed that are type certificated in the U.S. This AD does not contain a requirement to report results to the manufacturer. The EASA AD requires complying with specific helicopter manufacturer ASBs, and this AD requires complying with the Goodrich ASB for conducting the load inspection test.

Interim Action

We consider this AD to be an interim action. Investigation of the root cause of the clutch failure is ongoing. If final action is later identified, we might consider further rulemaking.

Costs of Compliance

We estimate that this AD will affect 1,378 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. It will take about 1 work-hour to perform the lift testing at an average labor rate of $85 per work-hour, for a cost per helicopter of $85 and a total cost to U.S. operators of $117,130. If necessary, replacing the hoist will take about 0.5 work-hour and required parts will cost about $95,000, for a cost per helicopter of about $95,043.

FAA's Justification and Determination of the Effective Date

The short compliance time involved is required because risk analysis of the previously described unsafe condition indicates that failure of the hoist could result in serious injury or death if the hoist is being used for human cargo. Subsequently, the required actions must be performed before the next flight involving a hoist operation.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment before issuing this AD were impracticable and contrary to the public interest and good cause existed for making Emergency AD No. 2013–06–51 effective immediately on March 25, 2013, to all known U.S. owners and operators of the specified model helicopters. These conditions still exist and the AD is hereby published, with a minor change, in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify that this AD:

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

We prepared an economic evaluation of the estimated costs to comply with this 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.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2013–06–51 Various Helicopter Models With The Goodrich Hoist Installed: Amendment 39–17486; Docket No. FAA–2013–0521; Directorate Identifier 2013–SW–010–AD.

(a) Applicability

This AD applies to helicopters, certificated in any category, with an externally-mounted hoist with a part number and serial number listed in Table 1 of Goodrich Alert Service Bulletin No. 44301–10–15, dated March 8, 2013 (ASB), installed, including but not limited to the following:

(1) AgustaWestland S.p.A Model A109, A109S, A109K2, A109A, A109A II, A109C, A109E, AW109SP, AB139, AW139, AB412, and AB412 EP;

(2) Bell Helicopter Textron, Inc., Model 212, 214B, 214B–1, 214ST, 412, 412CF, and 412EP;

(3) Bell Helicopter Textron Canada, Ltd., Model 429 and 430;

(4) Eurocopter France Model AS 365 N3, AS332L2, and EC225LP;

(5) Eurocopter Deutschland GmbH Model MBB–BK 117 C–2, EC135P1, EC135T1, EC135P2, EC135T2, EC135P2+, and EC135T2+;

(6) MD Helicopters, Inc., Model MD900; and

(7) Sikorsky Aircraft Corporation Model S–61L, S–61N, S–61R, S–61NM, S–70, S–70A, S–70C, S–70C(M), S–70C(M1), S–76A, S–76B, S–76C, S–76D, and S–92A helicopters.

(b) Unsafe Condition

This AD defines the unsafe condition as failure of the overload clutch resulting in in-flight failure of the hoist, which could result in injury to persons being lifted.

(c) Affected ADs

This AD publishes EAD No. 2013–06–51, issued March 25, 2013.

(d) Effective Date

This AD becomes effective July 15, 2013 to all persons except those persons to whom it was made immediately effective by EAD No. 2013–06–51, issued March 25, 2013, which contained the requirements of this AD.

(e) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(f) Required Actions

Before next flight involving a hoist operation, perform the following one-time actions:

(1) Perform a cable conditioning lift by following the Accomplishment Instructions, paragraphs 2.A. through 2.A.(2), of the ASB.

(2) Perform a load inspection test by following the Accomplishment Instructions, paragraphs 2.B. through 2.I., of the ASB. Refer to the aircraft weight and balance limitations prior to performing this test and use a balancing load if necessary to prevent helicopter rollover. Any alternate method of complying with the load inspection test must first be approved in accordance with paragraph (g) of this AD.

(3) If the hoist fails the load inspection test, deactivate or replace the hoist with an airworthy hoist.

(4) Record the result of the load inspection test on the hoist component history card or equivalent record.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Matt Wilbanks, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *matt.wilbanks@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

(h) Additional Information

The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2013–0077R1, dated March 27, 2013. You may view the EASA AD at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2013–0521.

(i) Subject

Joint Aircraft Service Component (JASC) Code: 2500, Equipment/Furnishings.

(j) Material Incorporated by Reference

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

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

(i) Goodrich Alert Service Bulletin No. 44301–10–15, dated March 8, 2013.

(ii) Reserved.

(3) For Goodrich Corporation's service information identified in this AD, contact Goodrich Corporation, Sensors & Integrated Systems (SIS–CA), Brea, CA 92821; telephone (714) 984–1461; *http://www.goodrich.com/Goodrich.*

(4) You may view this service information at FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued in Fort Worth, Texas, on June 13, 2013.

Kim Smith,

Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2013–14842 Filed 6–27–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–1335; Airspace Docket No. 12–ASO–19]

Establishment of Class E Airspace; Captiva, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule: delay of effective date.

SUMMARY: This action changes the effective date of a final rule, published in the **Federal Register** on June 6, 2013, establishing controlled airspace at Upper Captiva Island Heliport, Captiva, FL, to allow additional time for en route charting.

DATES: Effective date: 0901 UTC. The effective date of the final rule published on June 6, 2013 is delayed from June 27, 2013 to August 22, 2013. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

On June 6, 2013, the FAA published a final rule, in the **Federal Register** establishing Class E airspace at Upper Captiva Island Heliport, Captiva, FL, (78 FR 33967). Subsequent to publication, the FAA found that the effective date of June 27, 2013 did not allow sufficient time for coordination with FAA's aeronautical data charting service, thereby making this action necessary.

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

Final Rule Delay of Effective Date

Accordingly, pursuant to the authority delegated to me, the effective date on Airspace Docket No. 12–ASO–19, for the establishment of Class E airspace at Upper Captiva Island Heliport, Captiva, FL, as published in the **Federal Register** of June 6, 2013, (78 FR 33967), FR Doc. 2013–13105, is delayed from June 27, 2013, to August 22, 2013.

Issued in College Park, Georgia, on June 19, 2013.

Barry A. Knight,

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

[FR Doc. 2013–15287 Filed 6–27–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

30 CFR Part 1206

Product Valuation

CFR Correction

In Title 30 of the Code of Federal Regulations, Part 700 to End, revised as of July 1, 2012, on page 742, in § 1206.57, in paragraph (c)(3), the first sentence is corrected to read as follows:

§ 1206.57 Determination of transportation allowances.

* * * * *

(c) * * *

(3) ONNR may establish reporting dates for individual lessees different from those specified in this subpart in order to provide more effective administration. * * *

* * * * *

[FR Doc. 2013–15691 Filed 6–27–13; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

30 CFR Part 1218

Collection of Royalties, Rentals, Bonuses, and Other Monies Due the Federal Government

CFR Correction

In Title 30 of the Code of Federal Regulations, Part 700 to End, revised as of July 1, 2012, on page 873, in § 1218.51, in paragraph (a), the definition for *RIK* is removed.

[FR Doc. 2013–15693 Filed 6–27–13; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

30 CFR Part 1227

Delegation to States

CFR Correction

In Title 30 of the Code of Federal Regulations, Part 700 to End, revised as of July 1, 2012, in § 1227.110, on page 907, in the last sentence in paragraph (a), the phrase ''*www.ONRR.gov*'' is corrected to read ''*www.boemre.gov*'' and on page 908, in paragraph (e), the phrase ''ONRR Associate Director for Minerals Revenue Management'' is corrected to read ''Director for Office of Natural Resources Revenue''.

[FR Doc. 2013–15695 Filed 6–27–13; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2013–0387]

Special Local Regulations; Recurring Marine Events in the Seventh Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the special local regulation for the St. John 4th of July Carnival Fireworks Display from 8 p.m. until 10 p.m. on July 4, 2013. This action is necessary to ensure safety of life on navigable waters of the United States. During the enforcement period, a regulated area will exclude the presence of all vessels not associated with the show. All vessels not associated with the show will be prohibited from entering, transiting through, anchoring in, or remaining within the area unless authorized by the Captain of the Port San Juan or a designated representative.

DATES: The regulation in 33 CFR 100.701 Table 1 as well as the general regulations in that section will be enforced from 8 p.m. through 10 p.m. on July 4, 2013.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Mr. Efrain Lopez, Sector San Juan Prevention Department, Coast Guard; telephone (787) 289–2097, email *Efrain.Lopez1@uscg.mil*.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulation for the annual St. John 4th of July Carnival Fireworks Display in 33 CFR 100.701, Table 1, and the general regulations in that section on July 4, 2013, from 8 p.m. until 10 p.m. This rule creates a regulated area that will encompass all waters within a 200 yard radius centered on the following position: 18°19′55″ N/064°48′06″ W.

Under the general provisions of 33 CFR 100.701, vessels not associated with the show may not enter, transit through, anchor in, or remain in the regulated area, unless they receive permission from the COTP. Vessels may safely transit outside the regulated area, but may not anchor, block, loiter in, or impede the official patrol vessels. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 100.701 and 5 U.S.C. 552 (a). The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

Dated: June 14, 2013.

D. W. Pearson,

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

[FR Doc. 2013–15498 Filed 6–27–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2011–0452]

Special Local Regulations; Seattle Seafair Hydroplane Race, Lake Washington, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Seattle Seafair Unlimited Hydroplane Race Special Local Regulation on Lake Washington, WA from 8 a.m. on August 2, 2013, through 11:59 p.m. on August 4, 2013, during hydroplane race times. This action is necessary to ensure public safety from the inherent dangers associated with high-speed races while allowing access for rescue personnel in the event of an emergency. During the enforcement period, no person or vessel will be allowed to enter the regulated area without the permission of the Captain of the Port, on-scene Patrol Commander or Designated Representative.

DATES: The regulations in 33 CFR 100.1301 are effective from 8 a.m. on August 2, 2013, through 11:59 p.m. on August 4, 2013.

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

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulation for the annual Seattle Seafair Unlimited Hydroplane Race in 33 CFR 100.1301 from 8 a.m. on August 2, 2013, through 11:59 p.m. on August 4, 2013.

Under the provisions of 33 CFR 100.1301, the Coast Guard will restrict general navigation in the following area; The waters of Lake Washington bounded by the Interstate 90 (Mercer Island/Lacey V. Murrow) Bridge, the western shore of Lake Washington, and the east/west line drawn tangent to Bailey Peninsula and along the shoreline of Mercer Island.

The regulated area has been divided into two zones. The zones are separated by a line perpendicular from the I–90 Bridge to the northwest corner of the East log boom and a line extending from the southeast corner of the East log boom to the southeast corner of the hydroplane race course and then to the northerly tip of Ohlers Island in Andrews Bay. The western zone is designated Zone I, the eastern zone, Zone II. (Refer to NOAA Chart 18447).

The Coast Guard will maintain a patrol consisting of Coast Guard vessels, assisted by Auxiliary Coast Guard vessels, in Zone II. The Coast Guard patrol of this area is under the direction of the Coast Guard Patrol Commander (the ''Patrol Commander''). The Patrol Commander is empowered to control the movement of vessels on the racecourse and in the adjoining waters during the periods this regulation is in effect. The Patrol Commander may be assisted by other federal, state and local law enforcement agencies.

Only authorized vessels may be allowed to enter Zone I during the hours this regulation is in effect. Vessels in the vicinity of Zone I shall maneuver and anchor as directed by Coast Guard Officers or Petty Officers.

During the times in which the regulation is in effect, the following rules shall apply:

(1) Swimming, wading, or otherwise entering the water in Zone I by any person is prohibited while hydroplane boats are on the racecourse. At other times in Zone I, any person entering the water from the shoreline shall remain west of the swim line, denoted by buoys, and any person entering the water from the log boom shall remain within ten (10) feet of the log boom.

(2) Any person swimming or otherwise entering the water in Zone II shall remain within ten (10) feet of a vessel.

(3) Rafting to a log boom will be limited to groups of three vessels.

(4) Up to six (6) vessels may raft together in Zone II if none of the vessels are secured to a log boom. Only vessels authorized by the Patrol Commander, other law enforcement agencies or event sponsors shall be permitted to tow other watercraft or inflatable devices.

(5) Vessels proceeding in either Zone I or Zone II during the hours this regulation is in effect shall do so only at speeds which will create minimum wake, seven (07) miles per hour or less. This maximum speed may be reduced at the discretion of the Patrol Commander.

(6) Upon completion of the daily racing activities, all vessels leaving either Zone I or Zone II shall proceed at speeds of seven (07) miles per hour or less. The maximum speed may be reduced at the discretion of the Patrol Commander.

(7) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the Patrol Commander shall serve as signal to stop. Vessels signaled shall stop and shall comply with the orders of the patrol vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 100.1301 and 5 U.S.C. 552(a). If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, he may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: June 12, 2013.

S. J. Ferguson,

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

[FR Doc. 2013–15501 Filed 6–27–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0383]

RIN 1625–AA00

Safety Zone; Execpro Services Fireworks Display, Lake Tahoe, Incline Village, NV

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of Lake Tahoe near Incline Village, NV in support of the Execpro Services Fireworks Display on July 5, 2013. This safety zone is established to ensure the safety of participants and spectators from the dangers associated with the pyrotechnics. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission of the Captain of the Port or their designated representative.

DATES: This rule is effective from 7 a.m. July 2, 2013, until 10 p.m. on July 5, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2013–0383. 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 Lieutenant Junior Grade William Hawn, U.S. Coast Guard Sector San Francisco; telephone (415) 399–7442 or email at *D11-PF-MarineEvents@uscg.mil.* If you have questions on viewing or submitting material to the docket, call the 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.'' The Coast Guard is issuing this rule without prior notice and opportunity to comment because it is impracticable. The Coast Guard received the information about the fireworks display on May 9, 2013, and the fireworks display would occur before the rulemaking process would be completed. Because of the dangers posed by the pyrotechnics used in this fireworks display, the safety zone is necessary to provide for the safety of event participants, spectators, spectator craft, and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event.

Under 5 U.S.C. 553(d)(3), for the same reasons as mentioned 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

The legal basis for the proposed rule is 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, which collectively authorize the Coast Guard to establish safety zones.

Execpro Services will sponsor a fireworks display on July 5, 2013, in the navigable waters of Lake Tahoe near Incline Village, NV in approximate position 39°13′56″ N, 119°56′23″ W (NAD 83) as depicted in National Oceanic and Atmospheric Administration (NOAA) Chart 18665. This safety zone establishes a temporary restricted area on the waters 100 feet surrounding the fireworks barge during the loading, transit and arrival of the pyrotechnics from the loading site to the launch site and until the commencement of the fireworks display. Upon the commencement of the 20 minute fireworks display, the safety zone will increase in size and encompass the navigable waters around the fireworks barge within a radius of 560 feet. The fireworks display is meant for entertainment purposes. This restricted area around the fireworks barge is necessary to protect spectators, vessels, and other property from the hazards associated with the pyrotechnics.

C. Discussion of the Final Rule

The Coast Guard will enforce a safety zone in navigable waters around and under a fireworks barge within a radius of 100 feet during the loading, transit, and arrival of the fireworks barge to the display location and until the start of the fireworks display. From 7 a.m. until 11 p.m. on July 2, 2013, the fireworks barge will be loaded at Obexer's Marina in Homewood, CA. From 11 p.m. on July 2, 2013 to 7 a.m. on July 3, 2013, the loaded barge will transit from Obexer's Marina to the launch site near Incline Village, NV in approximate position 39°13′56″ N, 119°56′23″ W (NAD 83) where it will remain until the commencement of the fireworks display. Upon the commencement of the 20 minute fireworks display, scheduled to begin at 9:30 p.m. on July 5, 2013, the safety zone will increase in size and encompass the navigable waters around and under the fireworks barge within a radius 560 feet in approximate position 39°13′56″ N, 119°56′23″ W (NAD 83) for the Execpro Services Fireworks Display. At the conclusion of the fireworks display the safety zone shall terminate.

The effect of the temporary safety zone will be to restrict navigation in the vicinity of the fireworks barge while the fireworks are set up, and until the conclusion of the scheduled display. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the restricted area. These regulations are needed to keep spectators and vessels away from the immediate vicinity of the fireworks barge to ensure the safety of participants, spectators, and transiting vessels.

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.

We expect the economic impact of this rule does not rise to the level of necessitating a full Regulatory Evaluation. The safety zone is limited in duration, and is limited to a narrowly tailored geographic area. In addition, although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users will be notified via public Broadcast Notice to Mariners to ensure the safety zone will result in minimum impact. The entities most likely to be affected are waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities.

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 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 owners and operators of waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities and sightseeing. This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This safety zone would be activated, and thus subject to enforcement, for a limited duration. When the safety zone is activated, vessel traffic could pass safely around the safety zone. The maritime public will be advised in advance of this safety zone via Broadcast Notice to Mariners.

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 INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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 a safety zone of limited size and duration. 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; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T11–573 to read as follows:

§ 165.T11–573 Safety zone: Execpro Services Fireworks Display, Lake Tahoe, Incline Village, NV.

(a) *Location.* This temporary safety zone is established for the navigable waters of Lake Tahoe near Incline Village, NV as depicted in National Oceanic and Atmospheric Administration (NOAA) Chart 18665. From 5 a.m. on July 2, 2013, until 9:30 p.m. on July 5, 2013, the temporary safety zone applies to the nearest point of the fireworks barge within a radius of 100 feet during the loading, transit, and arrival of the fireworks barge from Obexer's Marina in Homewood, CA to the launch site near Incline Village, NV in approximate position 39°13′56″ N, 119°56′23″ W (NAD 83). From 9:30 p.m. until 10 p.m. on July 5, 2013, the temporary safety zone will increase in size to encompass the navigable waters around and under the fireworks barge in approximate position 39°13′56″ N, 119°56′23″ W (NAD 83) within a radius of 560 feet.

(b) *Enforcement period.* The zone described in paragraph (a) of this section will be enforced from 7 a.m. on July 2, 2013, through 10 p.m. on July 5, 2013. The Captain of the Port San Francisco (COTP) will notify the maritime community of periods during which this zone will be enforced via Broadcast Notice to Mariners in accordance with 33 CFR 165.7.

(c) *Definitions.* As used in this section, ''designated representative'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer on a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the COTP in the enforcement of the safety zone.

(d) *Regulations.* (1) Under the general regulations in 33 CFR Part 165, Subpart C, entry into, transiting or anchoring within this safety zone is prohibited

unless authorized by the COTP or a designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or a designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or a designated representative. Persons and vessels may request permission to enter the safety zone on VHF–23A or through the 24-hour Command Center at telephone (415) 399–3547.

Dated: June 13, 2013.

Gregory G. Stump,

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

[FR Doc. 2013–15502 Filed 6–27–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0345]

RIN 1625–AA00

Safety Zone: City of Martinez Fourth of July Fireworks Display, Carquinez Strait, Martinez, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of Carquinez Strait near Martinez, CA in support of the City of Martinez Fourth of July Fireworks Display on July 4, 2013. This safety zone is established to ensure the safety of participants and spectators from the dangers associated with the pyrotechnics. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission of the Captain of the Port or their designated representative.

DATES: This rule is effective on July 4, 2013, from 9:30 p.m. until 10 p.m.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2013–0345. 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 Lieutenant Junior Grade William Hawn, U.S. Coast Guard Sector San Francisco; telephone (415) 399–7442 or email at *D11–PF-MarineEvents@uscg.mil.* If you have questions on viewing or submitting material to the docket, call 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.'' Publication of an NPRM would be impracticable because the Coast Guard received the information about the fireworks display on May 1, 2013, and the fireworks display would occur before the rulemaking process would be completed.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register.** Because of the dangers posed by the pyrotechnics used in this fireworks display, the safety zone is necessary to provide for the safety of event participants, spectators, spectator craft, and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event.

B. Basis and Purpose

The legal basis for the proposed rule is 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, which collectively authorize the Coast Guard to establish safety zones.

The City of Martinez will sponsor the City of Martinez Fourth of July Fireworks Display on July 4, 2013, in Waterfront Park near Martinez, CA in approximate position 38°01′31″ N, 122°08′24″ W (NAD 83) as depicted in National Oceanic and Atmospheric Administration (NOAA) Chart 18657. Upon the commencement of the fireworks display, the safety zone will encompass the navigable waters around the launch site within a radius of 420 feet. The fireworks display is meant for entertainment purposes. This restricted area around the launch site is necessary to protect spectators, vessels, and other property from the hazards associated with the pyrotechnics. The Coast Guard has granted the event sponsor a marine event permit for the fireworks display.

C. Discussion of the Final Rule

The Coast Guard will enforce a safety zone in navigable waters around the land based launch site in Waterfront Park near Martinez, CA. Upon the commencement of the 20 minute fireworks display, scheduled to begin at 9:30 p.m. on July 4, 2013, the safety zone will encompass the navigable waters around the fireworks launch site within a radius 420 feet from position 38°01′31″ N, 122°08′24″ W (NAD 83) for the City of Martinez Fourth of July Fireworks Display. At the conclusion of the fireworks display the safety zone shall terminate.

The effect of the temporary safety zone will be to restrict navigation in the vicinity of the launch site until the conclusion of the scheduled display. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the restricted area. These regulations are needed to keep spectators and vessels away from the immediate vicinity of the launch site to ensure the safety of participants, spectators, and transiting vessels.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of 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.

We expect the economic impact of this rule does not rise to the level of necessitating a full Regulatory Evaluation. The safety zone is limited in duration, and is limited to a narrowly tailored geographic area. In addition, although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users will be notified via public Broadcast Notice to Mariners to ensure the safety zone will result in minimum impact. The entities most likely to be affected are waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities.

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 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 owners and operators of waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities and sightseeing. This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This safety zone would be activated, and thus subject to enforcement, for a limited duration. When the safety zone is activated, vessel traffic could pass safely around the safety zone. The maritime public will be advised in advance of this safety zone via Broadcast Notice to Mariners.

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 INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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 a safety zone of limited size and duration. This rule is categorically excluded from further review under paragraph 34(g) and 35(b) 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**. We seek any comments or information that may lead

to the discovery of a significant environmental impact from this rule.

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. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T11–565 to read as follows:

§ 165.T11–565 Safety zone; City of Martinez Fourth of July Fireworks Display, Carquinez Strait, Martinez, CA

(a) *Location.* This temporary safety zone is established for the navigable waters of Carquinez Strait near Martinez, CA as depicted in National Oceanic and Atmospheric Administration (NOAA) Chart 18657. The temporary safety zone will encompass the navigable waters around the fireworks launch site in approximate position 38°01′31″ N, 122°08′24″ W (NAD 83) within a radius of 420 feet.

(b) *Enforcement period.* The zone described in paragraph (a) of this section will be enforced from 9:30 p.m. through 10 p.m. on July 4, 2013. The Captain of the Port San Francisco (COTP) will notify the maritime community of periods during which this zone will be enforced via Broadcast Notice to Mariners in accordance with 33 CFR 165.7.

(c) *Definitions.* As used in this section, ''designated representative'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer on a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the COTP in the enforcement of the safety zone.

(d) *Regulations.* (1) Under the general regulations in 33 CFR Part 165, Subpart C, entry into, transiting or anchoring within this safety zone is prohibited unless authorized by the COTP or a designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or a designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or a designated representative. Persons and vessels may request permission to enter the safety zone on VHF–23A or through the 24-hour Command Center at telephone (415) 399–3547.

Dated: June 13, 2013.

Gregory G. Stump,

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

[FR Doc. 2013–15591 Filed 6–27–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0355]

RIN 1625–AA00

Safety Zone: City of Vallejo Fourth of July Fireworks Display, Mare Island Strait, Vallejo, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of Mare Island Strait near Vallejo, CA in support of the City of Vallejo Fourth of July Fireworks Display on July 4, 2013. This safety zone is established to ensure the safety of participants and spectators from the dangers associated with the pyrotechnics. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission of the Captain of the Port or their designated representative.

DATES: This rule is effective on July 4, 2013, from 9:30 p.m. until 10 p.m.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2013–0355. 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 Lieutenant Junior Grade William Hawn, U.S. Coast Guard Sector San Francisco; telephone (415) 399–7442 or email at *D11-PF-MarineEvents@uscg.mil.* If you have questions on viewing or submitting material to the docket, call 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.'' It would be impracticable to issue a notice of proposed rulemaking because the Coast Guard received the information about the fireworks display on May 2, 2013, and the fireworks display would occur before the rulemaking process would be completed.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Because of the dangers posed by the pyrotechnics used in this fireworks display, the safety zone is necessary to provide for the safety of event participants, spectators, spectator craft, and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event.

B. Basis and Purpose

The legal basis for the proposed rule is 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, which collectively authorize the Coast Guard to establish safety zones.

The City of Vallejo will sponsor the City of Vallejo Fourth of July Fireworks Display on July 4, 2013, on Mare Island

near Vallejo, CA in approximate position 38°06′04″ N, 122°16′10″ W (NAD 83) as depicted in National Oceanic and Atmospheric Administration (NOAA) Chart 18655. Upon the commencement of the fireworks display, the safety zone will encompass the navigable waters around the launch site within a radius of 420 feet. The fireworks display is meant for entertainment purposes. This restricted area around the launch site is necessary to protect spectators, vessels, and other property from the hazards associated with the pyrotechnics.

C. Discussion of the Final Rule

The Coast Guard will enforce a safety zone in navigable waters around the land based launch site on Mare Island near Vallejo, CA. Upon the commencement of the 20 minute fireworks display, scheduled to begin at 9:30 p.m. on July 4, 2013, the safety zone will encompass the navigable waters around the fireworks launch site within a radius 420 feet from position 38°06′04″ N, 122°16′10″ W (NAD 83) for the City of Vallejo Fourth of July Fireworks Display. At the conclusion of the fireworks display the safety zone shall terminate.

The effect of the temporary safety zone will be to restrict navigation in the vicinity of the launch site until the conclusion of the scheduled display. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the restricted area. These regulations are needed to keep spectators and vessels away from the immediate vicinity of the launch site to ensure the safety of participants, spectators, and transiting vessels.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of 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.

We expect the economic impact of this rule does not rise to the level of necessitating a full Regulatory Evaluation. The safety zone is limited in duration, and is limited to a narrowly tailored geographic area. In addition, although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users will be notified via public Broadcast Notice to Mariners to ensure the safety zone will result in minimum impact. The entities most likely to be affected are waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities.

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 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 owners and operators of waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities and sightseeing. This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This safety zone would be activated, and thus subject to enforcement, for a limited duration. When the safety zone is activated, vessel traffic could pass safely around the safety zone. The maritime public will be advised in advance of this safety zone via Broadcast Notice to Mariners.

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 INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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 a safety zone of limited size and duration. This rule is categorically excluded from further review under paragraph 34(g) and 35(b) 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**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

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. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T11–572 to read as follows:

§ 165.T11–572 Safety zone; City of Vallejo Fourth of July Fireworks Display, Mare Island Strait, Vallejo, CA.

(a) *Location.* This temporary safety zone is established for the navigable waters of Mare Island Strait near Vallejo, CA as depicted in National Oceanic and Atmospheric Administration (NOAA) Chart 18655. The temporary safety zone will encompass the navigable waters around the fireworks launch site in approximate position 38°06′04″ N, 122°16′10″ W (NAD 83) within a radius of 420 feet.

(b) *Enforcement period.* The zone described in paragraph (a) of this section will be enforced from 9:30 p.m. through 10 p.m. on July 4, 2013. The Captain of the Port San Francisco (COTP) will notify the maritime community of periods during which this zone will be enforced via Broadcast Notice to Mariners in accordance with 33 CFR 165.7.

(c) *Definitions.* As used in this section, ''designated representative'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer on a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the COTP in the enforcement of the safety zone.

(d) *Regulations.* (1) Under the general regulations in 33 CFR part 165, subpart C, entry into, transiting or anchoring within this safety zone is prohibited unless authorized by the COTP or a designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or a designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or a designated representative. Persons and vessels may request permission to enter the safety zone on VHF–23A or through the 24-hour Command Center at telephone (415) 399–3547.

Dated: June 13, 2013.

Gregory G. Stump,

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

[FR Doc. 2013–15595 Filed 6–27–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0431]

RIN 1625–AA00

Safety Zone; Fifth Coast Guard District Fireworks Displays, Barnegat Bay; Barnegat Township, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the enforcement date of a safety zone for one recurring fireworks display in the Fifth Coast Guard District. This regulation applies to only one recurring fireworks event held in Barnegat Bay in Barnegat Township, New Jersey. The fireworks display is normally held on July 4th, but this year it will be held on July 5th. The safety zone is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of Barnegat Bay near Barnegat Township, New Jersey, during the event.

DATES: This rule is effective on July 5, 2013, from 8:30 p.m. until 10 p.m.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2013–0431]. 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 Lieutenant Veronica Smith, U.S.

Coast Guard Sector Delaware Bay, Chief of Waterways Management Division; telephone 215–271–4902, email *veronica.l.smith@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 it is impracticable. There is insufficient time to undertake an NPRM and immediate action is needed to minimize potential danger to the public during the event. The potential dangers posed by fireworks displays makes a safety zone necessary to provide for the safety of participants, spectator craft and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event. The Coast Guard will issue broadcast notice to mariners to advise vessel operators of navigational restrictions. On scene Coast Guard and local law enforcement vessels will also provide actual notice to mariners.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. It is impracticable and contrary to the public interest to undergo a 30 day delayed effective date for this regulation because there is insufficient time to do so.

B. Basis and Purpose

Recurring fireworks displays are frequently held on or adjacent to the navigable waters within the boundary of the Fifth Coast Guard District. For a description of the geographical area of each Coast Guard Sector—Captain of the Port Zone, please see 33 CFR 3.25.

The regulation listing annual fireworks displays within the Fifth Coast Guard District and safety zones locations is 33 CFR 165.506. The Table to § 165.506 identifies fireworks displays by COTP zone, with the COTP Delaware Bay zone listed in section ''(a)'' of the Table.

Barnegat Township sponsors an annual fireworks display held on July 4th over the waters of Barnegat Bay, Barnegat Township, New Jersey. The Table to § 165.506, at section (a) event number ''5'', describes the enforcement date and regulated location for this fireworks event.

In the Table, this fireworks display occurs annually on July 4th. However, this year, the fireworks event will be held on July 5th, 2013.

A fleet of spectator vessels are anticipated to gather nearby to view the fireworks display. Due to the need for vessel control during the fireworks display, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels. Under provisions of 33 CFR 165.506, during the enforcement period, vessels may not enter the regulated area unless they receive permission from the Coast Guard Patrol Commander.

C. Discussion of the Final Rule

The Coast Guard will temporarily suspend the regulation listed in Table to § 165.506, section (a) event Number ''5'', and insert this temporary regulation at Table to § 165.506, at section (a.) as event Number ''17'', in order to reflect that the fireworks display will be held on July 5, 2013, and therefore change the enforcement date. This change is needed to accommodate the sponsor's event plan. No other portion of the Table to § 165.506 or other provisions in § 165.506 shall be affected by this regulation.

The regulated area of this safety zone includes all the waters of Barnegat Bay within a 500 yard radius of the fireworks barge in approximate position latitude 39°44′50″ N, longitude 074°11′21″ W, approximately 500 yards north of Conklin Island, NJ.

This safety zone will restrict general navigation in the regulated area during the fireworks event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area during the effective period. The regulated area is needed to control vessel traffic during the event for the safety of participants and transiting vessels.

In addition to notice in the **Federal Register**, the maritime community will be provided extensive advance notification via the Local Notice to Mariners, and marine information broadcasts so mariners can adjust their plans accordingly.

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.

This rule prevents traffic from transiting a portion of the Barnegat Bay, off of Barnegat Township, New Jersey during the specified event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via marine information broadcasts, local radio stations and area newspapers so that mariners can adjust their plans accordingly. Additionally, this rulemaking changes the enforcement date for Barnegat Bay, Barnegat Township, New Jersey fireworks demonstration for July 5, 2013 only and does not change the permanent enforcement period that has been published in 33 CFR 165.506, Table to § 165.506 at section (a), event Number ''5''. In some cases vessel traffic may be able to transit the regulated area when the Coast Guard Patrol Commander deems it is safe to do so.

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 Barnegat Bay, off of Barnegat Township, New Jersey, 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 around the regulated area at various times, and, with the permission of the Patrol Commander, vessels may transit through the regulated area. 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 INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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 the establishment of safety zones. 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, 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. In § 165.506, amend part (a) in the Table to § 165.506 by—

■ a. Suspending entry 5, ''Barnegat Bay, Barnegat Township, NJ, Safety zone,'' from 8:30 p.m. until 10 p.m. on July 5, 2013.

■ b. Adding entry 17, from 8:30 p.m. until 10 p.m. on July 5, 2013, to read as follows:

§ 165.506 Safety Zones; Fireworks Displays in the Fifth Coast Guard District

No.	Date	Location	Regulated area
(a) Coast Guard Sector Delaware Bay—COTP Zone			
*	*	*	*
17	July 5	Barnegat Bay, Barnegat Township, NJ, Safety Zone..	The waters of Barnegat Bay within a 500 yard radius of the fireworks barge in approximate position latitude 39°44′50″ N, longitude 074°11′21″ W, approximately 500 yards north of Conklin Island, NJ.
*	*	*	*

* * * * *

Dated: May 30, 2013.

K. Moore,

Captain, U.S. Coast Guard, Captain of the Port Sector Delaware Bay.

[FR Doc. 2013–15499 Filed 6–27–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

Final Priority—National Institute on Disability and Rehabilitation Research—Rehabilitation Research and Training Centers

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

ACTION: Final priority.

[CFDA Number: 84.133B–8]

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces a priority for the Disability and Rehabilitation Research Projects and Centers Program administered by the National Institute on Disability and Rehabilitation Research (NIDRR). Specifically, we announce a priority for a Rehabilitation Research and Training Center (RRTC) on Disability in Rural Areas. The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2013 and later years. We take this action to focus research attention on areas of national need. We intend this priority to improve outcomes among individuals with disabilities in rural areas.

DATES: This priority is effective July 29, 2013.

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

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

SUPPLEMENTARY INFORMATION:

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

Rehabilitation Research and Training Centers

The purpose of the RRTCs, which are funded through the Disability and Rehabilitation Research Projects and Centers Program, is to achieve the goals of the Rehabilitation Act, as amended, through advanced research, training, technical assistance, and dissemination activities in general problem areas, as specified by NIDRR. These activities are designed to benefit rehabilitation service providers, individuals with disabilities, and the family members or other authorized representatives of individuals with disabilities. Additional information on the RRTC program can be found at: *www.ed.gov/rschstat/research/pubs/res-program.html#RRTC.*

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Applicable Program Regulations: 34 CFR part 350.

We published a notice of proposed priority (NPP) in the **Federal Register** on May 7, 2013 (78 FR 26560). That notice contained background information and our reasons for proposing the particular priority.

Except for minor technical revisions, there are no differences between the proposed priority and the final priority.

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

Final Priority

RRTC on Disability in Rural Areas.

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority for a Rehabilitation Research and Training Center (RRTC) on Disability in Rural Areas. This RRTC must conduct rigorous research, and provide training, technical assistance, and information to improve the outcomes of individuals with disabilities who live in rural areas. The RRTC must:

(a) Conduct research that examines experiences and outcomes of individuals with disabilities who live in rural areas and apply the research findings to develop interventions that improve those outcomes. Applicants must focus their research activities on topics that fall under at least one of the following major life domains identified in NIDRR's Long-Range Plan for Fiscal Years 2013–2017 (78 FR 20299): Employment, Community Living and Participation, or Health and Function;

(b) Serve as a national resource center for individuals with disabilities living in rural areas, their families, service and support providers, and other stakeholders by conducting knowledge translation activities that include, but are not limited to:

(1) Providing information and technical assistance to service providers, individuals with disabilities living in rural areas and their representatives, and other key stakeholders;

(2) Providing training, including graduate, pre-service, and in-service training, to rehabilitation service providers and other disability service

providers, to facilitate more effective delivery of services to individuals with disabilities living in rural areas. This training may be provided through conferences, workshops, public education programs, in-service training programs, and similar activities;

(3) Disseminating research-based information and materials related to living with a disability in rural areas; and

(c) Involve individuals with disabilities who live in rural areas in planning and implementing the RRTC's activities, and in evaluating the RRTC's work.

Types of Priorities:

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

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

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

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

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

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

Executive Orders 12866 and 13563

Regulatory Impact Analysis

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The benefits of the Disability and Rehabilitation Research Projects and Centers Program have been well established over the years, as projects similar to the one envisioned by the final priority have been completed successfully. The new RRTC will generate and promote the use of new knowledge that will improve the options for individuals with disabilities to perform regular activities of their choice in the community.

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

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

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

search feature at this site, you can limit your search to documents published by the Department.

Dated: June 25, 2013.

Michael K. Yudin,

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

[FR Doc. 2013–15605 Filed 6–27–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 251

RIN 0596–AD12

Definition of a Ski Area

AGENCY: Forest Service, USDA.

ACTION: Interim final rule.

SUMMARY: The Forest Service is amending the definition of a ski area in its regulations to make it consistent with the authority in section 3 of the Ski Area Recreational Opportunity Enhancement Act (SAROEA) of 2011 to allow authorization of other snow sports besides Nordic and alpine skiing and, in appropriate circumstances, other seasonal and year-round natural resource-based recreation activities and associated facilities at ski areas on National Forest System (NFS) lands, provided that authorization of these other activities and facilities would not change the primary purpose of the ski areas to a purpose other than skiing and other snow sports.

DATES: The rule is effective July 29, 2013.

ADDRESSES: Send comments electronically by following the instructions at the Federal eRulemaking portal at *http://www.regulations.gov.* Comments also may be submitted by mail to USDA Forest Service Ski Area Definition Comments, GMUG National Forest, 2250 Highway 50, Delta, CO 81416. If comments are sent electronically, duplicate comments should not be sent by mail. Receipt of comments cannot be confirmed.

All comments, including names and addresses when provided, will be placed in the record and will be made available for public review and copying. Those wishing to review comments should call Corey Wong at (970) 874–6668 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Corey Wong, Acting National Winter Sports Program Manager, 970–874–6668. Individuals who use telecommunication devices for the deaf may call the Federal Information Relay Service at 800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Daylight Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3 of SAROEA amended the National Forest Ski Area Permit Act of 1986 (16 U.S.C. 497b) to allow authorization of other snow sports besides Nordic and alpine skiing at ski areas on NFS lands, such as snowboarding, sledding, and tubing. Section 3 of SAROEA also amended 16 U.S.C. 497b to allow authorization, in appropriate circumstances, of other seasonal and year-round natural resource-based recreation activities and associated facilities at ski areas on NFS lands, provided that authorization of these other activities and facilities would not change the primary purpose of the ski areas to a purpose other than skiing and other snow sports.

The definition for a ski area in Forest Service regulations at 36 CFR 251.51 implementing the National Forest Ski Area Permit Act provides for development only for Nordic and alpine skiing at ski areas on NFS lands and limits ancillary facilities at ski areas on NFS lands to those that support skiing. Accordingly, the Department is amending the definition for a ski area in 36 CFR 251.51 to provide for development for snow sports besides Nordic and alpine skiing at ski areas on NFS lands and to provide, in appropriate circumstances, for facilities necessary for other seasonal and year-round natural resource-based recreation activities at ski areas on NFS lands, provided that authorization of these other activities and facilities would not change the primary purpose of the ski area to a purpose other than skiing and other snow sports.

The Department is expanding the requirement in the current definition of a ski area in 36 CFR 251.51 that the preponderance of revenue at a ski area derive from activities and facilities that support Nordic and alpine skiing to include revenue derived from activities and facilities that support other snow sports. This requirement can then be used to determine whether authorization of other seasonal, natural resource-based recreation activities and facilities would change the primary purpose of the ski area to a purpose other than skiing and other snow sports.

The Department has also revised the terminology for types of revenue generated by ski areas on NFS lands to track the types of revenue that are included in the land use fee calculation for ski areas on NFS lands under the National Forest Ski Area Permit Fee Act of 1996 (16 U.S.C. 497c).

The amendment of the definition for a ski area in 36 CFR 251.51 merely makes the definition consistent with the authority in section 3 of SAROEA to allow authorization of additional recreation activities and associated facilities at ski areas on NFS lands and makes additional changes in terminology consistent with the National Forest Ski Area Permit Fee Act. These revisions are dictated by statute; the Department has no discretion in implementing them. Moreover, the revisions conform precisely to the corresponding language in the statutes.

Regulatory Certifications

Environmental Impact

This interim final rule is making minor, purely technical, nondiscretionary changes to the definition of a ski area on NFS lands. Forest Service regulations at 36 CFR 220.6(d)(2) exclude from documentation in an environmental assessment or environmental impact statement rules, regulations, or policies to establish service wide administrative procedures, program processes, or instructions. The Department has determined that this interim final rule falls within this category of actions and that no extraordinary circumstances exist which require preparation of an environmental assessment or environmental impact statement.

This interim final rule has been reviewed under USDA procedures and Executive Order (E.O.) 12866 on regulatory planning and review. It has been determined that this interim final rule is not significant. This interim final rule will not have an annual effect of $100 million or more on the economy, nor will it adversely affect productivity, competition, jobs, the environment, public health or safety, or State or local governments. This interim final rule will not interfere with an action taken or planned by another agency, nor will this interim final rule raise new legal or policy issues. Finally, this interim final rule will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of beneficiaries of those programs. Accordingly, this interim final rule is not subject to review by the Office of Management and Budget under E.O. 12866.

The Department has considered this interim final rule in light of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). This interim final rule makes minor, purely technical, nondiscretionary changes to the

definition of a ski area on NFS lands. Therefore, the Department has determined that this interim final rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act because this interim final rule will not impose record-keeping requirements on them; it will not affect their competitive position in relation to large entities; and it will not affect their cash flow, liquidity, or ability to remain in the market.

Federalism and Consultation and Coordination With Indian Tribal Governments

The Department has considered this interim final rule under the requirements of E.O. 13132 on federalism. The Department has determined that this interim final rule conforms to the federalism principles set out in this E.O.; will not impose any compliance costs on the States; and will not have substantial direct effects on the states, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Department has determined that no further determination of federalism implications is necessary at this time.

This interim final rule does not have tribal implications per E.O. 13175, Consultation and Coordination with Indian Tribal Governments. Therefore, advance consultation with tribes is not required in connection with the interim final rule.

No Takings Implications

The Department has analyzed the interim final rule in accordance with the principles and criteria in E.O. 12630 and has determined that his interim final rule will not pose the risk of a taking of private property.

Civil Justice Reform

The Department has reviewed this interim final rule under E.O. 12988 on civil justice reform. After adoption of this interim final rule, (1) All State and local laws and regulations that conflict with this interim final rule or that impede its full implementation will be preempted; (2) no retroactive effect will be given to this interim final rule; and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Department has assessed the effects of this interim final rule on State, local, and tribal governments and the private sector. This interim final rule will not compel the expenditure of $100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Energy Effects

The Department has reviewed this interim final rule under E.O. 13211 of May 18, 2001, Actions Concerning Regulations That Significantly Affect Energy Supply. The Department has determined that this interim final rule does not constitute a significant energy action as defined in the E.O.

Controlling Paperwork Burdens on the Public

This interim final rule does not contain any record-keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply to this interim final rule.

List of Subjects in 36 CFR Part 251

Administrative practice and procedure, Electric power, National forests, Public lands–rights-of-way, Reporting and recordkeeping requirements, Water resources.

Therefore, for the reasons set forth in the preamble, the Forest Service is amending subpart B of part 251 of Title 36 of the Code of Federal Regulations to read as follows:

PART 251–LAND USES

Subpart B–Special Uses

■ 1. The authority citation for part 251, subpart B, continues to read as follows:

Authority: 16 U.S.C. 4601–6a, 4601–6d, 472, 497b, 497c, 551, 580d, 1134, 3210; 30 U.S.C. 185; 43 U.S.C. 1740, 1761–1771.

■ 2. Amend § 251.51 by revising the definition of ''ski area'' to read as follows:

§ 251.51 Definitions.

* * * * *

Ski area—a site and associated facilities that has been primarily developed for alpine or Nordic skiing and other snow sports, but may also include, in appropriate circumstances, facilities necessary for other seasonal or year-round natural resource-based recreation activities, provided that a preponderance of revenue generated by the ski area derives from the sale of alpine and Nordic ski area passes and lift tickets, revenue from alpine, Nordic, and other snow sport instruction, and gross revenue from ancillary facilities that support alpine or Nordic skiing and other snow sports.

* * * * *

Dated: June 20, 2013.

Ann C. Mills,

Acting Under Secretary.

[FR Doc. 2013–15476 Filed 6–27–13; 8:45 am]

BILLING CODE 3410–11–P

LIBRARY OF CONGRESS

United States Copyright Office

37 CFR Part 202

[Docket No. 2013–6]

Single Application Option

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Interim final rule.

SUMMARY: The U.S. Copyright Office is amending its regulations on an interim basis in order to establish a new registration option called the ''single application.'' This application is being introduced in order to provide an additional option for individual authors/claimants registering a single (one) work that is not a work made for hire via the Copyright Office's electronic registration system (''eCO''). Such applications are the most administratively simple for the Copyright Office to process and may make copyright registration more attractive to individual authors of single works. This application option will be available on June 28, 2013, and the Copyright Office is inviting public comments during the first 60 days of its implementation. The single application option will cost the same—$35—as a standard electronic application.

DATES: *Effective date:* June 28, 2013. *Comments date:* Comments must be received by the Copyright Office of the General Counsel no later than August 28, 2013.

ADDRESSES: The Copyright Office strongly prefers that comments be submitted electronically. A comment page containing a comment form is posted on the Copyright Office Web site at *http://www.copyright.gov/comments/single-application/comment-submission.html.* The Web site interface requires submitters to complete a form specifying name and organization, as

applicable, and to upload comments as an attachment via a browse button. To meet accessibility standards, all comments must be uploaded in a single file not to exceed six megabytes (MB) in one of the following formats: The Portable Document File (PDF) format that contains searchable, accessible text (not an image); Microsoft Word; WordPerfect; Rich Text Format (RTF); or ASCII text file format (not a scanned document). The form and face of the comments must include both the name of the submitter and the organization. All comments will be posted publicly on the Copyright Office Web site exactly as they are received, along with names and organizations. If electronic submission of comments is not feasible, please contact the Copyright Office at (202) 707–8380 for special instructions.

FOR FURTHER INFORMATION CONTACT: Robert Kasunic, Associate Register of Copyrights and Director of Registration Policy & Practice, or Chris Weston, Attorney-Advisor, Office of the General Counsel, at (202) 707–8380.

SUPPLEMENTARY INFORMATION:

I. Background

*Prior **Federal Register** publications.* On January 24, 2012, the Copyright Office (the ''Office'') published a notice of inquiry in the **Federal Register** seeking public comment on several issues (the ''NOI''). 77 FR 3507 (Jan. 24, 2012). One—which is the subject of the present interim rule—was whether special consideration should be provided to registration of single works where the author is also the copyright owner and the work is not a work made for hire. (This is the ''single application,'' as distinguished from the ''standard application.'') This question was asked in the context of an ongoing fee study by the Office. The Office received four comments to this notice responding to the question of a single application, all of them positive.

On March 28, 2012, the Office published a comprehensive notice of proposed rulemaking proposing a new schedule of fees as well as proposing to offer a separate, easier application for ''a single author who is also the claimant for the online filing of a claim in a single work that is not a work made for hire'' (the ''NPR''). 77 FR 18743 (Mar. 28, 2012). The notice also stated that the Office would provide more details on the single author/single work registration option in a later proposed rulemaking. The Office received 10 comments directed at the proposed single application. The issues raised in these comments are addressed below.

Why an interim rule? As noted above, the Office previously stated that more details regarding the single author/single work registration option would be forthcoming. The present notice, then, serves the function of both a notice of proposed rulemaking—in that it seeks public comment on the rules governing the single application—and an interim rule—in that it simultaneously promulgates the single application. The Office believes that it received sufficient comment pursuant to its NPR that it is justified in publishing an interim rule regarding the implementation of the single application option. However, because only a description in the text of the NPR was provided, the Office is here providing the opportunity for the interested public to comment on the actual proposed text of the rule in the context of having the single application option available for public use and review. Because the rule covering this application is interim in nature, this allows the Office to modify it should such an action be warranted.

II. Discussion

The reasons for establishing a separate single registration application option are spelled out in detail in the NOI. Briefly, the Office believes that those registration applications that take the least time to process should enjoy a simpler online application. The Office hopes that providing a simplified application option will encourage more individual creators to register their works.

As initially proposed, the single application would only be available for ''an application to register a single work when the application is submitted by a person who is the sole author and the sole copyright owner of the work, the work is not a work made for hire, and the work does not contain material that was previously published or registered.'' 77 FR 3507 (Jan. 24, 2012). It was also suggested initially that the single application be available only via eCO, and that it may be used to register collections of works by the same author-claimant.

As restated in the NPR, the single application was proposed to apply only to ''a single author who is also the claimant for the online filing of a claim in a single work that is not a work made for hire.'' 77 FR 18743 (Mar. 28, 2012). Although the single application was initially conceived to require that the author, claimant, and remitter had to be the same individual, the Office has determined to allow a third party to remit a claim on behalf of an author-claimant, provided that the third party is also listed as the correspondent, and provided the claim meets the single registration requirements. The Office also determined that a claim for a single application may contain—but will not cover—material that was previously published or registered, so as to allow for the registration of certain derivative works.

Based on the comments received the Office has determined that the following will be the boundaries of the types of claims that are eligible for submission using the single application to be implemented on June 28, 2013:

- Electronic registration only.
- Single author (does not include joint works).
- Single claimant/owner (does not include works made for hire or works where the claimant/owner is different from the author, i.e., transferred ownership).
- Single work (e.g., one song, one poem, one photograph. Does not include collective works, unpublished collections, units of publication, group registrations, databases, or Web sites).

Regarding the requirement of one work per registration, while the Office is aware that many individual authors, particularly photographers, create multiple works that they may want to register at one time, registering multiple works creates a more complex application. A single electronic application will provide a more simplified registration option that would benefit the many individual applicants who submit such claims for registration. Any expansion beyond the limits listed above creates more complex applications, which take additional time to process, and are thus poor candidates for an application based on simplicity.

This rationale applies as well to those commenters who argued that the single application should be available both to individual creators who incorporate for business reasons (*e.g.,* an author who seeks to register a manuscript through a self-created corporate entity for tax or liability reasons) and to individuals or small businesses who commission works made for hire. Why, ask these commenters, are such authors—who are as much a part of the independent creative community as individuals who register their works as themselves—not also offered the benefit of a single application option? There should be no doubt that the Copyright Office agrees that works registered through a corporate entity or created for hire are worthy of copyright protection. It also recognizes that the business of creating and licensing creative works can be a complex one, even (or especially) for individuals and small businesses.

However, every deviation from the most simplified application, whether it be that the claimant is a corporation where the author is an individual, or the work is made for hire, creates, as noted above, more complexity for the registration process, and frustrates the goal of simplicity.

In addition to adding regulations governing the single application, the Copyright Office is proposing minor technical amendments to the current regulation governing electronic registration in general, in order to clarify the requirements for sending physical copies or phonorecords as deposit copies. These changes appear in the new sub-paragraph 202.3(b)(2)(i)(D).

It is important to the Copyright Office that registration be as simple, equitable, and economical as possible. The Office believes that providing an easier option for registration for those authors who file the simplest kind of application is worthwhile, and may encourage registration and foster the development of a more robust public record.

III. Request for Comments

The new online single registration application will appear as an option in eCO on June 28, 2013. The Office is providing the public an opportunity to comment on this implementation. The interim status of this rule means that it is likely to be revisited by the Copyright Office in the near future, which will offer the Office an opportunity to consider and act upon comments received.

List of Subjects in 37 CFR Part 202

Preregistration and Registration of Claims to Copyright.

Interim Regulations

In consideration of the foregoing, the Copyright Office amends part 202 of 37 CFR as follows:

PART 202—PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT

■ 1. The authority section for part 202 continues to read as follows:

Authority: 17 U.S.C. 408(f), 702

■ 2. Amend § 202.3 by revising paragraph (b)(2)(i) to read as follows:

§ 202.3 Registration of copyright.

* * * * *

(b) * * *

(2) * * *

(i) *Electronic applications.* (A) An applicant may submit an application electronically through the Copyright Office Web site [*www.copyright.gov*] For non-group registrations, an applicant may submit a standard electronic application, or an applicant may submit a ''single'' application.

(B) A ''single'' application can be made only for a single work by a single author that is owned by the person who created it, and is not a work made for hire. The claimant and the author must be the same. A third party may remit a ''single'' application on behalf of the author/claimant, provided that party lists itself as the correspondent. The following categories of work may not be registered using the ''single'' application: collective works, unpublished collections, units of publication, group registration options, databases, Web sites, works by more than one author, and works with more than one owner. The designation of a work as eligible for a ''single'' registration does not include work characterized as a ''single work'' under paragraph (b)(4) of this section.

(C) An online submission requires a payment of the application fee through an electronic fund transfer, credit or debit card, or through a Copyright Office deposit account.

(D) Deposit materials in support of an online application may be submitted electronically in a digital format (if eligible) along with the application and payment, or a remitter may send physical copies or phonorecords as necessary to satisfy the best edition requirements, by mail to the Copyright Office, using the required shipping slip generated during the online registration process.

* * * * *

Dated: June 24, 2013.

Maria Strong,

Acting General Counsel, U.S. Copyright Office.

[FR Doc. 2013–15545 Filed 6–27–13; 8:45 am]

BILLING CODE 4110–30–P

Proposed Rules

Federal Register
Vol. 78, No. 125
Friday, June 28, 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

Agricultural Marketing Service

7 CFR Part 1207

[Document Number AMS–FV–13–0027]

Potato Research and Promotion Plan; Amend the Administrative Committee Structure and Delete the Board's Mailing Address

AGENCY: Agricultural Marketing Service.

ACTION: Proposed rule.

SUMMARY: This proposal invites comments on amending the structure of the Administrative Committee (Committee) of the U.S. Potato Board (Board) and deleting the Board's mailing address from the Potato Research and Promotion Plan. The Plan is administered by the Board with oversight by the U.S. Department of Agriculture (USDA). Under the Plan, there are seven Committee Vice-Chairperson positions. The Board has recommended that these positions be increased to nine. This proposed change is intended to facilitate increased involvement in the Board's leadership opportunities. Further, the Board's office is being relocated and the address must be changed in the Plan. The deletion of the Board's mailing address from the Plan would require no further amendment to the Plan if the Board's office is relocated again.

DATES: Comments must be received by July 15, 2013.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments may be submitted on the Internet at: *http://www.regulations.gov* or to the Promotion and Economics Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., Room 1406–S, Stop 0244, Washington, DC 20250–0244; facsimile: (202) 205–2800. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection, including name and address, if provided, in the above office during regular business hours or it can be viewed at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, Promotion and Economics Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., Room 1406–S, Stop 0244, Washington, DC 20250–0244; telephone: (301) 337–5295; toll free (888) 720–9917; facsimile (202) 205–2800; or electronic mail: *Patricia.Petrella@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This proposed rule is issued under the Potato Research and Promotion Plan (Plan) (7 CFR part 1207). The Plan is authorized under the Potato Research and Promotion Act (Act) (7 U.S.C. 2611–2627).

Executive Order 12866 and Executive Order 13563

Executive Order 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated as ''non-significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has waived the review process.

Executive Order 12988

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 311 of the Act (7 U.S.C. 2620), a person subject to a plan may file a petition with USDA stating that such plan, any provision of such plan, or any obligation imposed in connection with such plan, is not in accordance with law and request a modification of such plan or to be exempted therefrom. Such person is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which such person is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided that a complaint is filed not later than 20 days after date of the entry of the ruling.

Background

This proposed rule invites comments on amending the structure of the Committee of the Board and to delete the Board's mailing address from the Plan. The Plan is administered by the Board with oversight by USDA. Under the Plan, assessments are collected from handlers and importers and used for projects to promote potatoes and potato products.

This proposed rule modifies the structure of the Board's Administrative Committee as prescribed in the Plan by increasing the number of Vice-Chairperson positions on the Committee from seven to nine. These additional positions would be allocated, as provided in the Board's bylaws, to the Northwest and North Central caucuses. The Northwest district includes Alaska, Idaho, Montana, Oregon and Washington. The North Central district includes Illinois, Indiana, Iowa, Michigan, Missouri, Minnesota, North Dakota, Ohio, South Dakota, and Wisconsin. With this action, Board representation at the executive level for potato producers in the Northwest district increases from 28.5 percent to 33 percent and in the North Central district from 14 percent to 22 percent.

Section 1207.327(b) of the Plan provides the authority to the Board to make rules and regulations, with USDA approval, to effectuate the terms and conditions of the Plan. Section 1207.328(a) of the Plan provides the authority to the Board to select from its members such officers as may be necessary and to adopt such rules for the conduct of its business as the Board may deem advisable.

Section 1207.507(a) of the Plan's administrative rules delineates the structure of the Board's Administrative Committee. The Committee is selected from among Board members, and is composed mostly of producer members, with one or more importer member(s),

and the public member. The Board, through the adoption of its bylaws, may prescribe the manner of selection and the number of members; except that the regulations mandate that the Committee shall include a Chairperson and a fixed number of Vice-Chairpersons. The proposed change is intended to facilitate increased involvement in the Board's leadership opportunities from the Northwest and North Central caucuses and possibly increase diversity at higher positions on the Board.

Prior to this change, the Plan provided for seven Vice-Chairperson positions on the Committee. Vice-Chairperson positions are allocated in the Board's bylaws to represent production districts as determined by the Board. This action increases the number of Vice-Chairperson positions to nine. The additional Vice-Chairpersons would be allocated to the Northwest and North Central caucuses, which historically have been the caucuses with the greatest production.

The second proposed change would delete the Board's mailing address from the Plan's rules and regulations. Section 1207.501 of the Plan specifies that all communications in connection with the Plan shall be addressed to: National Potato Promotion Board, 7555 East Hampden Avenue, Suite 412, Denver, Colorado, 80231. The Board is in the process of moving to a new location within Denver, Colorado. Therefore, this section would need to be amended. However, USDA is recommending that this section be deleted so no further amendment would be required if the Board moves its office in the future. Interested persons wanting to contact the Board can reach them through their Web site, Facebook, or smartphone application.

Board Recommendation

The Board met on March 14, 2013, and unanimously recommended amending the Committee structure of the Board and amending the Board's mailing address from the Plan. This action would contribute to effective administration of the program.

Initial Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS is required to examine the impact of the proposed rule on small entities. Accordingly, AMS has considered the economic impact of this action on small entities.

According to the Board, it is estimated that in 2013 there are about 2,500 producers, 1,030 handlers and 240 importers of potatoes and potato products who are subject to the provisions of the Plan.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. The Small Business Administration defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than $750,000 and small agricultural service firms (domestic handlers and importers) as those having annual receipts of no more than $7.0 million. Under these definitions, the majority of the handlers, producers and importers that would be affected by this rule would be considered small entities.

This proposed rule invites comments on amending the structure of the Administrative Committee of the Board and deleting the Board's mailing address from the Plan. The Plan is administered by the Board with oversight by the U.S. Department of Agriculture (USDA). Under the Plan, there are seven Committee Vice-Chairperson positions. The Board has recommended that these positions be increased to nine Vice-Chairpersons. This proposed change is intended to facilitate increased involvement in the Board's leadership opportunities. The deletion of the Board's mailing address would require no further amendment to the Plan if the Board's office is relocated. The Board's office is being relocated so an amendment change was necessary to the Plan.

This proposed rule would amend section 1207.507(a) of the Plan by changing the number of Vice-Chairperson positions from seven to nine. Also, the Board's office address would be removed from 1207.501 of the Plan.

Regarding the economic impact of this proposed rule on affected entities, this action would impose no costs on producers, handlers, and importers as a result of this action. Both changes are administrative in nature; it would merely provide additional opportunities for increased involvement by producers in the Board's leadership opportunities from the larger production areas.

Regarding alternatives, one option to the proposed action would be to maintain the status quo and not change the Administrative Committee structure. This would not alleviate the concerns voiced by the Northwest and North Central caucuses for more representation and leadership opportunities. The Board also considered combining the Southwest caucus into the Northwest caucus. The Board concluded that this would cause the Southwest producers to lose their representation as there are more Northwest producers and the available seats could possibly be absorbed by all Northwest producers. Therefore, the proposed recommendation was approved, as it would allow greater opportunity for producers from the Board's two largest caucus districts to become engaged in the Board's leadership structure. This action would also make the representation on the Board more equitable according to production.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that are imposed by the Order have been approved previously under OMB control number 0581–0093. This proposed rule would not result in a change to the information collection and recordkeeping requirements previously approved and would impose no additional reporting and recordkeeping burden on potato producers, handlers and importers.

As with all Federal promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

AMS is committed to complying 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.

Regarding outreach efforts, this action was discussed by the Board at meetings over the past year. Board members discussed the changes with their respective regions. The Board met in March 2013 and unanimously made its recommendation. All of the Board's meetings, including meetings held via teleconference, are open to the public and interested persons are invited to participate and express their views.

We have performed this initial RFA regarding the impact of this proposed action on small entities and we invite comments concerning potential effects of this action on small businesses.

A 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen days is deemed appropriate because this rule would need to be in place as soon as possible so the additional Vice-Chairperson can participate in Committee meetings. In addition, the Board's office has already relocated so the address needs to be

deleted promptly. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 1207

Advertising, Agricultural research, Imports, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1207 is proposed to be amended as follows:

PART 1207—POTATO RESEARCH AND PROMOTION PLAN

■ 1. The authority citation for 7 CFR part 1207 continues to read as follows:

Authority: 7 U.S.C. 2611–2627 and 7 U.S.C. 7401.

§ 1207.501 [Removed and Reserved]

■ 2. Section 1207.501 is removed and reserved.

■ 3. Section 1207.507(a) is revised to read as follows:

§ 1207.507 Administrative Committee.

(a) The Board shall annually select from among its members an Administrative Committee composed of producer members as provided for in the Board's bylaws, one or more importer members, and the public member. Selection shall be made in such manner as the Board may prescribe: Except that such committee shall include the Chairperson and nine Vice-Chairpersons, one of whom shall also serve as the Secretary and Treasurer of the Board.

* * * * *

Dated: June 24, 2013.

Rex A. Barnes,

Associate Administrator.

[FR Doc. 2013–15578 Filed 6–27–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 130405334–3334–01]

RIN 0648–BD20

Re-establishing the Sanctuary Nomination Process

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Proposed rule; request for public comments.

SUMMARY: NOAA's ONMS is announcing that it is re-establishing the sanctuary nomination process and is proposing to amend its regulations governing the process for nominating and evaluating sites for eligibility as a national marine sanctuary. This action would replace the currently inactive Sanctuary Evaluation List (SEL) with a new process for local communities and other interested parties to provide NOAA with robust, criteria-driven proposals for new national marine sanctuaries. To implement this process, NOAA is seeking public comment on proposed changes to the sanctuary nomination and designation procedures, and on the criteria by which the agency would analyze nominations for potential new national marine sanctuaries. Once these criteria have been made final, NOAA intends to solicit nominations for areas of the marine and Great Lakes environments that satisfy those criteria for possible designation as a national marine sanctuary.

DATES: Comments on this proposed rule must be received no later than August 27, 2013.

ADDRESSES: You may submit comments, identified by RIN 0648–BD20, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NOS-2013-0091*, click the ''Comment Now!'' icon, complete the required fields and enter or attach your comments.
- *Mail:* Matt Brookhart, Chief, Policy & Planning Division, Office of National Marine Sanctuaries, 1305 East-West Highway, 11th Floor, Silver Spring, MD 20910.

All comments received are a part of the public record and will be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. ONMS will accept anonymous comments (for electronic comments submitted through the Federal eRulemaking Portal, enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Matt Brookhart, Chief, Policy & Planning Division, NOAA Office of National Marine Sanctuaries, 1305 East-West Highway, 11th Floor, Silver Spring, MD 20910, (301) 713–7247.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is also accessible via the Internet at *http://www.access.gpo.gov/su-docs/aces/aces140.html.*

I. Background

The National Marine Sanctuaries Act (NMSA or Act, 16 U.S.C. 1431 et seq.) authorizes the Secretary of Commerce to, among other things, identify and designate as national marine sanctuaries areas of the marine environment, including the Great Lakes, which are of special national significance; to manage these areas as the National Marine Sanctuary System (NMSS); and to provide for the comprehensive and coordinated conservation and management of these areas and the activities affecting them in a manner which complements existing regulatory authorities. Section 1433 of the NMSA provides sanctuary designation standards and factors to consider in determining whether an area qualifies for consideration as a potential sanctuary, and section 1434 establishes procedures for sanctuary designation and implementation. Day-to-day management of the NMSS has been delegated by the Secretary to the ONMS. Regulations implementing the NMSA and each sanctuary are codified in Title 15 Part 922 of the Code of Federal Regulations (CFR).

NOAA first developed a formal process for identifying and evaluating sites for consideration as potential national marine sanctuaries in the late 1970s. In 1983, NOAA replaced this process with the Site Evaluation List (SEL) (48 FR 24295). As described in NOAA regulations at 15 CFR 922.3, the SEL was a list of natural and historical marine resource sites selected by the Secretary as qualifying for further evaluation for possible designation as national marine sanctuaries. The SEL included detailed criteria, relied on regional review panels, and was intended to be reviewed and updated every five years. When it was published in 1983, the SEL included 29 sites (48 FR 35568), four of which were subsequently designated as sanctuaries: Flower Garden Banks (1991), Stellwagen Bank (1992), Western Washington Outer Coast (renamed Olympic Coast, 1994), and Thunder Bay (2000) national marine sanctuaries (NMS). The list of sites on the SEL can be found at *http://sanctuaries.noaa.gov/management/fr/54_fr_53432.pdf.*

When the SEL was established, the criteria for nominating sites to the list focused primarily on the natural resource qualities that made an area eligible for sanctuary designation. The Marine Sanctuaries Amendments Act of 1984 (Pub. L. 98–496) added historical, research and educational qualities to the list of designation criteria. In 1988, NOAA issued a final rule (53 FR 43801) reflecting these amendments and, in 1989, announced that it would consider new sites for the SEL consistent with these revised criteria (54 FR 53432).

In 1995, the ONMS Director deactivated the SEL (60 FR 66875) to focus on management of the existing sanctuaries, which at that time there were a total of twelve national marine sanctuaries. Since then, only one national marine sanctuary, Thunder Bay National Marine Sanctuary, has been added to the NMSS. Public interest in the designation of new national marine sanctuaries has, however, remained strong. A variety of individuals, local, state, and tribal governments, academic institutions, citizen groups, and non-government organizations from coastal communities around the country have requested NOAA, the Department of Commerce, and the President to consider designating additional sanctuaries. These requests often reference the many and diverse benefits that coastal communities realize from an adjacent national marine sanctuary, including, but not limited to: Meaningful protection of nationally significant marine resources; significant social and economic benefits from expanded travel, tourism, and recreation, as well as ocean-related jobs; increased opportunity for, and access to, federal research focused on local marine resources; education programs to promote ocean literacy, sustainable uses, and stewardship; and community-driven problem solving for a myriad of ocean issues.

II. Description of Action

The purpose of this proposed rulemaking is to:

(1) Provide public notice that NOAA is re-establishing the public process to nominate areas of the marine and Great Lakes environments for consideration as national marine sanctuaries;

(2) Seek public comment on proposed changes to various sections of the ONMS regulations at 15 CFR 922; and

(3) Seek public comment on the criteria and process NOAA proposes using to evaluate new sanctuary nominations.

This proposed rule proposes criteria, process, and regulatory changes necessary to provide the American public an opportunity to nominate marine areas that NOAA may consider for designation as a national marine sanctuary. This new sanctuary nomination process intends to focus on proposals generated and driven by local and regional community groups and coalitions. As such, it would replace the old SEL process—which tended towards an agency-driven, ''top-down'' approach—with a more grassroots, ''bottom-up'' approach to sanctuary nominations. NOAA is, therefore, proposing to remove all terminology referencing the SEL in order to ensure that the sanctuary nomination process ultimately implemented by NOAA is more community driven, open to public input and analysis, and that any sites ultimately designated as national marine sanctuaries have widespread community support. NOAA will begin accepting new nominations following issuance of a final rule, which will be published after consideration of public comment on the proposed criteria and regulations below. NOAA is not accepting nominations for new national marine sanctuaries at this time, nor is it considering evaluation of sites from the deactivated SEL. If NOAA determines that a nominated site meets the final criteria, the agency may then choose to begin the public process for national marine sanctuary designation.

The public may re-nominate sites from the deactivated SEL, per the final evaluation criteria, and resubmit these areas for NOAA's consideration. The final criteria will be consistent with the existing standards in section 303(b) of the NMSA, but they may not mirror them exactly. In deciding to pursue an eligible site for designation, NOAA can, and will, contemplate additional criteria or clarifications of existing criteria, such as the ONMS' fiscal capability to manage any area as a national marine sanctuary. Ultimately, the agency seeks to have the most robust means possible for designating areas of special national significance as new national marine sanctuaries.

III. Request for Public Comments

NOAA requests public comment on: (1) The completeness and utility of the following twelve criteria for evaluating areas of the marine environment as possible new national marine sanctuaries; (2) NOAA's proposed process steps for receiving sanctuary nominations; and (3) proposed amendments to ONMS regulations.

Proposed Nomination Criteria

NOAA will analyze the comments on these criteria and any additional criteria proposed by the public and publish the final evaluation criteria in its final rule on this process. The twelve criteria NOAA proposes to evaluate ares of the marine environment as possible new national marine sanctuaries are:

(1) The area's natural resource and ecological qualities, including its contribution to biological productivity, maintenance of ecosystem structure, maintenance of ecologically or commercially important or threatened species or species assemblages, maintenance of critical habitat of endangered species, and the biogeographic representation of the site.

(2) The area's historical, cultural, archaeological, or paleontological significance.

(3) The present and potential uses of the area that depend on maintenance of the area's resources, including commercial and recreational fishing, subsistence uses, other commercial and recreational activities, and research and education.

(4) The present and potential activities that may adversely affect the significance, values, qualities, resources and uses identified above.

(5) The existing State and Federal regulatory and management authorities applicable to the area and the adequacy of those authorities to fulfill the purposes and policies of the NMSA.

(6) The manageability of the area, including such factors as its size, its ability to be identified as a discrete ecological unit with definable boundaries, its accessibility, and its suitability for monitoring and enforcement activities.

(7) The public benefits to be derived from sanctuary status, with emphasis on the benefits of long-term protection of nationally significant resources, vital habitats, and resources which generate tourism.

(8) The negative impacts produced by management restrictions on income-generating activities such as living and nonliving resources development.

(9) The socioeconomic effects of sanctuary designation.

(10) The area's scientific value and value for monitoring the resources and natural processes that occur there.

(11) The feasibility of employing innovative management approaches to protect sanctuary resources or to manage compatible uses.

(12) The value of the area as an addition to the System.

Proposed Sanctuary Nomination Process

As part of the new sanctuary nomination process, NOAA is contemplating the following procedures and protocols:

(1) A nomination must have broad community support, including a combination of such entities as local government organizations, elected officials, tribes, stakeholder groups (e.g., industry or non-governmental organizations), or academia.

(2) In nominating an area for national marine sanctuary consideration, a coalition of advocates should strive to provide documentation and/or analyses that address as many of the final evaluation criteria as possible. (NOAA will publish the final evaluation criteria in its final rule on this process.)

(3) NOAA will maintain a publically transparent inventory on the ONMS Web site of those nominations that have successfully demonstrated eligibility for national marine sanctuary designation. These nominations would not automatically equate to sanctuary designation.

(4) NOAA would implement any new sanctuary designation as a separate process from the nomination process, and under the highly participatory standards enacted by the NMSA and the National Environmental Policy Act (NEPA).

Proposed Regulatory Amendments

In this rulemaking, NOAA proposes to revise 15 CFR 922.10 to codify a statement that NOAA is once again accepting nominations for national marine sanctuary designation. NOAA is also proposing to eliminate all regulations related to the SEL by removing 15 CFR 922.21 and 922.23, and removing SEL from the Definitions section at 15 CFR 922.3.

Note that, through a separate rulemaking action (78 FR 5998, January 28, 2013), NOAA is also proposing to revise regulations regarding the SEL as part of a comprehensive regulatory review pursuant to Executive Order 13563. NOAA will resolve any inconsistencies between these two rules in the respective final rules.

IV. Classification

A. Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. A description of this action, its purpose, and its legal basis are described in the preamble to this proposed rule and is not repeated here. The factual basis for this certification is as follows:

This rule proposes administrative changes to the regulations. The proposed action will only modify the procedural regulations to reactivate the sanctuary nomination process and set forth the nomination process and evaluation criteria for evaluating areas of the marine environment as possible new national marine sanctuaries.

The types of small entities that may be impacted by this rulemaking are local government organizations, tribes, stakeholder groups (e.g., industry or non-governmental organizations), or academia who wish to nominate areas of the marine environment for consideration as a national marine sanctuary. The agency, however, does not currently have data reflecting how many of these entities would submit nominations for possible designation as a new national marine sanctuary, but it anticipates that it would be a very small number. The impacts of this rulemaking would also be very small, as the proposed provisions merely set forth the proposed nomination process and evaluation criteria. The submission of nominations is purely voluntary, and this rulemaking does not impose any costs or requirements beyond those related to the preparation of documentation in support of the nomination. This action does not include any decisions or determinations on future sanctuary site designations. The impact of future potential national marine sanctuary designations will be evaluated individually on a case-by-case basis and will be subject to a Regulatory Flexibility Act review at that time. Therefore, it is not expected that the modifications of the regulations at 15 CFR 922.10 will have a significant economic impact on a substantial number of small entities.

This proposed rule does not establish any new reporting, record-keeping, or other compliance requirements.

B. Executive Orders 12866 and 13563

This proposed rule has been determined to not be significant within the meaning of Executive Order 12866.

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Amendments, Appeals, Appellant, Application requirements, Authorizations, Definitions, Designation, Environmental protection, Marine resources, Motorized personal watercraft, Natural resources, Permitting, Permit procedures, Prohibited activities, Special use permit, Stowed and not available for immediate use, Resources, Research, Traditional fishing, Water resources.

Dated: June 24, 2013.

Holly A. Bamford,

Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons set forth above, NOAA proposes to amend 15 CFR part 922 as follows:

PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

■ 1. The authority citation for part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 *et seq.*

■ 2. Amend § 922.3 by removing the definitions of ''Active Candidate'' and ''Site Evaluation List.''

■ 3. Revise Subpart B to part 922 to read as follows:

Subpart B—Sanctuary Nomination Process

§ 922.10 General.

(a) The sanctuary nomination process is currently active.

(b) To find out how to submit a nomination, contact ONMS by visiting *www.sanctuaries.noaa.gov.*

(c) The Director will evaluate all nominations according to the criteria identified in section 303(b) of the National Marine Sanctuaries Act, Sanctuary Designation Standards (16 U.S.C. 1433), and any further guidance issued by NOAA.

(d) The Director will maintain a publically available inventory of sites that NOAA has determined to be eligible for sanctuary designation.

(e) A determination that a site is eligible for sanctuary designation, by itself shall not subject the site to any regulatory control under the Act. Such controls may only be imposed after designation.

Subpart C—Designation of National Marine Sanctuaries

§ 922.21 [Removed and Reserved]

■ 4. Remove and reserve § 922.21.

§ 922.23 [Removed and Reserved]

■ 5. Remove and reserve § 922.23.

[FR Doc. 2013–15488 Filed 6–27–13; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM13–8–000]

Electric Reliability Organization Proposal To Retire Requirements in Reliability Standards

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: Pursuant to section 215 of the Federal Power Act, the Commission proposes to approve the retirement of 34 requirements within 19 Reliability Standards identified by the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization. The requirements proposed for retirement either: Provide little protection for Bulk-Power System reliability or are redundant with other aspects of the Reliability Standards. In addition, the Commission proposes to withdraw 41 outstanding Commission directives that NERC develop modifications to Reliability Standards. The Commission believes that the identified outstanding directives have either been addressed in some other manner, are redundant with another directive or provide general guidance as opposed to a specific directive and, therefore, that withdrawal of these outstanding directives will have little impact the reliability of the Bulk-Power System. This proposal is part of the Commission's ongoing effort to review its requirements and reduce unnecessary burdens by eliminating requirements that are not necessary to the performance of the Commission's regulatory responsibilities.

DATES: Comments are due August 27, 2013.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways:

- Electronic Filing through *http://www.ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not a scanned format.
- *Mail/Hand Delivery:* Those unable to file electronically may mail or hand-deliver comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document.

FOR FURTHER INFORMATION CONTACT: Kevin Ryan (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, Telephone: (202) 502–6840. Michael Gandolfo (Technical Information), Office of Electric Reliability, Division of Reliability Standards and Security, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, Telephone: (202) 502–6817.

SUPPLEMENTARY INFORMATION:

Notice of Proposed Rulemaking

(Issued June 20, 2013)

1. Pursuant to section 215(d) of the Federal Power Act (FPA),[1] the Commission proposes to approve the retirement of 34 requirements within 19 Reliability Standards identified by the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO). The proposed retirements meet the benchmarks set forth in the Commission's March 15, 2012 order that requirements proposed for retirement either: (1) Provide little protection for Bulk-Power System reliability or (2) are redundant with other aspects of the Reliability Standards.[2] Consistent with the Commission's proposal in the March 2012 Order, we believe that the requirements proposed for retirement can ''be removed from the Reliability Standards with little effect on reliability and an increase in efficiency of the ERO compliance program.'' [3] We seek comment on our proposal to approve the retirement of the 34 requirements identified by NERC.

2. In addition, we propose to withdraw 41 outstanding Commission directives that NERC develop modifications to Reliability Standards. In Order No. 693 and subsequent final rules, the Commission has identified various issues and directed NERC to develop modifications to the Reliability Standards or take other action to address those issues.[4] While NERC has addressed many of these directives, over 150 directives remain outstanding. Some of the outstanding directives may no longer warrant action to assure reliability of the Bulk-Power System and should be withdrawn. We have identified 41 outstanding directives to withdraw based on the following three guidelines: (1) Whether the reliability concern underlying the outstanding directive has been addressed in some manner, rendering the directive stale; (2) whether the outstanding directive provides general guidance for standards development rather than a specific directive; and (3) whether the outstanding directive is redundant with another directive. The 41 outstanding directives we propose to withdraw are listed in Attachment A to this Notice of Proposed Rulemaking (NOPR). The withdrawal of these directives will enhance the efficiency of the Reliability Standards development process, with little or no impact on Bulk-Power System reliability.

3. Pursuant to Executive Order 13579, the Commission issued a plan to identify regulations that warrant repeal or modification, or strengthening, complementing, or modernizing where necessary or appropriate.[5] In the Plan, the Commission also stated that it voluntarily and routinely, albeit informally, reviews its regulations to ensure that they achieve their intended purpose and do not impose undue burdens on regulated entities or unnecessary costs on those entities or their customers. The proposal in this NOPR is a part of the Commission's ongoing effort to review its requirements and reduce unnecessary burdens by eliminating requirements that are not necessary to the performance of the Commission's regulatory responsibilities.

I. Background

A. Section 215 of the FPA

4. Section 215 of the FPA requires the Commission-certified ERO to develop mandatory and enforceable Reliability

[1] 16 U.S.C. 824o(d) (2006).

[2] *See North American Electric Reliability Corp.,* 138 FERC ¶ 61,193, at P 81 (March 2012 Order), *order on reh'g and clarification,* 139 FERC ¶ 61,168 (2012).

[3] *Id.* P 81.

[4] *Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, FERC Stats. & Regs. ¶ 31,242, *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007). *See also Mandatory Reliability Standards for the Calculation of Available Transfer Capability, Capacity Benefit Margins, Transmission Reliability Margins, Total Transfer Capability, and Existing Transmission Commitments and Mandatory Reliability Standards for the Bulk-Power System,* Order No. 729, 129 FERC ¶ 61,155 (2009), *order on clarification,* Order No. 729–A, 131 FERC ¶ 61,109 (2010), *order on reh'g and reconsideration,* Order No. 729–B, 132 FERC ¶ 61,027 (2010).

[5] Plan for Retrospective Analysis of Existing Rules, Docket No. AD12–6–000 (Nov. 8, 2011). Executive Order 13579 requests that independent agencies issue public plans for periodic retrospective analysis of their existing ''significant regulations.'' Retrospective analysis should identify ''significant regulations'' that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in order to achieve the agency's regulatory objective.

Standards, subject to Commission review and approval. Once approved, the Reliability Standards may be enforced in the United States by the ERO subject to Commission oversight, or by the Commission independently.[6] Pursuant to the requirements of FPA section 215, the Commission established a process to select and certify an ERO[7] and, subsequently, certified NERC as the ERO.[8]

B. March 2012 Order

5. In the March 2012 Order, the Commission accepted, with conditions, NERC's ''Find, Fix, Track and Report'' (FFT) initiative. The FFT process, *inter alia,* provides NERC and the Regional Entities the flexibility to address lower-risk possible violations through an FFT informational filing as opposed to issuing and filing a Notice of Penalty. In addition, the Commission raised the prospect of revising or removing requirements of Reliability Standards that ''provide little protection for Bulk-Power System reliability or may be redundant.''[9] Specifically, the Commission stated:

The Commission notes that NERC's FFT initiative is predicated on the view that many violations of requirements currently included in Reliability Standards pose lesser risk to the Bulk-Power System. If so, some current requirements likely provide little protection for Bulk-Power System reliability or may be redundant. The Commission is interested in obtaining views on whether such requirements could be removed from the Reliability Standards with little effect on reliability and an increase in efficiency of the ERO compliance program. If NERC believes that specific Reliability Standards or specific requirements within certain Standards should be revised or removed, we invite NERC to make specific proposals to the Commission identifying the Standards or requirements and setting forth in detail the technical basis for its belief. In addition, or in the alternative, we invite NERC, the Regional Entities and other interested entities to propose appropriate mechanisms to identify and remove from the Commission-approved Reliability Standards unnecessary or redundant requirements. We will not impose a deadline on when these comments should be submitted, but ask that to the extent such comments are submitted NERC, the Regional Entities, and interested entities coordinate to submit their respective comments concurrently.[10]

In response, NERC initiated a review, referred to as the ''P 81 project,'' to identify requirements that could be removed from Reliability Standards without impacting the reliability of the Bulk-Power System.

II. NERC Petition

6. In its February 28, 2013 petition, NERC seeks Commission approval of the retirement of 34 requirements within 19 Reliability Standards. NERC asserts that the 34 requirements proposed for retirement ''are redundant or otherwise unnecessary'' and that ''violations of these requirements . . . pose a lesser risk to the reliability of the Bulk-Power System.''[11] In addition, NERC states that it is not proposing to retire any Reliability Standard in its entirety, and the remaining requirements of each affected Reliability Standard will remain in continuous effect. NERC maintains that the requirements proposed for retirement ''can be removed [from the Reliability Standards] with little to no effect on reliability.''[12] NERC also asserts that the proposed retirement of the 34 requirements ''will allow industry stakeholders to focus their resources appropriately on reliability risks and will increase the efficiency of the ERO compliance program.''[13]

7. In addition, in its petition, NERC provides a description of the collaborative process adopted by industry stakeholders to respond to the Commission's proposal in paragraph 81 of the March 2012 Order. NERC maintains that the ''scope of the P 81 project was limited solely to the removal of requirements in their entirety that would not otherwise compromise the integrity of the specific Reliability Standard or impact the reliability of the BES.''[14] Further, NERC states that the criteria adopted to identify potential requirements for retirement ''were designed so that no rewriting or consolidation of requirements would be necessary.''[15]

8. NERC states that the ''P 81 Team'' developed three criteria for its review:

(1) Criterion A: An overarching criteria designed to determine that there is no reliability gap created by the proposed retirement; (2) Criterion B: consists of seven separate identifying criteria designed to recognize requirements appropriate for retirement (administrative; data collection/data retention; documentation; reporting; periodic updates; commercial or business practice; and redundant); and (3) Criterion C: consists of seven separate questions designed to assist the P 81 Team in making an informed decision regarding whether requirements are appropriate to propose for retirement.[16]

9. Specifically, the seven questions adopted for Criterion C are:

C1: Was the Reliability Standard requirement part of a FFT filing?
C2: Is the Reliability Standard requirement being reviewed in an on-going Standards Development Project?
C3: What is the VRF of the Reliability Standard requirement?
C4: In which tier of the 2013 [Actively Monitored List] does the Reliability Standard requirement fall?
C5: Is there a possible negative impact on NERC's published and posted reliability principles?
C6: Is there any negative impact on the defense in depth protection of the Bulk Electric System?
C7: Does the retirement promote results or performance based Reliability Standards?

10. NERC maintains that the project team focused on the identification of ''lower-level facilitating requirements that are either redundant with other requirements or where evidence retention is burdensome and the requirement is unnecessary'' because the reliability goal is achieved through other standards or mechanisms.[17] NERC asserts that the proposed retirement of documentation requirements will not create a gap in reliability because ''NERC and the Regional Entities can enforce reporting obligations pursuant to section 400 of NERC's Rules of Procedure and Appendix 4C to ensure that necessary data continues to be submitted for compliance and enforcement purposes.''[18] NERC asserts that although the P 81 project proposes to retire requirements associated with data retention or documentation, ''the simple fact that a requirement includes a data retention or documentation element *does not* signify that it should be considered for retirement or is otherwise inappropriately designated as a requirement.''[19]

11. Based on this approach, NERC identified the following 34 requirements

[6] *See* 16 U.S.C. 824o(e)(3).

[7] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards,* Order No. 672, FERC Stats. & Regs. ¶ 31,204, *order on reh'g,* Order No. 672–A, FERC Stats. & Regs. ¶ 31,212 (2006).

[8] *North American Electric Reliability Corp.,* 116 FERC ¶ 61,062, *order on reh'g and compliance,* 117 FERC ¶ 61,126 (2006), *aff'd sub nom. Alcoa Inc. v. FERC,* 564 F.3d 1342 (D.C. Cir. 2009).

[9] March 2012 Order, 138 FERC ¶ 61,193 at P 81.

[10] *Id.*

[11] Petition at 2.

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.* at 7.

[18] *Id.* at 8 (citing *North American Electric Reliability Corp.,* 141 FERC ¶ 61,241 at P 82 (2012) (approving proposed revisions to NERC's Rules of Procedure)).

[19] *Id.* at 9 (emphasis in original).

within 19 Reliability Standards for potential retirement:

- BAL–005–0.2b, Requirement R2—Automatic Generation Control
- CIP–003–3, –4, Requirement R1.2—Cyber Security—Security Management Controls [20]
- CIP–003–3, –4, Requirements R3, R3.1, R3.2, and R3.3—Cyber Security—Security Management Controls
- CIP–003–3, –4, Requirement R4.2—Cyber Security—Security Management Controls
- CIP–005–3a, –4a, Requirement R2.6—Cyber Security—Electronic Security Perimeter(s)
- CIP–007–3, –4, Requirement R7.3—Cyber Security—Systems Security Management
- EOP–005–2, Requirement R3.1—System Restoration from Blackstart Services
- FAC–002–1, Requirement R2—Coordination of Plans for New Facilities
- FAC–008–3, Requirements R4 and R5—Facility Ratings
- FAC–010–2.1, Requirement R5—System Operating Limits Methodology for the Planning Horizon
- FAC–011–2.1, Requirement R5—System Operating Limits Methodology for the Operations Horizon
- FAC–013–2, Requirement R3—Assessment of Transfer Capability for the Near-term Transmission Planning Horizon
- INT–007–1, Requirement R1.2—Interchange Confirmation
- IRO–016–1, Requirement R2—Coordination of Real-Time Activities between Reliability Coordinators
- NUC–001–2, Requirements R9.1, R9.1.1, R9.1.2, R9.1.3, and R1.9.4—Nuclear Plant Interface Coordination
- PRC–010–0, Requirement R2—Assessment of the Design and Effectiveness of UVLS Programs
- PRC–022–1, Requirement R2—Under-Voltage Load Shedding Program Performance
- VAR–001–2, Requirement R5—Voltage and Reactive Control

12. NERC also requests that the Commission approve the implementation plan, provided as Exhibit C to NERC's petition, which provides that the identified requirements will be retired immediately upon Commission approval.

13. NERC states that it will apply the ''concepts'' from the P 81 project to improve the drafting of Reliability Standards going forward. Specifically, NERC explains that Reliability Standards development projects ''will involve stronger examination for duplication of requirements across the NERC body of Reliability Standards and the technical basis and necessity for each and every requirement will continue to be evaluated.'' [21] According to NERC, requirements that were proposed and ultimately not included in the immediate filing will be mapped for consideration as part of addressing existing standards projects and five-year reviews of standards that have not been recently revised.

III. Discussion

A. Proposed Retirement of Requirements

14. Pursuant to section 215 of the FPA, we propose to approve the retirement of the 34 requirements within 19 Reliability Standards identified by NERC as just, reasonable, not unduly discriminatory or preferential, and in the public interest. In the March 2012 Order, the Commission explained that ''some current requirements likely provide little protection for Bulk-Power System reliability or may be redundant. The Commission is interested in obtaining views on whether such requirements could be removed from the Reliability Standards with little effect on reliability and an increase in efficiency of the ERO compliance program.'' [22] In general, the proposed retirements satisfy the expectations set forth in the March 2012 Order; namely, the requirements proposed for retirement either: (1) Provide little protection for Bulk-Power System reliability or (2) are redundant with other aspects of the Reliability Standards.

15. We agree with NERC that the elimination of certain requirements that pertain to the information collection or documentation will not result in a reliability gap. Section 400 and Appendix 4C (Uniform Compliance Monitoring and Enforcement Program) of the NERC Rules of Procedure provide NERC and the Regional entities the authority to enforce reporting obligations necessary to support reliability.[23] This authority, used in the appropriate manner, justifies retiring certain documentation-related requirements that provide limited, if any, support for reliability. We anticipate that the retirement of such requirements will enhance the efficiency of the ERO compliance program, as well as the efficiency of individual registered entity compliance programs.

16. The specific requirements, NERC's rationale supporting retirement, and the Commission's proposed approval of the retirements are outlined below.

Resource and Demand Balancing Reliability Standards

17. BAL–005–0.2b, Requirement R2—Automatic Generation Control:

R2. Each Balancing Authority shall maintain Regulating Reserve that can be controlled by AGC to meet the Control Performance Standard.

18. NERC states that the reliability purpose of BAL–005–0.2b is ''to establish requirements for Balancing Authority Automatic Generation Control (''AGC'') necessary to calculate Area Control Error (''ACE'') and to routinely deploy the Regulating Reserve.'' [24] NERC asserts that the reliability purpose and objectives of BAL–005–0.2b will not be affected by the retirement of Requirement R2.[25] Specifically, NERC states that BAL–005 is related to BAL–001—Real Power Balancing Control Performance, and a ''Balancing Authority must use AGC to control its Regulating Reserves to meet the Control Performance Standards (''CPS'') as set forth in BAL–001–0.1a Requirements R1 and R2.'' [26] According to NERC, the ''primary purpose of Requirement R2 is to specify how a Balancing Authority must meet [the Control Performance Standards], i.e., through the use of [Automatic Generation Control].'' [27]

19. NERC states that, although the Commission has previously rejected an argument regarding the potential redundancy of Requirement R2, ''this Requirement is redundant in an operational sense.'' [28] NERC asserts that, while a balancing authority may be able to meet its Control Performance Standard without automatic generation control, ''it cannot do so for any extended period of time, and, therefore, Balancing Authorities must use [Automatic Generation Control] to control Regulating Reserves to satisfy obligations under BAL–001–0.1a

[20] NERC explains that although only eight requirements in the Critical Infrastructure Protection (CIP) body of Reliability Standards are proposed for retirement, NERC proposes the retirement of those eight requirements in both CIP versions 3 and 4. Therefore, the total number of CIP requirements proposed for retirement is sixteen.

[21] Petition at 9.

[22] March 2012 Order, 138 FERC ¶ 61,193 at P 81.

[23] *See North American Electric Reliability Corp.*, 141 FERC ¶ 61,241 at P 82.

[24] Petition at 12–13.

[25] *Id.* at 13.

[26] *Id.*

[27] *Id.*

[28] *Id.* at 14.

Requirements R1 and R2.'' [29] NERC concludes that ''Balancing Authorities must still have Regulating Reserves that can be controlled by [Automatic Generation Control] to satisfy the [Control Performance Standards] in BAL–001–0.1a Requirements R1 and R2'' if BAL–005–0.2b, Requirement R2 is retired.[30]

20. We propose to approve the retirement of BAL–005–0.2b, Requirement R2 based on NERC's assertion that the requirement is redundant with BAL–001–0.1a, Requirements R1 and R2. Specifically, we propose to accept NERC's explanation that the obligation to maintain regulating reserves controlled by automatic generation control under BAL–005–0.2b, Requirement R2 is redundant from an operational perspective with the obligation to meet the Control Performance Standards in BAL–001–0.1a, Requirements R1 and R2. As NERC notes, although a balancing authority can meet the Control Performance Standards without automatic generation control, it is reasonable to assume that it cannot operate in that manner for an extended period of time and that a balancing authority must ultimately rely on regulating reserves controlled by automatic generation control.

Critical Infrastructure Protection Reliability Standards

21. CIP–003–3, –4, Requirement R1.2—Cyber Security—Security Management Controls:

R1.2. The cyber security policy is readily available to all personnel who have access to, or are responsible for, Critical Cyber Assets.

22. NERC states that CIP–003 requires responsible entities to have minimum security management controls in place to protect critical cyber assets. According to NERC, the ''reliability purpose and objectives of CIP–003 are unaffected by the proposed retirement of Requirement R1.2.'' [31] NERC states that ''CIP–003 Requirement R1.2 is an administrative task that requires Responsible Entities to ensure that their cyber security policy is readily available to personnel'' and that retirement of Requirement R1.2 will not create a gap in reliability.[32]

23. We propose to approve the retirement of CIP–003–3, -4, Requirement R1.2 based on NERC's explanation that it is an administrative provision that provides little protection for Bulk-Power System reliability. As NERC explains, the training, procedures, and process related requirements of the CIP standards render having the cyber security policy readily available an unnecessary requirement.[33] Thus, we agree that CIP–003–3, –4, Requirement R1.2 may be viewed as redundant with the training obligations imposed under CIP–004–3a that require specific training for all employees, including contractors and service vendors, who have access to critical cyber assets. We also agree with NERC that CIP–003–3, –4, Requirement R1.2 creates a compliance burden that outweighs the reliability benefit of requiring a responsible entity to ensure that its general cyber security policy is readily available.

24. CIP–003–3, –4, Requirements R3, R3.1, R3.2, and R3.3—Cyber Security—Security Management Controls:

R3. Exceptions—Instances where the Responsible Entity cannot conform to its cyber security policy must be documented as exceptions and authorized by the senior manager or delegate(s).

R3.1. Exceptions to the Responsible Entity's cyber security policy must be documented within thirty days of being approved by the senior manager or delegate(s).

R3.2. Documented exceptions to the cyber security policy must include an explanation as to why the exception is necessary and any compensating measures.

R3.3. Authorized exceptions to the cyber security policy must be reviewed and approved annually by the senior manager or delegate(s) to ensure the exceptions are still required and valid. Such review and approval shall be documented.

25. NERC states that CIP–003 requires Responsible Entities to have minimum security management controls in place to protect critical cyber assets. NERC asserts that the ''reliability purpose and objectives of CIP–003 are unaffected by the proposed retirement of Requirements R3, and R3.1 through R3.3.'' [34] NERC characterizes CIP–003–3, –4, Requirements R3, R3.1, R3.2, and R3.3 as administrative tasks and indicates that the proposed retirement of these requirements presents no reliability gap. NERC explains that the requirements at issue ''only apply to exceptions to internal corporate policy, and only in cases where the policy exceeds a Reliability Standards requirement or addressees an issue that is not covered in a Reliability Standard.'' [35] NERC maintains that the retirement of Requirements R3, R3.1, R3.2, and R3.3 ''would not impact an entity's ability to maintain such an exception process within its corporate policy governance procedures, if it is so desired.'' [36]

26. NERC explains that CIP–003–3, –4, Requirement R3, R3.1, R3.2, and R3.3 ''have proven not to be useful and have been subject to misinterpretation.'' [37] Specifically, NERC states that entities may be interpreting CIP–003–3, –5, Requirement R3 and its sub-requirements as allowing for an exemption from compliance with one or more requirements of a Reliability Standard. NERC explains that this misinterpretation has created an unnecessary burden because entities have ''allocate[d] time and resources to tasks that are misaligned with the [CIP] requirements themselves.'' [38] In addition, NERC notes that the misunderstanding of the requirements has affected the efficiency of the ERO compliance program due to ''the amount of time and resources needed to clear up the misunderstanding and coach entities on the meaning of the CIP exception requirements.'' [39]

27. We propose to approve the retirement of CIP–003–3, –4, Requirements R3, R3.1, R3.2, and R3.3 based on NERC's explanation that Requirements R3, R3.1, R3.2, and R3.3 impose administrative tasks that provide little protection for Bulk-Power System reliability. As NERC notes, the exception process outlined under CIP–003–3, –4, Requirements R3, R3.1, R3.2, and R3.3 only applies to a responsible entity's internal corporate policy, and only in situations where a responsible entity's internal corporate policy exceeds a CIP Reliability Standard requirement. The retirement of CIP–003–3, –4, Requirements R3, R3.1, R3.2, and R3.3 will not affect a responsible entity's compliance with the body of the CIP Reliability Standards.

28. CIP–003–3, –4, Requirement R4.2—Cyber Security—Security Management Controls:

R4.2. The Responsible Entity shall classify information to be protected under this program based on the sensitivity of the Critical Cyber Asset information.

29. NERC states that CIP–003, Requirement R4.2 requires responsible entities to classify information based on its ''sensitivity.'' NERC characterizes

[29] *Id.*

[30] *Id.*

[31] Petition at 15.

[32] *Id.*

[33] *Id.*, NERC Petition, Exhibit E (Paragraph 81 Technical Whitepaper) at 17.

[34] Petition at 17.

[35] *Id.*

[36] *Id.*

[37] *Id.*, Exhibit E at 21.

[38] *Id.*

[39] *Id.*

this task as an ''administrative task'' that is redundant with CIP–003–3, –4, Requirement R4. According to NERC, Requirement R4 already requires a Responsible Entity to classify critical cyber information and the ''only difference between Requirements R4 and R4.2 is that the subjective term 'based on sensitivity' has been added [to Requirement R4.2], thus, making it essentially redundant.'' [40] NERC maintains that the retirement of R4.2 presents no reliability gap.

30. We propose to approve the retirement of CIP–003–3, -4, Requirement R4.2 based on NERC's explanation that Requirement R4.2 is redundant with CIP–003–3, -4, Requirement R4. Specifically, the only distinction between CIP–003–3, -4, Requirement R4.2 and Requirement R4 is the subjective term ''based on the sensitivity.'' The obligation in Requirement R4 that a responsible entity must identify, classify, and protect Critical Cyber Asset information remains even with the retirement of Requirement R4.2.

31. CIP–005–3a, –4a, Requirement R2.6—Cyber Security—Electronic Security Perimeter(s):

R2.6. Appropriate Use Banner—Where technically feasible, electronic access control devices shall display an appropriate use banner on the user screen upon all interactive access attempts. The Responsible Entity shall maintain a document identifying the content of the banner.

32. NERC states that the general purpose of CIP–005–3a, –4a is to ensure a proper or secure access point configuration. NERC asserts that the ''implementation of an appropriate use banner . . . on a user's screen for all interactive access attempts into the Electronic Security Perimeter . . . is an activity or task that is administrative.'' [41] NERC states that the implementation of an appropriate use banner does not support the general purpose of CIP–005–3a, –4a and, thus, retirement of the provision presents no reliability gap.[42]

33. NERC explains that Requirement R2.6 has also been the subject of numerous technical feasibility exceptions for devices that cannot support such a banner and, thus, has diverted resources from more productive efforts. NERC avers that ''the ERO's compliance program would become more efficient if CIP–005–3a, –4a [Requirement] R2.6 was retired, because ERO time and resources could be reallocated to monitor compliance with the remainder of CIP–005–3a, –4a, which provides for more effective controls of electronic access at all electronic access points into the ESP.'' [43]

34. We propose to approve the retirement of CIP–005–3a, –4a, Requirement R2.6 based on NERC's explanation that Requirement R2.6 represents an administrative task that provides little protection for Bulk-Power System reliability. As NERC notes, the implementation of an appropriate use banner as required under CIP–005–3a, –4a, Requirement R2.6 does not further the general goal of controlling electronic access at all electronic access points to the Electronic Security Perimeter(s). In addition, Requirement R2.6 has been the subject of numerous technical feasibility exceptions due to the fact that not all devices can support an appropriate use banner.

35. CIP–007–3, –4, Requirement R7.3—Cyber Security—Systems Security Management:

R7.3. The Responsible Entity shall maintain records that such assets were disposed of or redeployed in accordance with documented policies.

36. NERC states that Requirement R7.3 requires the maintaining of records for the purpose of demonstrating compliance with disposing of or redeploying Cyber Assets in accordance with documented procedures. NERC asserts, however, that it and the Regional Entities can require the production of records to demonstrate compliance under section 400 of the NERC Rules of Procedure. Therefore, NERC maintains that ''Requirement R7.3 is redundant and unnecessary.'' [44]

We propose to approve the retirement of CIP–007–3, –4, Requirement R7.3. The retirement of Requirement R7.3 will not relieve a responsible entity of the obligation to dispose of or redeploy a Cyber Asset in the manner set forth in CIP–007–3, –4, Requirement R7. Should NERC or the Regional Entities seek to confirm that a responsible entity is complying with the substantive obligations in CIP–007–3, –4, Requirement R7, they can invoke their authority under section 400 of the NERC Rules of Procedure.

Emergency Preparedness and Operations Reliability Standards

37. EOP–005–2, Requirement R3.1—System Restoration from Blackstart Services:

R3.1. If there are no changes to the previously submitted restoration plan, the Transmission Operator shall confirm annually on a predetermined schedule to its Reliability Coordinator that it has reviewed its restoration plan and no changes were necessary.

38. NERC states that the reliability purpose of EOP–005–2 is to ensure that plans, Facilities, and personnel are prepared to enable system restoration from blackstart resources to assure that reliability is maintained during restoration and priority is placed on restoring the Interconnection. According to NERC, the reliability purpose of EOP–005 will be unaffected by the retirement of Requirement R3.1.

39. NERC explains that ''EOP–005–2 Requirement R3 currently requires the Transmission Operator to submit its restoration plan to its Reliability Coordinator, whether or not the plan includes changes.'' [45] NERC maintains that, since a transmission operator is already obligated to review and submit its restoration plan to its reliability coordinator annually whether or not there has been a change, ''EOP–005–2 Requirement R3.1 only adds a separate, duplicative administrative burden for the entity to also confirm that there were no changes[.]'' [46]

40. We propose to approve the retirement of EOP–005–2, Requirement R3.1 based on NERC's explanation that Requirement R3.1 is redundant with EOP–005–2, Requirement R3. Specifically, Requirement R3 requires a responsible entity to review its restoration plan and submit the plan to its reliability coordinator annually. As NERC notes, Requirement R3.1 adds a separate, duplicative administrative burden requiring a transmission operator to confirm whether or not the restoration plan reflects any changes. The retirement of Requirement R3.1 will not remove the transmission operator's obligation to review and submit its restoration plan to its reliability coordinator on an annual basis.

Facilities Design, Connections, and Maintenance Reliability Standards

41. FAC–002–1, Requirement R2—Coordination of Plans for New Facilities:

R2. The Planning Authority, Transmission Planner, Generator Owner, Transmission Owner, Load-Serving Entity, and Distribution Provider shall each retain its documentation (of its evaluation of the reliability impact of the new facilities and their connections to the interconnected transmission systems) for three years and shall provide the documentation to the Regional

[40] Petition at 19.

[41] *Id.* at 20.

[42] An ''appropriate use banner'' is a notification presented to the user when accessing a system through an electronic access control device that is intended to emphasize the corporate policy on the appropriate use of the system.

[43] *Id.* at 21.

[44] *Id.* at 22.

[45] *Id.* at 23.

[46] *Id.* at 24.

Reliability Organization(s) and NERC on request (within 30 calendar days).

42. NERC states that the reliability purpose of FAC–002 is to avoid adverse impacts on reliability by requiring generator owners and transmission owners and electricity end-users to meet facility connection and performance requirements. Specifically, NERC maintains that ''Responsible Entities have an existing obligation to produce the same information required by Requirement R2 to demonstrate compliance with Requirement R1 and its sub-requirements, thus making Requirement R2 redundant.'' [47] NERC concludes that the retirement of Requirement R2 presents no reliability gap. NERC asserts that the reliability purpose of FAC–002 will be unaffected by the retirement of Requirement R2.

43. We propose to approve the retirement of FAC–002–1, Requirement R2 based on NERC's explanation that Requirement R2 is redundant with the compliance obligations imposed by FAC–002–1, Requirement R1 and its sub-requirements. While FAC–002–1, Requirement R2 requires a responsible entity to retain documentation of the evaluation of the reliability impact of new facilities and their connections to the interconnected transmission systems for three years, Requirement R1 and its sub-requirements require a responsible entity to have evidence and documentation of the evaluation in order to show that it is in compliance. We also note that Part D, Section 1.4 of FAC–002–1 separately specifies a data retention period of three years for this evaluation. The retirement of Requirement R2 should not result in a reliability gap on account of the need to maintain evidence and documentation to show compliance with FAC–002–1, Requirement R1.

44. FAC–008–3, Requirements R4 and R5—Facility Ratings:

R4. Each Transmission Owner shall make its Facility Ratings methodology and each Generator Owner shall each make its documentation for determining its Facility Ratings and its Facility Ratings methodology available for inspection and technical review by those Reliability Coordinators, Transmission Operators, Transmission Planners and Planning Coordinators that have responsibility for the area in which the associated Facilities are located, within 21 calendar days of receipt of a request.

R5. If a Reliability Coordinator, Transmission Operator, Transmission Planner or Planning Coordinator provides documented comments on its technical review of a Transmission Owner's Facility Ratings methodology or Generator Owner's documentation for determining its Facility Ratings and its Facility Rating methodology, the Transmission Owner or Generator Owner shall provide a response to that commenting entity within 45 calendar days of receipt of those comments. The response shall indicate whether a change will be made to the Facility Ratings methodology and, if no change will be made to that Facility Ratings methodology, the reason why.

45. NERC states that ''the reliability objective [of FAC–008 is] that facility ratings produced by the methodologies of the Transmission Owner or Generator Owner shall equal the most limiting applicable equipment rating, and consider, for example, emergency and normal conditions, historical performance, nameplate ratings, etc.'' [48] NERC asserts that this reliability objective ''is not significantly or substantively advanced by FAC–008–3 R4 (available for inspection) and R5 (comment and responsive comments).'' [49] NERC states that the retirement of FAC–008–03, Requirements R4 and R5 will not create a reliability gap ''because Transmission Owners and Generator Owners must comply with the substantive requirements of FAC–008–3 regarding their facility rating methodologies whether or not the exchange envisioned by FAC–008–3 R4 and R5 occurs.'' [50]

46. NERC states further that ''neither FAC–008–3 R4 nor R5 require that the Transmission Owner and Generator Owner change its methodology, rather FAC–008–3 R4 and R5 are designed as an exchange of comments that may be an avenue to advance commercial interests.'' [51] Therefore, NERC asserts that FAC–008–3, Requirements R4 and R5 represent ''an administrative task that does little, if anything, to benefit or protect the reliable operation of the BES, and has the potential to implicate commercially sensitive issues.'' [52] NERC concludes that ''the ERO compliance program would gain efficiencies by no longer having to track whether requests for technical review had occurred, comments provided and reallocate time and resources to monitoring the Transmission Owner's or Generator Owner's adherence to substantive requirements of FAC–008–3.'' [53]

47. We propose to approve the retirement of FAC–008–03, Requirements R4 and R5 based on NERC's explanation that Requirements R4 and R5 impose an administrative task that provides little protection for Bulk-Power System reliability. The retirement of Requirements R4 and R5 will not relieve a transmission owner or generator owner of the obligation to have documentation supporting its facility ratings methodology.

Requirements R4 and R5, therefore, impose a compliance burden with little attendant reliability benefit.

48. FAC–010–2.1, Requirement R5—System Operating Limits Methodology for the Planning Horizon:

R5. If a recipient of the SOL Methodology provides documented technical comments on the methodology, the Planning Authority shall provide a documented response to that recipient within 45 calendar days of receipt of those comments. The response shall indicate whether a change will be made to the SOL Methodology and, if no change will be made to that SOL Methodology, the reason why.

49. NERC states that the reliability purpose of FAC–010–2.1 is to ensure that system operating limits used in the reliable planning of the bulk electric system are determined based on an established methodology.[54] NERC asserts that the reliability purpose of FAC–010–2.1 will be unaffected by the retirement of Requirement R5. NERC states that ''[t]he retirement of FAC–010–2.1 R5 does not create a reliability gap, because the Planning Authority must comply with the substantive requirements of FAC–010–2.1 whether or not the exchange envisioned by FAC–010–2.1 R5 occurs.'' [55]

50. NERC states that ''FAC–010- 2.1 R5 sets forth an administrative task that does little, if anything, to benefit or protect the reliable operation of the BES, and has the potential to implicate commercially sensitive issues.'' [56] According to NERC, ''a Planning Authority's time and resources would be better spent complying with the substantive requirements of FAC–010–2.1.'' [57] NERC concludes that ''the ERO compliance program would gain efficiencies by no longer having to track whether requests for technical review had occurred, comments provided and reallocate time and resources to monitoring the Planning Authority's

[47] *Id.* at 25.

[48] Exhibit E at 40.

[49] *Id.*

[50] *Id.*

[51] *Id.*

[52] *Id.* at 41.

[53] *Id.*

[54] *Id.* at 43. The NERC Glossary of Terms Used in Reliability Standards defines ''system operating limit'' as:

The value (such as MW, MVar, Amperes, Frequency or Volts) that satisfies the most limiting of the prescribed operating criteria for a specified system configuration to ensure operation within acceptable reliability criteria.

[55] Exhibit E at 43.

[56] *Id.*

[57] *Id.*

adherence to substantive requirements of FAC–010–2.1.'' [58]

51. We propose to approve the retirement of FAC–010–2.1, Requirement R5 based on NERC's explanation that Requirement R5 imposes an administrative task that provides little protection for Bulk-Power System reliability. The retirement of Requirement R5 will not relieve a planning authority of the obligation to document its system operating limits methodology under the remaining provisions of FAC–010–2.1. In addition, the retirement of Requirement R5 will not relieve a planning authority from its obligation pursuant to Requirement R4 of the standard to provide its system operating limits methodology, including any changes to the methodology, to the appropriate entities prior to the effective date of any such change. Based on the explanation in NERC's petition, Requirement R5 imposes a compliance burden with little attendant reliability benefit.

52. FAC–011–2.1, Requirement R5—System Operating Limits Methodology for the Operations Horizon:

R5. If a recipient of the SOL Methodology provides documented technical comments on the methodology, the Reliability Coordinator shall provide a documented response to that recipient within 45 calendar days of receipt of those comments. The response shall indicate whether a change will be made to the SOL Methodology and, if no change will be made to that SOL Methodology, the reason why.

53. NERC states that FAC–011–2 Requirement R5 requires that, when a reliability coordinator receives comments on its system operating limit methodology, the reliability coordinator must respond and indicate whether it has changed its methodology. According to NERC, the ''retirement of FAC–011–2 R5 does not create a reliability gap, because the Reliability Coordinator must comply with the substantive requirements of FAC–011–2 R5 [*sic*] whether or not the exchange envisioned by FAC–011–2 R5 occurs.'' [59] NERC maintains that ''FAC–011–2 R5 may support an avenue to advance commercial interests.'' [60]

54. NERC states that FAC–011–2, Requirement R5 sets forth an administrative task that does little, if anything, to benefit or protect the reliable operation of the BES. NERC asserts that ''[i]nstead of spending time and resources on FAC–011–2 R5 a Reliability Coordinator's time and resources would be better spent complying with the substantive requirements'' of FAC–011–2.[61] NERC concludes that ''the ERO compliance program would gain efficiencies by no longer having to track whether requests for technical review had occurred, comments provided and reallocate time and resources to monitoring the Reliability Coordinator's adherence to substantive requirements'' of FAC–011–2.[62]

55. We propose to approve the retirement of FAC–011–2, Requirement R5 based on NERC's explanation that Requirement R5 imposes an administrative task that provides little protection for Bulk-Power System reliability. The retirement of Requirement R5 will not relieve a reliability coordinator of the obligation to document its system operating limits methodology under the remaining provisions of FAC–011–2. In addition, the retirement of Requirement R5 will not relieve a reliability coordinator from its obligation pursuant to Requirement R4 of the standard to provide its system operating limits methodology, including any changes to the methodology, to the appropriate entities prior to the effective date of any such change. Based on the explanation in NERC's petition, Requirement R5 imposes a compliance burden with little attendant reliability benefit.

56. FAC–013–2, Requirement R3—Assessment of Transfer Capability for the Near-term Transmission Planning Horizon:

R3. If a recipient of the Transfer Capability methodology provides documented concerns with the methodology, the Planning Coordinator shall provide a documented response to that recipient within 45 calendar days of receipt of those comments. The response shall indicate whether a change will be made to the Transfer Capability methodology and, if no change will be made to that Transfer Capability methodology, the reason why.

57. NERC states that FAC–013–2, Requirement R3 is a needlessly burdensome administrative task that does little, if anything, to benefit or protect the reliable operation of the BES. NERC explains FAC–013–2, Requirement R1 and its associated sub-requirements set forth the information that each Planning Authority must include when developing its transfer capability methodology. NERC explains further ''FAC–013–2 R3 sets forth a requirement that if an entity comments on this methodology, the Planning Authority must respond and indicate whether or not it will make a change to its Transfer Capability methodology.'' [63] NERC concludes, ''while R1 sets forth substantive requirements, R3 sets forth more of an administrative task of the Planning Authority responding to comments on its methodology.'' [64]

58. NERC states that ''it would seem unnecessarily burdensome to engage in the exchange of comments, given there is no nexus between the exchange and compliance with the substantive requirements of FAC–013–2.'' [65] According to NERC, issues regarding an entity's transfer capability methodology should be raised in the context of the receipt of transmission services, not the Reliability Standards.[66] NERC asserts that time and resources would be better spent complying with the substantive requirements of FAC–013–2. NERC concludes that ''the ERO compliance program would gain efficiencies by no longer having to track whether requests for technical review had occurred, comments provided and reallocate time and resources to monitoring the Reliability Coordinator's adherence to substantive requirements of FAC–013–2.'' [67]

59. We propose to approve the retirement of FAC–013–2, Requirement R3 based on NERC's explanation that Requirement R3 imposes an administrative task that provides little protection for Bulk-Power System reliability. The retirement of Requirement R3 will not relieve a planning coordinator of the obligation to document its transfer capability methodology under the remaining provisions of FAC–013–2. In addition, the retirement of Requirement R3 will not relieve a planning coordinator from its obligation pursuant to Requirement R2 of the standard to provide its transfer capability methodology, including any changes to the methodology, to the appropriate entities prior to the effective date of any such change. Based on the explanation in NERC's petition, Requirement R3 imposes a compliance burden with little attendant reliability benefit.

Interchange Scheduling and Coordination Reliability Standards

60. INT–007–1, Requirement R1.2—Interchange Confirmation:

R1.2. All reliability entities involved in the Arranged Interchange are currently in the NERC registry.

[58] *Id.*

[59] *Id.* at 45.

[60] *Id.*

[61] *Id.* at 46.

[62] *Id.*

[63] *Id.* at 48.

[64] *Id.*

[65] *Id.* at 49.

[66] *Id.*

[67] *Id.*

61. NERC states that the reliability purpose of INT–007–1 is to ensure that each arranged interchange is checked for reliability before it is implemented. NERC maintains that the reliability purpose of INT–007–1 ''is unaffected by the proposed retirement of Requirement R1.2'' and avers that ''Requirement R1.2 is an administrative task that is now outdated.''[68]

62. Specifically, NERC explains ''[a]t one time, the identification number came from the NERC Transmission System Information Network (''TSIN'') system, which is now handled via the NAESB Electric Industry Registry.''[69] NERC explains further that ''under the E-Tag protocols, no entity may engage in an Interchange transaction without first registering with the E-Tag system and receiving an identification number'' and the E-tag identification number is used to pre-qualify and engage in an Arranged Interchange.[70] NERC concludes that the task set forth in INT–007–1 Requirement R1.2 is an outdated activity that is no longer necessary, and therefore the proposed retirement of Requirement R1.2 presents no reliability gap.

63. We propose to approve the retirement of INT–007–1, Requirement R1.2 based on NERC's explanation that Requirement R1.2 is an outdated administrative task that provides little protection for Bulk-Power System reliability. The identification of entities engaging in arranged interchange transactions is now addressed through the NAESB Electric Industry Registry, and the registration for such transactions is now handled through the E-Tag system. The retirement of INT–007–1, Requirement R1.2 will not result in a gap in reliability.

Interconnection Reliability Operations and Coordination Reliability Standards

64. IRO–016–1, Requirement R2—Coordination of Real-Time Activities Between Reliability Coordinators:

R2. The Reliability Coordinator shall document (via operator logs or other data sources) its actions taken for either the event or for the disagreement on the problem(s) or for both.

65. NERC states that IRO–016 establishes requirements for coordinated real-time operations, including: (1) Notification of problems to neighboring reliability coordinators and (2) discussions and decisions for agreed-upon solutions for implementation. NERC explains that the reliability purpose of IRO–016–1 is to ensure that each reliability coordinator's operations are coordinated such that they will not have an adverse reliability impact on other reliability coordinator areas and to preserve the reliability benefits of interconnected operations. NERC asserts that ''Requirement R2 is an administrative task and the proposed retirement will not adversely impact reliability'' and, ''[t]herefore, the reliability purpose of IRO–016–1 is unaffected by the proposed retirement of Requirement R2.''[71]

66. In addition, NERC notes that NERC and the Regional Entities have the authority to require an entity to submit data and information for purposes of monitoring compliance under section 400 of the NERC Rules of Procedure. NERC asserts, therefore, that ''the retirement of IRO–016–1 Requirement R2 does not affect the ability for NERC and the Regional Entities to require Reliability Coordinators to produce documentation to demonstrate compliance with IRO–016–1 Requirement R1 and its sub-requirements.''[72] NERC concludes that ''retiring IRO–016–1 Requirement R2 presents no gap to reliability or to the information NERC and the Regional Entities need to monitor compliance.''[73]

67. We propose to approve the retirement of IRO–016–1, Requirement R2 based on NERC's assertion that Requirement R2 establishes an administrative task that provides little protection for Bulk-Power System reliability. Specifically, the retirement of IRO–016–1, Requirement R2 will not interfere with the substantive aspects of the Reliability Standard found in Requirement R1. We also note that Part D, Section 1.3 of the standard establishes for reliability coordinators a data retention obligation with respect to the substantive aspects of the standard. The retirement of Requirement R2 will not have an adverse effect on reliability, nor will retirement inhibit the ability of NERC or the Regional Entities to seek documentation to assess compliance with the reliability standard.

Nuclear Reliability Standards

68. NUC–001–2, Requirements R9.1, R9.1.1, R9.1.2, R9.1.3, and R1.9.4—Nuclear Plant Interface Coordination:

R9.1. Administrative elements:
R9.1.1. Definitions of key terms used in the agreement.
R9.1.2. Names of the responsible entities, organizational relationships, and responsibilities related to the NPIRs.
R9.1.3. A requirement to review the agreement(s) at least every three years.
R9.1.4. A dispute resolution mechanism.

69. NERC states that the reliability purpose of NUC–001–2 is to ensure the coordination between nuclear plant generator operators and transmission entities for nuclear plant safe operation and shutdown. NERC explains that Requirement 9.1 and its sub-requirements specify certain administrative elements that must be included in the agreement (required in Requirement R2) between the nuclear plant generator operator and the applicable transmission entities.[74] NERC maintains that the reliability purpose of NUC–001–2 is unaffected by the proposed retirement of Requirements 9.1, 9.1.1, 9.1.2, 9.1.3 and 9.1.4.

70. NERC asserts that Requirement R9.1 and its sub-requirements are administrative tasks and the proposed retirement of these Requirements will not adversely impact reliability. NERC states further that ''requiring via a mandatory Reliability Standard the inclusion of boilerplate provisions is unnecessarily burdensome relative to the other significant requirements in NUC–001–2 that pertain to performance based reliability coordination and protocols between Transmission Entities and Nuclear Plant Generator Operators.''[75] NERC indicates that the information required by these requirements is likely in modern agreements anyway. NERC concludes that the retirement of NUC–001–2, Requirement R9.1 and its sub-requirements ''creates no reliability gap.''[76]

71. We propose to approve the retirement of NUC–001–2, Requirements 9.1, 9.1.1, 9.1.2, 9.1.3 and 9.1.4 based on NERC's explanation that Requirement 9.1 and its sub-requirements reflect administrative elements currently required to be included in the nuclear plant interface requirements between a nuclear plant generator operator and applicable transmission entities. The administrative elements required under Requirement 9.1 and its sub-requirements do not relate to the substantive, technical requirements of NUC–001–2 (i.e., technical requirements and analysis, operations and maintenance coordination, and communications and training), and provide little protection for Bulk-Power System reliability.

[68] Petition at 26.
[69] *Id.*
[70] *Id.* at 26–27.
[71] *Id.* at 28.
[72] *Id.* at 28–29.
[73] *Id.* at 29.
[74] *Id.* at 30.
[75] *Id.*
[76] *Id.*

Protection and Control Reliability Standards

72. PRC–010–0, Requirement R2—Assessment of the Design and Effectiveness of UVLS Programs:

R2. The Load-Serving Entity, Transmission Owner, Transmission Operator, and Distribution Provider that owns or operates a UVLS program shall provide documentation of its current UVLS program assessment to its Regional Reliability Organization and NERC on request (30 calendar days).

73. NERC explains that PRC–010–0 requires certain registered entities to periodically conduct and document an assessment of the effectiveness of their under voltage load shedding (UVLS) program at least every five years or as required by changes in system conditions. NERC states that the purpose of PRC–010–0 is to provide system preservation measures to prevent system voltage collapse or voltage instability by implementing an UVLS program. NERC asserts that it and the Regional Entities have the authority under section 400 of the NERC Rules of Procedure ''to require an entity to submit documentation of its current UVLS program assessment for purposes of monitoring compliance.'' [77]

74. NERC states further that the retirement of PRC–010–0, Requirement R2 does not affect the ability of NERC and the Regional Entities to require reliability coordinators to produce documentation to monitor compliance with PRC–010–0. Specifically, NERC explains that PRC–010–0, Requirement R1 requires entities to ''document an assessment of the effectiveness of its UVLS program[.]'' [78] NERC concludes that the retirement of PRC–010–0, Requirement R2 ''presents no reliability gap.'' [79]

75. We propose to approve the retirement of PRC–010–0, Requirement R2 based on NERC's explanation that the administrative task imposed under Requirement R2 is redundant with NERC and the Regional Entity authority under section 400 of the NERC Rules of Procedure. Requirement R1 of PRC–010–0 sets forth the substantive requirements for applicable entities to periodically conduct and document an assessment of the effectiveness of its UVLS program. Requirement R2 dictates that an entity must provide documentation of its current assessment to NERC and/or the appropriate Regional Reliability Organization upon request. The retirement of PRC–010–0, Requirement R2 will not hamper the ability of NERC or the Regional Entities to compel the production of the assessments required under Requirement R1 since these entities may obtain this information pursuant to section 400 of the NERC Rules of Procedure.

76. PRC–022–1, Requirement R2—Under-Voltage Load Shedding Program Performance:

R2. Each Transmission Operator, Load-Serving Entity, and Distribution Provider that operates a UVLS program shall provide documentation of its analysis of UVLS program performance to its Regional Reliability Organization within 90 calendar days of a request.

77. NERC states that the purpose of Reliability Standard PRC–022–1 is to ensure that UVLS programs perform as intended to mitigate the risk of voltage collapse or voltage instability in the bulk electric system. NERC explains that PRC–022–1, Requirement R2 requires entities to provide documentation of its analysis of its UVLS program performance within 90 days of request. NERC maintains that the retirement of Requirement R2 ''does not affect the ability of NERC to require Reliability Coordinators to produce documentation to monitor compliance with PRC–022–1 Requirement R1 and its sub-requirements.'' [80]

78. Specifically, NERC explains that PRC–022–1, Requirement R1 requires that the entity document the performance of its UVLS program. NERC avers that the retirement of PRC–022–1, Requirement R2 ''is consistent with reliability principles and will not result in a gap in reliability as NERC has the ability to request [the information documented under PRC–022–1, Requirement R2] pursuant to Section 400 of the NERC Rules of Procedure.'' [81] NERC concludes that ''[t]he ERO compliance program efficiency will increase since it will no longer need to track a static requirement of whether a UVLS program assessment was submitted within [90] days of a request by NERC or the Regional Entity, and instead, compliance monitoring may focus on the more substantive requirements of PRC–022–1.'' [82]

79. We propose to approve the retirement of PRC–022–1, Requirement R2 based on NERC's explanation that the administrative task imposed under Requirement R2 is redundant with NERC's and the Regional Entities' authority under section 400 of the NERC Rules of Procedure. Requirement R1 of PRC–022–1 sets forth the substantive requirements for each applicable entity to document its analysis of the performance of its UVLS program. The retirement of PRC–022–1, Requirement R2 will not hamper the ability of NERC or the Regional Entities to compel the production of the analysis required under Requirement R1 since they may obtain this information pursuant to section 400 of the NERC Rules of Procedure.

Voltage and Reactive Reliability Standards

80. VAR–001–2, Requirement R5—Voltage and Reactive Control:

R5. Each Purchasing-Selling Entity and Load Serving Entity shall arrange for (self-provide or purchase) reactive resources—which may include, but is not limited to, reactive generation scheduling; transmission line and reactive resource switching; and controllable load—to satisfy its reactive requirements identified by its Transmission Service Provider.

81. NERC states that the retirement of VAR–001–2, Requirement R5 is consistent with reliability principles since the requirement is redundant with the Commission's *pro forma* open access transmission tariff (OATT) and the reliability objective is achieved via VAR–001–2, Requirement R2. NERC notes that Requirement R5 provides for transmission customers to self-provide or purchase reactive resources as required under Schedule 2 of the OATT. NERC states that a review of Requirement R5 and Schedule 2 ''indicates that the reliability objective of ensuring that [purchasing-selling entities] as well as [load serving entities] either acquire or self provide reactive power resources associated with transmission service requests is accomplished via Schedule 2[.]'' [83] NERC also explains that ''in the Electric Reliability Council of Texas (ERCOT) region, where there is no FERC approved OATT, reactive power is handled via Section 3.15 of the ERCOT Nodal Protocols that describes how ERCOT establishes a Voltage Profile for the grid, and then in detail explains the responsibilities of the Generators, Distribution Providers and Texas Transmission Service Providers (not to be confused with a NERC TSP), to meet the Voltage Profile and ensure that those entities have sufficient reactive support to do so.'' [84] NERC maintains that there is no need to reiterate the obligation to arrange for reactive resources in VAR–001–2, Requirement R5.

[77] *Id.* at 32.

[78] *Id.*

[79] *Id.*

[80] *Id.* at 33.

[81] *Id.*

[82] *Id.*

[83] *Id.* at 36.

[84] *Id.* at 37.

82. In addition, NERC states that the reliability objective of VAR–001–2 is also addressed by VAR–001–2, Requirement R2.[85] NERC asserts that ''[t]he Transmission Operator's adherence to Requirement R2 is a double-check for the obligations under Schedule 2 to ensure there are sufficient reactive power resources to protect the voltage levels under normal and Contingency conditions.'' [86] NERC adds that the ''double check'' under Requirement R2 ''does not relieve [purchasing-selling entities] and [load serving entities] from their obligations under Schedule 2 of the [open access transmission tariff] or Interchange agreements.'' [87]

83. We propose to approve the retirement of VAR–001–2, Requirement R5 based on NERC's assertion that Requirement R5 is redundant with provisions of the *pro forma* OATT. Specifically, Schedule 2 of the open access transmission tariff requires transmission providers to provide reactive power resources, either directly or indirectly, and requires transmission customers to either purchase or self-supply reactive power resources.[88] A similar requirement is found in the ERCOT Nodal Protocols that established the voltage profile for the grid within the ERCOT region.[89] In addition, VAR–001–2, Requirement R2 requires transmission operators to acquire sufficient reactive resources to protect voltage levels under normal and contingency conditions. Thus, the retirement of VAR–001–2, Requirement R5 will not result in a reliability gap.

84. We seek comment on our proposal to approve the retirement of the 34 requirements discussed above.

B. Outstanding Directives

85. Since the issuance of Order No. 693, the Commission has issued a number of directives that require NERC to take certain actions. In an effort to make better use of NERC's and the Commission's resources, the Commission has identified 41 of the outstanding directives that the Commission believes are no longer necessary to assure the reliable operation of the Bulk-Power System. As a result, we propose to withdraw the 41 outstanding directives. Attachment A to this NOPR identifies each directive and provides an explanation why we are proposing to withdraw the directive.[90]

86. We used the following three criteria in identifying the 41 outstanding directives for withdrawal: (1) The reliability concern underlying the outstanding directive has been addressed in some manner, rendering the directive stale; (2) the outstanding directive provides general guidance for standards development rather than a specific directive; and (3) the outstanding directive is redundant with another directive. Each of the 41 outstanding directives identified in Attachment A satisfies one or more of these criteria.

87. Therefore, we propose to withdraw the 41 directives listed in Attachment A in the interest of enhancing the efficiency of the ERO standards development process and reducing unnecessary burdens. We seek comment on our proposal to withdraw the listed directives. In particular, we seek comment on whether withdrawing the 41 directives could have a detrimental effect on the reliability of the bulk electric system.

IV. Information Collection Statement

88. The information collection requirements contained in this Proposed Rule are subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995.[91] OMB's regulations require approval of certain information collection requirements imposed by agency rules.[92] Upon approval of a collection of information, OMB will assign an OMB control number and expiration date. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number. The Commission solicits comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected or retained, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques.

89. The Commission based its paperwork burden estimates on the NERC compliance registry as of April 30, 2013.[93] According to the registry, there are 132 balancing authorities, 544 distribution providers, 898 generator owners, 859 generator operators, 56 interchange authorities, 515 load serving entities, 80 planning authorities/planning coordinators, 677 purchasing selling entities, 21 reliability coordinators, 346 transmission owners, 185 transmission operators, 185 transmission planners, and 93 transmission service providers.

90. The Commission estimates that the burden will be reduced for each requirement as dictated in the chart below, for a total estimated reduction in burden of $535,500. The Commission based the burden reduction estimates on staff experience, knowledge, and expertise.

[85] Reliability Standard VAR–001–2, Requirement R2 provides, *inter alia,* ''Each Transmission Operator shall acquire sufficient reactive resources . . . within its area to protect the voltage levels under normal and Contingency conditions.''

[86] Petition at 36–37.

[87] *Id.* at 37.

[88] *See, Preventing Undue Discrimination and Preference in Transmission Service,* Order No. 890–B, 123 FERC ¶ 61,299 (2008), *Pro Forma* OATT Schedule 2 (Reactive Supply and Voltage Control from Generation or Other Sources Service).

[89] *See* ERCOT Nodal Protocols, Section 3.15 (Voltage Support).

[90] Each directive identified in Attachment A includes a ''NERC Reference Number.'' Commission staff and NERC staff have developed a common approach to identifying and tracking outstanding Commission directives. The NERC Reference Numbers reflect this joint tracking process.

[91] 44 U.S.C. 3507(d) (2006).

[92] 5 CFR 1320.11 (2012).

[93] The estimates for the retired CIP requirements are based on February 28, 2013 registry data in order to provide consistency with burden estimates provided in the Commission's recent CIP version 5 Notice of Proposed Rulemaking in Docket No. RM13–5–000.

Standard, requirement number, and FERC collection number	Type of respondents	Number of respondents [94] [A]	Average reduction in burden hours estimate per respondent per year [B]	Estimated total annual reduction in burden (in hours) [A × B]	Estimated total annual reduction in cost [A × B × $60/hour [95]]
EOP–005–2, R3.1 (FERC–725A)	TOP	185	1	185	11,100
FAC–008–3, R4 (FERC–725A)	TO, GO	1,151	1	1,151	69,060
FAC–008–3, R5 (FERC–725A)	TO, GO	1,151	1	1,151	69,060
FAC–010–2.1, R5 (FERC–725D)	PA	80	20	1,600	96,000
FAC–011–2, R5 (FERC–725D)	RC	21	20	420	25,200
FAC–013–2, R3 (FERC–725A)	PC	80	8	1,600	96,000
INT–007–1, R1.2 (FERC–725A)	IA	56	20	448	26,880
IRO–016–1, R2 (FERC–725A)	RC	21	20	420	25,200
CIP–003–3, –4, R1.2 (FERC–725B)	RC, BA, IA, TSP, TO, TOP, GO, GOP, LSE,.	325	1	325	19,500
CIP–003–3, –4, R3, R3.1, R3.2, R3.3 (FERC–725B).	RC, BA, IA, TSP, TO, TOP, GO, GOP, LSE,.	325	1	325	19,500
CIP–005–3, –4, R2.6 (FERC–725B)	RC, BA, IA, TSP, TO, TOP, GO, GOP, LSE,.	325	4	1300	78,000
Total				8,925	535,500

91. The above chart does not include BAL–005–0.2b, Requirement R2; CIP–003–3, –4, Requirement R4.2, CIP–007–3, –4, Requirement R7.3, FAC–002–1, Requirement R2; PRC–010–0, Requirement R2; PRC–022–1, Requirement R2; and VAR–001–2, Requirement R5 because those requirements were found redundant with other requirements.[96] Since the action required within them is required elsewhere there is no change in the overall burden in retiring these requirements. Likewise, NUC–001–2, Requirement R9.1; NUC–001–2, Requirement R9.1.1; NUC–001–2, Requirement R9.1.2; NUC–001–2, Requirement R9.1.3; and NUC–001–2, Requirement R9.1.4 are not included because these requirements require that the applicable entities put boiler plate language into their agreements that is normally included in all legal contracts.[97] Since this action will be taken regardless if it is required by a NERC Reliability, there is no reduction in burden.

Titles: FERC–725A, Mandatory Reliability Standards for the Bulk Power System; FERC–725B, Mandatory Reliability Standards for Critical Infrastructure Protection; FERC–725D, Facilities, Design, Connections, and Maintenance Reliability Standards; and FERC–725F, Mandatory Reliability Standards for Nuclear Plant Interface Coordination.

Action: Proposed Collection of Information.

OMB Control Nos: 1902–0244, 1902–0248, 1902–0247, and 1902–0249.

Respondents: Business or other for profit, and not for profit institutions.

Frequency of Responses: On occasion.

92. *Necessity of the Information:* This proceeding proposes to approve the retirement of the 34 requirements within 19 Reliability Standards identified by NERC. The proposed retirements either: (1) Provide little protection for Bulk-Power System reliability or (2) are redundant with other aspects of the Reliability Standards. In addition, we propose to withdraw the 47 currently outstanding directives listed in Attachment A in the interest of enhancing the efficiency of the ERO standard development and compliance programs, as well as the efficiency of individual registered entity compliance programs.

93. *Internal review:* The Commission has reviewed NERC's proposal and made a determination that its action is necessary to implement section 215 of the FPA. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden reduction estimates associated with the retired information requirements.

94. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, Office of the Executive Director, 888 First Street NE., Washington, DC 20426 [Attention: Ellen Brown, email: *DataClearance@ferc.gov*, phone: (202) 502–8663, fax: (202) 273–0873].

95. Comments concerning the information collections proposed in this NOPR and the associated burden estimates, should be sent to the Commission in this docket and may also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs [Attention: Desk Officer for the Federal Energy Regulatory Commission]. For security reasons, comments should be sent by email to OMB at the following email address: *oira_submission@omb.eop.gov.* Please reference one of the OMB Control Numbers and the docket number of this Notice of Proposed Rulemaking (Docket No. RM13–8–000) in your submission.

V. Regulatory Flexibility Act Certification

96. The Regulatory Flexibility Act of 1980 (RFA) [98] generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's Office of Size Standards develops the numerical definition of a small business.[99] The Small Business Administration has established a size standard for electric utilities, stating that a firm is small if, including its affiliates, it is primarily engaged in the transmission, generation and/or distribution of electric energy for

[94] This number was calculated by adding all the applicable entities while removing double counting caused by entities registered under multiple functions.

[95] The estimated hourly loaded cost (salary plus benefits) for an engineer is assumed to be $60/hour, based on salaries as reported by the Bureau of Labor Statistics (BLS) (*http://bls.gov/oes/current/naics2_22.htm*). Loaded costs are BLS rates divided by 0.703 and rounded to the nearest dollar (*http://www.bls.gov/news.release/ecec.nr0.htm*).

[96] The reporting requirements in these standards are part of the FERC–725A information collection.

[97] The reporting requirements in this standard are part of the FERC–725F information collection.

[98] 5 U.S.C. 601–612 (2006).

[99] 13 CFR 121.101 (2012).

sale and its total electric output for the preceding twelve months did not exceed four million megawatt hours (MWh).[100]

97. The Commission seeks comment on the estimated impact of the proposed reduction of requirements on small business entities. The Commission estimates the total reduction in burden for all small entities to be $36,060. The Commission estimates that small planning authorities/planning coordinators will see a reduction of $2,400 per entity per year, greater than for other affected small entities types.[101] The Commission does not consider $2,400 per year to be a significant economic impact. The Commission believes that, in addition to the estimated economic impact, the proposed retirement of the 34 requirements of mandatory Reliability Standards will provide small entities with relief from having to track compliance with these provisions and preparing to show compliance in response to a potential compliance audit by a Regional Entity or other regulator.

98. Based on the above, the Commission certifies that the proposed Reliability Standards will not have a significant impact on a substantial number of small entities. Accordingly, no initial regulatory flexibility analysis is required.

VI. Environmental Analysis

99. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[102] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[103] The actions proposed here fall within this categorical exclusion in the Commission's regulations.

VII. Comment Procedures

100. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due August 27, 2013. Comments must refer to Docket No. RM13–8–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

101. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov*. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

102. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

103. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VIII. Document Availability

104. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

105. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

106. User assistance is available for eLibrary and the Commission's Web site during normal business hours from the Commission's Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov*, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov*.

By direction of the Commission.

Kimberly D. Bose,

Secretary.

Note: Attachment A will not appear in the Code of Federal Regulations.

Attachment A

#	Standard	Order No.	Para	Directive	Justification
Group A—The reliability concern underlying the outstanding directive has been addressed in some manner, rendering the directive stale					
1	BAL–006	693	P 428	"Add measures concerning the accumulation of large inadvertent interchange balances and levels of non- compliance." (NERC Reference No. 10036).	NERC replaced levels of non-compliance with violation severity levels (VSLs). NERC has designated VSLs for BAL–006.
2	EOP–001	693	P 565	"The Commission agrees with ISO–NE that the Reliability Standard should be clarified to indicate that the actual emergency plan elements, and not the "for consideration" elements of Attachment 1, should be the basis for compliance. However, all of the elements should be considered when the emergency plan is put together." (NERC Reference No. 10065).	The VSLs listed in EOP–001–2.1b and the Reliability Standard Audit Worksheet for EOP–001 require evidence of this consideration.

[100] 13 CFR 121.201, Sector 22, Utilities & n.1.

[101] The burden reduction for planning authorities/planning coordinators is based on the retirement of FAC–010–2.2, Requirement R5 and FAC–013–2, Requirement R3. Based on the NERC Compliance Registry and Energy Information Administration Form EIA–861 data, the Commission estimates that 5 out of the 80 planning authorities/planning coordinators meet the definition of a small entity.

[102] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[103] 18 CFR 380.4(a)(2)(ii) (2012).

#	Standard	Order No.	Para	Directive	Justification
3	INT–004	693	P 843	"Consider adding levels of non-compliance to the standard." (NERC Reference No. 10134).	NERC replaced levels of non-compliance with VSLs. VSLs for INT–004 have been developed and approved by the Commission.
4	INT–005	693	P 848	"Consider adding levels of non-compliance to the standard." (NERC Reference No. 10135).	NERC replaced levels of non-compliance with VSLs. VSLs for INT–005 have been developed and approved by the Commission.
5	MOD–010 through MOD–025.	693	P 1147	"Direct the ERO to use its authority pursuant to § 39.2(d) of our regulations to require users, owners and operators to provide to the Regional Entity the information related to data gathering, data maintenance, reliability assessments and other process-type functions." (NERC Reference No. 10266).	The concern underlying the directive has been addressed through section 1600 (Requests for Data or Information) of NERC's Rules of Procedure. The Commission approved Section 1600 of NERC's Rules on February 21, 2008.
6	MOD–010	693	P 1152	"Address critical energy infrastructure confidentiality issues as part of the standard development process." (NERC Reference No. 10268).	This directive is no longer necessary in light of section 1500 (Confidential Information) of NERC's Rules of Procedure addressing treatment of confidential information.
7	MOD–010	693	P 1163	"Direct the ERO to develop a Work Plan that will facilitate ongoing collection of the steady-state modeling and simulation data specified in MOD–011–0." (NERC Reference No. 10270).	The concern underlying the directive has been addressed through NERC's Reliability Standards Development Plan: 2013–2015. This plan was provided to the Commission in an informational filing on December 31, 2012. It contains an action plan to merge, upgrade, and expand existing requirements in the modeling data (MOD–010 through MOD- 015) and demand data (MOD–016 through MOD–021) Reliability Standards.
8	PRC–017	693	P 1546	"Require documentation identified in Requirement R2 be routinely provided to NERC or the regional entity that includes a requirement that documentation identified in Requirement R2 shall be routinely provided to the ERO." (NERC Reference No. 10363).	Requirement R2 of PRC–017 already requires affected entities to provide documentation of the special protection system program and its implementation to the appropriate Regional Reliability Organization and NERC within 30 calendar days of a request. If either the Regional Entity or NERC determine that they need and will use the information on a regular schedule, they have the authority to establish a schedule under the current requirement.
9	Glossary	693	P 1895	"Modification to the glossary that enhances the definition of "generator operator" to reflect concerns of the commenters ["to include aspects unique to ISOs, RTOs and pooled resource organizations"]." (NERC Reference No. 10005).	The concern underlying the directive has been addressed through the NERC registration process. *See* Order No. 693 at P 145.
10	Glossary	693	P 1895	"Modification to the glossary that enhances the definition of "transmission operator" to reflect concerns of the commenters ["to include aspects unique to ISOs, RTOs and pooled resource organizations"]." (NERC Reference No. 10006).	The concern underlying the directive has been addressed through the NERC registration process. *See* Order No. 693 at P 145.
Group B—The outstanding directive provides general guidance for standards development rather than a specific directive					
11	BAL–005	693	P 406	"The Commission understands that it may be technically possible for DSM to meet equivalent requirements as conventional generators and expects the Reliability Standards development process to provide the qualifications they must meet to participate." (NERC Reference No. 10033).	This paragraph is not a directive to change or modify a standard.

#	Standard	Order No.	Para	Directive	Justification
12	BAL–006	693	P 438	"Examine the WECC time error correction procedure as a possible guide the Commission asks the ERO, when filing the new Reliability Standard, to explain how the new Reliability Standard satisfies the Commission's concerns." (NERC Reference No. 10037).	This paragraph is not a directive to change or modify a standard.
13	COM–001	693	P 507	"Although we direct that the regional reliability organization should not be the compliance monitor for NERCNet, we leave it to the ERO to determine whether it is the appropriate compliance monitor or if compliance should be monitored by the Regional Entities for NERCNet User Organizations." (NERC Reference No. 10051).	This paragraph is not a directive to change or modify a standard.
14	MOD–001	729	P 20	"We encourage the ERO to consider Midwest ISO's and Entegra's comments when developing other modifications to the MOD Reliability Standards pursuant to the EROs Reliability Standards development procedure." [See also P 198–199] (NERC Reference No. 10216).	This paragraph is not a directive to change or modify a standard.
15	MOD –001, –004, –008, –028, –029, –030.	729	P 160	"In developing the modifications to the MOD Reliability Standards directed in this Final Rule, the ERO should consider generator nameplate ratings and transmission line ratings including the comments raised by Entegra and ISO/RTO Council." [Also see P 154] (NERC Reference No. 10207).	This paragraph is not a directive to change or modify a standard.
16	MOD–001	729	P 179	"The Commission directs the ERO to consider Entegra's request regarding more frequent updates for constrained facilities through its Reliability Standards development process." (see Order No. 729 at P 177 for Entegra's comments). (NERC Reference No. 10211).	This paragraph is not a directive to change or modify a standard.
17	MOD–028	729	P 231	"The Commission directs the ERO to develop a modification sub-requirement R2.2 pursuant to its Reliability Standards development process to clarify the phrase 'adjacent and beyond Reliability Coordination areas.' " (NERC Reference No. 10219).	This paragraph clarifies the Commission's understanding of the phrase "adjacent and beyond Reliability Coordination area." Since the Commission's understanding of the language is clearly expressed, and the matter has little impact on reliability, there is no reason to go forward with the directive.
18	MOD–028	729	P 234	"The Commission agrees that a graduated time frame for reposting could be reasonable in some situations. Accordingly, the ERO should consider this suggestion when making future modifications to the Reliability Standards." (NERC Reference No. 10220).	This paragraph is not a directive to change or modify a standard.
19	MOD–029	729	P 246	"The ERO should consider Puget Sound's concerns on this issue when making future modifications to the Reliability Standards." [See also P 245] (NERC Reference No. 10222).	This paragraph is not a directive to change or modify a standard.
20	MOD–030	729	P 269	"The Commission also directs the ERO to make explicit such [effective date] detail in any future version of this or any other Reliability Standard." (NERC Reference No. 10223).	This paragraph is not a directive to change or modify a standard.

#	Standard	Order No.	Para	Directive	Justification
21	MOD–024	693	P 1310	"Similarly, we respond to Constellation that any modification of the Levels of Non-Compliance in this Reliability Standard should be reviewed in the ERO Reliability Standards development process." (NERC Reference No. 10318).	This paragraph is not a directive to change or modify a standard.
22	PER–002	693	P 1375	"Training programs for operations planning and operations support staff must be tailored to the needs of the function, the tasks performed and personnel involved." (NERC Reference No. 10329).	This paragraph is not a directive to change or modify a standard.
23	VAR–001	693	P 1863	"The Commission expects that the appropriate power factor range developed for the interface between the bulk electric system and the load-serving entity from VAR–001–1 would be used as an input to the transmission and operations planning Reliability Standards." (NERC Reference No. 10441).	This paragraph is not a directive to change or modify a standard.
24	VAR–001	693	P 1869	"We recognize that our proposed modification does not identify what definitive requirements the Reliability Standard should use for established limits and sufficient reactive resources." (NERC Reference No. 10434).	This paragraph is not a directive to change or modify a standard.
25	TPL and FAC series.	705	P 49	"Direct that any revised TPL Reliability Standards must reflect consistency in the lists of contingencies." (NERC Reference No. 10601).	This paragraph provides guidance on an ongoing implementation issue and is not a directive to change or modify a standard.
Group C—The outstanding directive is redundant with another directive					
26	MOD–012	693	P 1177	"Direct the ERO to use its authority pursuant to § 39.2(d) of our regulations to require users, owners, and operators to provide to the Regional Entities the information related to data gathering, data maintenance, reliability assessments and other process type functions." (NERC Reference No. 10275).	This directive is redundant with the directive in paragraph 1147, which has already been addressed and is reflected in section A above.
27	MOD–012	693	P 1177	"Develop a Work Plan and submit a compliance filing that will facilitate ongoing collection of the dynamics system modeling and simulation data." (NERC Reference No. 10279).	This directive is redundant with the directive in paragraph 1163, which has already been addressed and is reflected in section A above.
28	MOD–012	693	P 1181	"Direct the ERO to address confidentiality issues and modify the standard as necessary through its Reliability Standards development process." (NERC Reference No. 10277).	This directive is redundant with the directive in paragraph 1152, which has already been addressed and is reflected in section A above.
29	MOD–013	693	P 1200	"Direct the ERO to develop a Work Plan that will facilitate ongoing collection of the dynamics system modeling and simulation data specified in MOD–013–1, and submit a compliance filing containing this Work Plan to the Commission." (NERC Reference No. 10283).	This directive is redundant with the directive in paragraph 1163, which has already been addressed and is reflected in section A above.
30	MOD–014	693	P 1212	"Direct the ERO to use its authority pursuant to § 39.2(d) of our regulations to require users, owners and operators to provide the validated models to regional reliability organizations." (NERC Reference No. 10288).	This directive is redundant with the directive in paragraph 1147, which has already been addressed and is reflected in section A above.

#	Standard	Order No.	Para	Directive	Justification
31	MOD–014	693	P 1212	"Direct the ERO to develop a Work Plan that will facilitate ongoing validation of steady-state models and submit a compliance filing containing the Work Plan with the Commission." (NERC Reference No. 10289).	This directive is redundant with the directive in paragraph 1163, which has already been addressed and is reflected in section A above.
32	MOD–015	693	P 1221	"Direct the ERO to use its authority pursuant to § 39.2(d) of our regulations to require users, owners and operators to provide to the Regional Entity the validated dynamics system models while MOD–015–0 is being modified." (NERC Reference No. 10291).	This directive is redundant with the directive in paragraph 1147, which has already been addressed and is reflected in section A above.
33	MOD–015	693	P 1221	"Require the ERO to develop a Work Plan that will enable continual validation of dynamics system models and submit a compliance filing with the Commission." (NERC Reference No. 10292).	This directive is redundant with the directive in paragraph 1163, which has already been addressed and is reflected in section A above.
34	MOD–017	693	P 1247	"Provide a Work Plan and compliance filing regarding the collection of information specified under standards that are deferred, in this instance, data on the accuracy, error and bias of the forecast." (NERC Reference No.10299).	This directive is redundant with the directive in paragraph 1163, which has already been addressed and is reflected in section A above.
35	MOD–018	693	P 1264	"Require the ERO to provide a Work Plan and compliance filing regarding collection of information specified under standards that are deferred, and believe there should be no difficulties complying with this Reliability Standard." (NERC Reference No. 10303).	This directive is redundant with the directive in paragraph 1163, which has already been addressed and is reflected in section A above.
36	MOD–019	693	P 1275	"Direct the ERO to use its authority pursuant to § 39.2(d) of our regulations to require users, owners and operators to provide to the Regional Entity information related to forecasts of interruptible demands and direct control load management." (NERC Reference No. 10305).	This directive is redundant with the directive in paragraph 1147, which has already been addressed and is reflected in section A above.
37	MOD–021	693	1297	"Direct the ERO to provide a Work Plan and compliance filing regarding collection of information specified under related standards that are deferred, and believe there should be no difficulty complying with this Reliability Standard." (NERC Reference No. 10309).	This directive is redundant with the directive in paragraph 1163, which has already been addressed and is reflected in section A above.
38	MOD–021	693	P 1297	"Direct the ERO to use its authority pursuant to § 39.2(d) of our regulations to require users, owners and operators to provide to the Regional Entity the information required by this Reliability Standard." (NERC Reference No. 10313).	This directive is redundant with the directive in paragraph 1147, which has already been addressed and is reflected in section A above.
39	MOD–024	693	P 1308	"In order to continue verifying and reporting gross and net real power generating capability needed for reliability assessment and future plans, we direct the ERO to develop a Work Plan and submit a compliance filing." (NERC Reference No. 10317).	This directive is redundant with the directive in paragraph 1147, which has already been addressed and is reflected in section A above.
40	MOD–024	693	P 1312	"Direct the ERO to use its authority pursuant to § 39.2(d) of our regulations to require users, owners and operators to provide this information." (NERC Reference No. 10314).	This directive is redundant with the directive in paragraph 1147, which has already been addressed and is reflected in section A above.

#	Standard	Order No.	Para	Directive	Justification
41	MOD–025	693	P 1320	"In order to continue verifying and reporting gross and net reactive power generating capability needed for reliability assessment and future plans, we direct the ERO to develop a Work Plan as defined in the Common Issues section." (NERC Reference No. 10321).	This directive is redundant with the directive in paragraph 1147, which has already been addressed and is reflected in section A above.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 876

[Docket No. FDA–2012–N–0303]

Gastroenterology-Urology Devices; Reclassification of Implanted Blood Access Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed order.

SUMMARY: The Food and Drug Administration (FDA) is issuing a proposed administrative order to reclassify the implanted blood access device preamendments class III device into class II (special controls) and subject to premarket notification, and to further clarify the identification. FDA is proposing this reclassification under the Federal Food, Drug, and Cosmetic Act (the FD&C Act) based on new information pertaining to the device. This action implements certain statutory requirements.

DATES: Submit either electronic or written comments on the proposed order by July 29, 2013. See section XII for the proposed effective date of any final order that may publish based on this proposed order.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2012–N–0303, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following ways:

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

Instructions: All submissions received must include the Agency name and Docket No. FDA–2012–N–0303 for this order. All comments received may be posted without change to *http://www.regulations.gov*, including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

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

FOR FURTHER INFORMATION CONTACT: Rebecca Nipper, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1540, Silver Spring, MD 20993, 301–796–6527.

SUPPLEMENTARY INFORMATION:

I. Background—Regulatory Authorities

The FD&C Act establishes a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the FD&C Act (21 U.S.C. 360c) established three categories (classes) of devices, reflecting the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the FD&C Act, devices that were in commercial distribution before the enactment of the 1976 amendments, May 28, 1976 (generally referred to as preamendments devices), are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976 (generally referred to as postamendments devices), are automatically classified by section 513(f) of the FD&C Act into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval unless, and until, the device is reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the FD&C Act, to a predicate device that does not require premarket approval. The Agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR Part 807).

On July 9, 2012, the Food and Drug Administration Safety and Innovation Act (FDASIA) was enacted. Section 608(a) of FDASIA (126 Stat. 1056) amended the device reclassification procedures under section 513(e) of the FD&C Act, changing the process for reclassifying a device from rulemaking to an administrative order. Prior to the enactment of FDASIA, FDA published a proposed rule under section 513(e) proposing the reclassification of implanted blood access devices for hemodialysis (77 FR 36951; June 20, 2012). FDA is issuing this proposed administrative order to comply with the new procedural requirement created by FDASIA when reclassifying a preamendments class III device. Also as required by section 513(e) of the FD&C Act, FDA has scheduled a panel meeting to discuss the proposed reclassification for June 27, 2013 (78 FR 25747; May 2, 2013). The three comments submitted in response to the proposed rule on implanted blood access devices for hemodialysis will be considered under this proposed administrative order and do not need to be resubmitted. No objections to the proposed reclassification were submitted. This

action is intended solely to fulfill the procedural requirements for reclassification implemented by FDASIA. FDA is also issuing the draft guidance, ''Implanted Blood Access Devices for Hemodialysis,'' which provides recommendations on how to comply with the special controls that are necessary to provide a reasonable assurance of the safety and effectiveness of the device.

Section 513(e) of the FD&C Act provides that FDA may, by administrative order, reclassify a device based upon ''new information.'' FDA can initiate a reclassification under section 513(e) or an interested person may petition FDA to reclassify a preamendments device. The term ''new information,'' as used in section 513(e) of the FD&C Act, includes information developed as a result of a reevaluation of the data before the Agency when the device was originally classified, as well as information not presented, not available, or not developed at that time. (See, e.g., *Holland-Rantos Co.* v. *United States Dep't of Health, Educ., & Welfare,* 587 F.2d 1173, 1174 n.1 (D.C. Cir. 1978); *Upjohn* v. *Finch,* 422 F.2d 944 (6th Cir. 1970); *Bell* v. *Goddard,* 366 F.2d 177 (7th Cir. 1966).)

Reevaluation of the data previously before the Agency is an appropriate basis for subsequent regulatory action where the reevaluation is made in light of newly available regulatory authority (see *Bell* v. *Goddard,* supra, 366 F.2d at 181; *Ethicon, Inc.* v. *FDA,* 762 F.Supp. 382, 388–391 (D.D.C. 1991)), or in light of changes in ''medical science.'' (See *Upjohn* v. *Finch* supra, 422 F.2d at 951.) Whether data before the Agency are old or new data, the ''new information'' to support reclassification under section 513(e) must be ''valid scientific evidence,'' as defined in section 513(a)(3) of the FD&C Act and § 860.7(c)(2) (21 CFR 860.7(c)(2)). (See, e.g., *General Medical Co.* v. *FDA,* 770 F.2d 214 (D.C. Cir. 1985); *Contact Lens Association* v. *FDA,* 766 F.2d 592 (D.C. Cir. 1985), cert. denied, 474 U.S. 1062 (1986).)

FDA relies upon ''valid scientific evidence'' in the classification process to determine the level of regulation for devices. To be considered in the reclassification process, the valid scientific evidence upon which the Agency relies must be publicly available. Publicly available information excludes trade secret and/or confidential commercial information, e.g., the contents of a pending premarket approval application (PMA). (See section 520(c) of the FD&C Act (21 U.S.C. 360j(c)).) Section 520(h)(4) of the FD&C Act, added by the Food and Drug Administration Modernization Act of 1997 (FDAMA), provides that FDA may use, for reclassification of a device, certain information in a PMA 6 years after the application has been approved. This includes information from clinical and preclinical tests or studies that demonstrate the safety or effectiveness of the device, but does not include descriptions of methods of manufacture or product composition and other trade secrets.

Section 513(e)(1) of the FD&C Act sets forth the process for issuing a final order. Specifically, prior to the issuance of a final order reclassifying a device, the following must occur: (1) Publication of a proposed order in the **Federal Register**; (2) a meeting of a device classification panel described in section 513(b) of the FD&C Act; and (3) consideration of comments from all affected stakeholders, including patients, payors, and providers. In addition, the proposed order must set forth the proposed reclassification, and a substantive summary of the valid scientific evidence concerning the proposed reclassification, including the public health benefits of the use of the device, and the nature and incidence (if known) of the risk of the device. (See section 513(e)(1)(A)(i) of the FD&C Act.)

FDAMA added section 510(m) to the FD&C Act. Section 510(m) of the FD&C Act provides that a class II device may be exempted from the premarket notification requirements under section 510(k) of the FD&C Act if the Agency determines that premarket notification is not necessary to assure the safety and effectiveness of the device.

II. Regulatory History of the Device

As discussed in the preamble to the proposed rule (46 FR 7616; January 23, 1981), the Gastroenterology-Urology Devices Panel recommended that both implanted and nonimplanted blood access devices be classified into class II. Although FDA agreed with the panel recommendation for nonimplanted blood access devices, FDA disagreed with the panel for implanted blood access devices and proposed that implanted blood access devices be classified into class III because FDA believed that the device presented a potential unreasonable risk of illness or injury to the patient. FDA also noted that the implanted blood access device is part of a life-supporting and life-sustaining system and that general controls and performance standards were insufficient to provide reasonable assurance of the safety and effectiveness of implanted blood access devices.

In 1983, FDA classified implanted blood access devices into class III, but the accessories to these devices into class II (48 FR 53012; November 23, 1983). In 1987, FDA published a clarification by inserting language in the codified language stating that no effective date had been established for the requirement for premarket approval for implanted blood access devices (52 FR 17732 at 17738; May 11, 1987).

In 2009, FDA published an order for the submission of information on implanted blood access devices (74 FR 16214; April 9, 2009). In response to that order, FDA received information in support of reclassification from 15 device manufacturers who all recommended that implanted blood access devices be reclassified to class II. The manufacturers stated that safety and effectiveness of these devices may be assured by bench testing, biocompatibility testing, sterility testing, expiration date testing, labeling, and standards.

On June 20, 2012, FDA published a proposed rule proposing the reclassification of implanted blood access devices for hemodialysis from class III to class II (77 FR 36951) and announced the availability of a draft Special Controls Guidance Document that, when finalized, would serve as a special control, if FDA reclassified these devices. FDA believed that the special controls as described in the guidance document entitled ''Class II Special Controls Guidance Document: Implanted Blood Access Devices for Hemodialysis'' would be sufficient to mitigate the risks to health associated with implanted blood access devices for hemodialysis.

The proposed rule provided for a comment period that was open until September 18, 2012. FDA received three comments that suggested modifications to the proposed Special Controls Guidance Document. These were considered by FDA.

On July 9, 2012, FDASIA was enacted, which amended the device reclassification procedures under sections 513 and 515 of the FD&C Act (21 U.S.C. 360c and 360e, respectively), changing the process for taking final administrative action for these devices. Accordingly, FDA is issuing a proposed administrative order to comply with the new procedural requirement created by FDASIA when reclassifying a preamendments class III device. Further, FDA intends to codify the proposed special controls within the § 876.5540(b)(1) (21 CFR 876.5540(b)(1)) classification regulation.

III. Device Description

Implanted blood access devices include various flexible or rigid tubes,

such as catheters or cannulae. 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.

FDA is proposing in this order to modify the identification language from how it is presently written in § 876.5540(a)(1) for additional clarification. FDA is clarifying in the identification that these are prescription devices and modifying the examples of devices (e.g., catheter, cannulae) in the identification language to be consistent with existing legally marketed devices covered by this classification.

IV. Proposed Reclassification

FDA is proposing that implanted blood access devices for hemodialysis be reclassified from class III to class II. In this proposed order, the Agency has identified special controls under section 513(a)(1)(B) of the FD&C Act that, together with general controls (including prescription-use restrictions) applicable to the devices, would provide reasonable assurance of their safety and effectiveness. Absent the special controls identified in this proposed order, general controls applicable to the device are insufficient to provide reasonable assurance of the safety and effectiveness of the device. FDA believes that this new information is sufficient to demonstrate that the proposed special controls can effectively mitigate the risks to health identified in the next section, and that these special controls, together with general controls, will provide a reasonable assurance of safety and effectiveness for implanted blood access devices.

FDA believes that these devices can be utilized to provide access to a patient's blood for hemodialysis or other chronic uses for 30 days or more. When used in hemodialysis, the device is part of an artificial kidney system for the treatment of patients with renal failure or toxemic conditions and provides access to a patient's blood for hemodialysis.

FDA has considered implanted blood access devices in accordance with the reserved criteria set forth in section 510(l) and decided that the device requires premarket notification (510(k) of the FD&C Act). Therefore, the Agency does not intend to exempt this proposed class II device from premarket notification (510(k)) submission as provided under section 510(m) of the FD&C Act.

V. Risks to Health

After considering available information for the classification of these devices, FDA has evaluated the risks to health associated with the use of implanted blood access devices for hemodialysis and determined the following risks to health are associated with its use:

- *Thrombosis in patient and catheter occlusion, or central venous stenosis.* Inadequate blood compatibility of the materials used in this device, blood pooling between dialysis sessions, or turbulent blood pathways could lead to potentially debilitating or fatal thromboembolism.
- *Adverse tissue reaction.* Inadequate tissue compatibility of the materials used in this device could cause an immune reaction.
- *Infection and pyrogen reactions.* An improperly sterilized device could cause a skin or bloodstream infection.
- *Device failure.* Weakness of connections or materials could lead to blood loss or device fragment embolization.
- *Cardiac arrhythmia, hemorrhage, embolism, nerve injury, or vessel perforation.* Improper placement into the heart or blood vessel could damage tissues and result in injuries.
- *Hemolysis.* Turbulence or high pressure created by narrow openings or changes in blood flow paths could cause the destruction of red blood cells.
- *Accidental withdrawal or catheter migration.* A catheter's cuff may not allow adequate ingrowth from the surrounding subcutaneous tissue, which could cause the device to dislodge or fall out with subsequent blood loss.

VI. Summary of Reasons for Reclassification

FDA believes that implanted blood access devices for hemodialysis should be reclassified from class III to class II because special controls, in addition to general controls, can be established to provide reasonable assurance of the safety and effectiveness of the device, and because general controls themselves are insufficient to provide reasonable assurance of its safety and effectiveness. In addition, there is now sufficient information to establish special controls to provide such assurance.

While current clinical practice guidelines recommend avoiding implanted blood access devices, such as catheters, if possible, they are still a necessary treatment option, and are used in a significant number of hemodialysis patients. While the risks are frequently cited, there are many advantages of implanted blood access devices, which lead to their relatively frequent use, as described previously. In many cases, vascular access for hemodialysis is needed urgently, and the alternatives, such as the arteriovenous fistula or the arteriovenous graft require weeks and months, respectively, before they can be used. Implanted blood access devices are frequently used as the immediate hemodialysis vascular access and also as a bridge to a more permanent vascular access. Additionally, some patients may have inadequate vascular anatomy to establish a more permanent vascular access and may require continued implanted blood access device use.

VII. Summary of Data Upon Which the Reclassification Is Based

FDA believes that the identified special controls, in addition to general controls, are necessary to provide reasonable assurance of safety and effectiveness of these devices. Therefore, in accordance with sections 513(e) and 515(i) of the FD&C Act and § 860.130, based on new information with respect to the device and taking into account the public health benefit of the use of the device and the nature and known incidence of the risk of the device, FDA, on its own initiative, is proposing to reclassify this preamendments class III device into class II. The Agency has identified special controls that would provide reasonable assurance of their safety and effectiveness. Implanted blood access devices for hemodialysis are prescription devices restricted to patient use only upon the authorization of a practitioner licensed by law to administer or use the device (proposed § 876.5540(a); § 801.109 (21 CFR 801.109) (Prescription devices.)).

Since 1983 when FDA classified implanted blood access devices into class III, sufficient evidence has been developed to support a reclassification to class II with special controls. FDA has been reviewing these devices for many years and their risks are well

known. The risks to health are identified in section V, and FDA believes these risks can be adequately mitigated by special controls. Catheters continue to evolve over time with improved materials and insertion techniques to mitigate the risks. A review of 15 publications shows a decrease in infections and an increase in patency over three decades (1980 to 2011) (Refs. 1 to 15). The decrease in occurrence of serious adverse events as evidenced through FDA's Manufacturer and User Facility Device Experience (MAUDE) database, the valid scientific evidence to support implanted blood access devices for hemodialysis provided in the referenced publications, and FDA's review experience with these devices, supports FDA's conclusion that the identified special controls, including performance testing demonstrating that the device performs as intended under anticipated conditions of use, is appropriately designed, and includes adequate safeguards and labeling to inform users of inappropriate use conditions, in addition to general controls, provide reasonable assurance of the safety and effectiveness of implanted blood access devices.

VIII. Proposed Special Controls

FDA believes that the following special controls, together with general controls (including applicable prescription-use restrictions and continuing 510(k) notification requirements), are sufficient to mitigate the risks to health described in section V for implanted blood access devices:

1. Components of the device that come into human contact must be demonstrated to be biocompatible. Material names and specific designation numbers must be provided.

2. Performance data must demonstrate that the device performs as intended under anticipated conditions of use. The following performance characteristics must be tested:

a. Pressure versus flow rates for both arterial and venous lumens, from the minimum flow rate to the maximum flow rate in 100 ml/min increments, must be established. The fluid and its viscosity used during testing must be stated.

b. Recirculation rates for both forward and reverse flow configurations must be established, along with the protocol used to perform the assay, which must be provided.

c. Priming volumes must be established.

d. Tensile testing of joints and materials must be conducted. The minimum acceptance criteria must be adequate for its intended use.

e. Air leakage testing and liquid leakage testing must be conducted.

f. Testing of the repeated clamping of the extensions of the catheter that simulates use over the life of the catheter must be conducted, and retested for leakage.

g. Mechanical hemolysis testing must be conducted.

h. Chemical tolerance of the catheter to repeated exposure to commonly used disinfection agents must be established.

3. Performance data must demonstrate the sterility of the device.

4. Performance data must support the shelf life of the device for continued sterility, package integrity, and functionality over the requested shelf life that must include tensile, repeated clamping, and leakage testing.

5. Labeling must bear all information required for the safe and effective use of implanted blood access devices for hemodialysis including the following:

a. Labeling must provide arterial and venous pressure versus flow rates, either in tabular or graphical format.

b. Labeling must provide the arterial and venous priming volumes.

c. Labeling must specify the forward and reverse recirculation rates.

d. Labeling must specify an expiration date.

e. Labeling must identify any disinfecting agents that cannot be used to clean any components of the device.

f. Any contraindicated disinfecting agents due to material incompatibility must be identified by printing a warning on the catheter. Alternatively a label can be provided that can be affixed to the patient's medical record with this information.

g. The labeling must contain the following information: Comprehensive instructions for the preparation and insertion of the hemodialysis catheter, including recommended site of insertion, method of insertion, a reference on the proper location for tip placement, a method for removal of the catheter, anticoagulation, guidance for management of obstruction and thrombus formation, and site care.

h. The labeling must identify any coatings or additives and summarize the results of performance testing for any coating or material with special characteristics, such as decreased thrombus formation or antimicrobial properties.

6. For subcutaneous devices, the recommended type of needle for access must be described, stated in the labeling, and test results on repeated use of the ports must be provided.

7. Coated devices must include a description of the coating or additive material, duration of effectiveness, how the coating is applied, and testing to adequately demonstrate the performance of the coating.

In addition, implanted blood access devices are prescription devices restricted to patient use only upon the authorization of a practitioner licensed by law to administer or use the device. (Proposed § 876.5540(a); § 801.109 (Prescription devices.)). Under 21 CFR 807.81, the device would continue to be subject to 510(k) notification requirements. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of a draft guidance document entitled ''Implanted Blood Access Devices for Hemodialysis,'' that, when finalized, would provide recommendations on how to comply with the special controls proposed in this order, if FDA reclassifies this device (Ref. 16).

IX. Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

X. Paperwork Reduction Act of 1995

This proposed order refers to currently approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in part 807, subpart E, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR Part 814, subpart B, have been approved under OMB control number 0910–0231; and the collections of information under 21 CFR Part 801 have been approved under OMB control number 0910–0485.

XI. Codification of Orders

Prior to the amendments by FDASIA, section 513(e) of the FD&C Act provided for FDA to issue regulations to reclassify devices. Although section 513(e) as amended requires FDA to issue final orders rather than regulations, FDASIA also provides for FDA to revoke previously issued regulations by order. FDA will continue to codify classifications and reclassifications in the Code of Federal Regulations (CFR). Changes resulting from final orders will appear in the CFR as changes to codified classification determinations or as newly codified orders. Therefore, under

section 513(e)(1)(A)(i), as amended by FDASIA, in this proposed order we are proposing to revoke the requirements in § 876.5540(b)(1) related to the classification of implanted blood access devices as class III devices and to codify the reclassification of implanted blood access devices into class II (special controls).

XII. Proposed Effective Date

FDA is proposing that any final order based on this proposed order become effective on the date of its publication in the **Federal Register** or at a later date if stated in the final order.

XIII. Comments

Comments submitted to the previous dockets (2012–N–0303) have been officially noted and do not need to be resubmitted. FDA will consider previous docket comments in issuing any final orders for these devices. Interested persons may submit either electronic comments regarding this document or the associated guidance to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

XIV. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**), and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday, and are available electronically at *http://www.regulations.gov*.

1. Eisenhauer, E.D., R.J. Derveloy, and P.R. Hastings, ''Prospective Evaluation of Central Venous Pressure (CVP) Catheters in a Large City-County Hospital,'' *Annals of Surgery,* vol. 196, pp. 560–564, 1982.
2. Vanholder, V., N. Hoenich, and S. Ringoir, ''Morbidity and Mortality of Central Venous Catheter Hemodialysis: A Review of 10 Years' Experience,'' *Nephron,* vol. 47, pp. 274–279, 1987.
3. Almirall, J., J. Gonzalez, J. Rello, et al., ''Infection of Hemodialysis Catheters: Incidence and Mechanisms,'' *American Journal of Nephrology,* vol. 9, pp. 454–459, 1989.
4. Boyle, M.J., W.F. Gawley, D.P. Hickey, et al., ''Experience Using the Quinton Permcath for Haemodialysis in the Irish Republic,'' *Nephrology Dialysis Transplantation,* vol. 12, pp. 1934–1939, 1997.
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6. Arnold, W.P., ''Improvement in Hemodialysis Vascular Access Outcomes in a Dedicated Access Center, *Seminars in Dialysis,* vol. 13, pp. 359–363, 2000.
7. Wivell, W., M.A. Bettmann, B. Baxter, et al., ''Outcomes and Performance of the Tesio Twin Catheter System Placed for Hemodialysis Access,'' *Radiology,* vol. 221, pp. 697–703, 2001.
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List of Subjects in 21 CFR Part 876

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR Part 876 be amended as follows:

PART 876—GASTROENTEROLOGY-UROLOGY DEVICES

■ 1. The authority citation for 21 CFR Part 876 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. Section 876.5540 is amended by revising paragraphs (a)(1), (b)(1), and by removing paragraph (c) to read as follows:

§ 876.5540 Blood access device and accessories.

(a) * * *

(1) The implanted blood access device is a prescription device and consists of various flexible or rigid tubes, such as catheters, or cannulae, which are surgically implanted in appropriate blood vessels, may come through the skin, and are intended to remain in the body for 30 days or more. This generic type of device includes: Single, double, and triple lumen catheters with cuffs; subcutaneous ports with catheters; shunts; cannula; vessel tips; and connectors specifically designed to provide access to blood.

* * * * *

(b) *Classification.* (1) Class II (special controls) for the implanted blood access device. The special controls for this device are:

(i) Components of the device that come into human contact must be demonstrated to be biocompatible. Material names and specific designation numbers must be provided.

(ii) Performance data must demonstrate that the device performs as intended under anticipated conditions of use. The following performance characteristics must be tested:

(A) Pressure versus flow rates for both arterial and venous lumens, from the minimum flow rate to the maximum flow rate in 100 ml/min increments, must be established. The fluid and its viscosity used during testing must be stated.

(B) Recirculation rates for both forward and reverse flow configurations must be established, along with the protocol used to perform the assay, which must be provided.

(C) Priming volumes must be established.

(D) Tensile testing of joints and materials must be conducted. The minimum acceptance criteria must be adequate for its intended use.

(E) Air leakage testing and liquid leakage testing must be conducted.

(F) Testing of the repeated clamping of the extensions of the catheter that simulates use over the life of the catheter must be conducted, and retested for leakage.

(G) Mechanical hemolysis testing must be conducted.

(H) Chemical tolerance of the catheter to repeated exposure to commonly used disinfection agents must be established.

(iii) Performance data must demonstrate the sterility of the device.

(iv) Performance data must support the shelf life of the device for continued sterility, package integrity, and functionality over the requested shelf life that must include tensile, repeated clamping, and leakage testing.

(v) Labeling must bear all information required for the safe and effective use of implanted blood access devices for hemodialysis including the following:

(A) Labeling must provide arterial and venous pressure versus flow rates, either in tabular or graphical format.

(B) Labeling must provide the arterial and venous priming volumes.

(C) Labeling must specify the forward and reverse recirculation rates.

(D) Labeling must specify an expiration date.

(E) Labeling must identify any disinfecting agents that cannot be used to clean any components of the device.

(F) Any contraindicated disinfecting agents due to material incompatibility must be identified by printing a warning on the catheter. Alternatively a label can be provided that can be affixed to the patient's medical record with this information.

(G) The labeling must contain the following information: Comprehensive instructions for the preparation and insertion of the hemodialysis catheter, including recommended site of insertion, method of insertion, a reference on the proper location for tip placement, a method for removal of the catheter, anticoagulation, guidance for management of obstruction and thrombus formation, and site care.

(H) The labeling must identify any coatings or additives and summarize the results of performance testing for any coating or material with special characteristics, such as decreased thrombus formation or antimicrobial properties.

(vi) For subcutaneous devices, the recommended type of needle for access must be described, stated in the labeling, and test results on repeated use of the ports must be provided.

(vii) Coated devices must include a description of the coating or additive material, duration of effectiveness, how the coating is applied, and testing to adequately demonstrate the performance of the coating.

* * * * *

Dated: June 25, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–15504 Filed 6–27–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–160873–04]

RIN 1545–BF39

American Jobs Creation Act Modifications to Section 6708, Failure To Maintain List of Advisees With Respect to Reportable Transactions; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels a public hearing on proposed regulations relating to the penalty under section 6708 of the Internal Revenue Code for failing to make available lists of advisees with respect to reportable transactions.

DATES: The public hearing originally scheduled for July 2, 2013 at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Oluwafunmilayo Taylor of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration) at (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and a notice of public hearing that appeared in the **Federal Register** on Friday, March 8, 2013 (78 FR 14939) announced that a public hearing was scheduled for July 2, 2013, at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The subject of the public hearing is under section 6708 of the Internal Revenue Code.

The public comment period for these regulations expired on June 6, 2013. The notice of proposed rulemaking and notice of public hearing instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed by June 10, 2013. As of Monday, June 24, 2013, no one has requested to speak. Therefore, the public hearing scheduled for July 2, 2013, is cancelled.

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2013–15471 Filed 6–27–13; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2012–0581; A–1–FRL–9827–7]

Approval and Promulgation of Air Quality Implementation Plans; Idaho Amalgamated Sugar Company Nampa BART Alternative

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revised BART determination and an alternate control measure for The Amalgamated Sugar Company, LLC. (TASCO) plant located in Nampa, Canyon County, Idaho, to meet the requirements of Best Available Retrofit Technology (BART) for regional haze. The EPA previously approved the State's BART determination for TASCO as meeting the requirements for the regional haze provisions in the Clean Air Act (CAA) on June 22, 2011. On June 29, 2012, the State of Idaho submitted revisions to its Regional Haze State Implementation Plan that included a revised BART determination for the TASCO facility, a revised emission limitation for particulate matter (PM), and an alternative control measure for TASCO to replace the Federally approved sulfur dioxide (SO_2) BART determination. The EPA proposes to vacate the previously approved SO_2 BART determination for TASCO, approve the revised BART determination, the revised emission limitation, and the alternative control measure at TASCO.

DATES: Written comments must be received on or before July 29, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2012–0581, by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Mail:* Steve Body, EPA, Office of Air, Waste, and Toxics, AWT–107, 1200

Sixth Avenue, Suite 900, Seattle, Washington 98101.

C. *Email: body.steve@epa.gov* [or *R10-Public_Comments@epa.gov*]

D. *Hand Delivery:* EPA, Region 10 Mailroom, 9th Floor, 1200 Sixth Avenue, Seattle, Washington 98101. Attention: Steve Body, Office of Air Waste, and Toxics, AWT–107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R10–OAR–2012–0581. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information 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 the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Steve Body, (206) 553–0782, or by email at *body.steve@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean the EPA. Information is organized as follows:

Table of Contents

I. Background
II. Regional Haze Rule Provisions for BART Alternative Measures
III. Idaho's State Implementation Plan (SIP) Revision Submittal
IV. The EPA's Evaluation of SIP Revision Submittal
V. The EPA's Proposed Action
VI. Statutory and Executive Order Review

I. Background

In the Clean Air Act (CAA) Amendments of 1977, Congress established a program to protect and improve visibility in the Nation's national parks and wilderness areas. See CAA section 169A. Congress amended the visibility provisions in the CAA in 1990 to focus attention on the problem of regional haze. See CAA section 169B. The EPA promulgated regional haze regulations (RHR) in 1999 to implement sections 169A and 169B of the Act. These regulations require states to develop and implement plans to ensure reasonable progress toward improving visibility in mandatory Class I Federal areas [1] (Class I areas). 64 FR 35714 (July 1, 1999); see also 70 FR 39104 (July 6, 2005) and 71 FR 60612 (October 13, 2006).

Regional haze is impairment of visual range or colorization caused by air pollution, principally fine particulate, produced by numerous sources and activities, located across a broad regional area. The sources include but are not limited to, major and minor stationary sources, mobile sources, and area sources including non-anthropogenic sources. These sources and activities may emit fine particles ($PM_{2.5}$) (*e.g.,* sulfates, nitrates, organic carbon, elemental carbon, and soil dust), and their precursors (*e.g.,* sulfur dioxide (SO_2), nitrogen oxides (NO_X), and in some cases, ammonia and volatile organic compounds). Fine particulate can also cause serious health effects and mortality in humans, and contributes to environmental effects such as acid deposition and eutrophication. See 64 FR at 35715.

Data from the existing visibility monitoring network, the ''Interagency Monitoring of Protected Visual Environments'' (IMPROVE) monitoring network, show that visibility impairment caused by air pollution occurs virtually all the time in most national parks and wilderness areas. The average visual range in many Class I areas in the western United States is 100–150 kilometers, or about one-half to two-thirds the visual range that would exist without manmade air pollution.[2] Visibility impairment also varies day-to-day and by season depending on variations in meteorology and emission rates. The deciview (dv) is the metric by which visibility is measured in the regional haze program. A change of 1 dv is generally considered the change in visual range that the human eye can perceive.

The RHR requires each State's regional haze implementation plan to contain emission limitations representing BART and schedules for compliance with BART for each source subject to BART, unless the State demonstrates that an emissions trading program or other alternative will achieve greater reasonable progress toward natural visibility conditions. A State may opt to implement or require participation in an emission trading program or other alternative measure rather than require sources subject to BART to install, operate, and maintain BART.

On April 16, 2007, Idaho submitted to the EPA for approval new and revised rules that provide the Idaho Department of Environmental Quality (IDEQ) the regulatory authority to address regional haze and to implement BART (BART Authority rule). The EPA approved these rules on June 9, 2011. 76 FR 33651. Idaho submitted its Regional Haze State Implementation Plan as meeting the requirements of 40 CFR 51.308 to the EPA on October 25, 2010 (2010 RH SIP submittal). The 2010 RH SIP submittal covers the planning

[1] Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977. 42 U.S.C. 7472(a). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. 44 FR 69122 (November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. 42 U.S.C. 7472(a). Although states and tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I Federal areas.'' Each mandatory Class I Federal area is the responsibility of a ''Federal Land Manager.'' 42 U.S.C. 7602(i). When we use the term ''Class I area'' in this action, we mean a ''mandatory Class I Federal area.''

[2] *Id.*

period of 2008 through 2018 and, among the other required elements, includes a BART determination for the TASCO facility in Nampa, Idaho. On June 22, 2011, the EPA approved the BART related provisions of Idaho's 2010 RH SIP submittal, including the final BART determination for the TASCO facility.[3] 76 FR 36329. That approval incorporated by reference the September 7, 2010, TASCO Tier II Operating Permit No. T2–2009.0105 (2010 TASCO Tier II Operating Permit) that contained the emission limitations representing BART for TASCO. On November 8, 2012, EPA took final action to approve the remaining elements in the Idaho Regional Haze SIP. 77 FR 66929. Thus, Idaho's 2010 RH SIP is fully approved.

On June 29, 2012, Idaho submitted revisions (2012 RH SIP submittal) to the 2010 RH SIP that includes: a revised NO_X BART determination; a more stringent particulate matter (PM) emission limitation; and an alternative control measure to replace the SO_2 BART determination for TASCO's fossil fuel-fired Riley Boiler. This alternative control measure is also referred to as the BART Alternative. In addition to the new NO_X and PM emission limitations on the Riley Boiler, the alternative control measure relies on control of NO_X emissions from two other boilers at the TASCO facility in Nampa, that are not BART eligible emission units (non-BART boilers). The alternative measure also takes into account emission reductions resulting from the permanent shutdown of three coal fired pulp-dryers. The revised NO_X BART determination, more stringent PM emission limitation, and the BART Alternative are contained in a revised Tier II Operating Permit, T2–2009.0105 issued to TASCO December 23, 2011 (2011 TASCO Tier II Operating Permit). As explained below this alternative measure and revised permit result in greater reasonable progress toward natural visibility conditions than the improvement expected from the BART determination previously approved.

II. Regional Haze Rule Provisions for BART Alternative Measures

The RHR contains provisions whereby a state may choose to implement an alternative measure as an alternative to BART, if the state can demonstrate that the alternative measure achieves greater reasonable progress toward achieving natural visibility conditions than would be achieved through the installation, operation and maintenance of BART. The requirements for alternative measures are established at 40 CFR 51.308(e)(2). As explained in the RHR, the state must demonstrate that all necessary emission reductions will take place during the first long term strategy period (i.e., by 2018) and that the emissions reductions resulting from the alternative measure will be surplus to those reductions resulting from measures adopted to meet requirements of the CAA as of the baseline date of the SIP.

The Idaho rules provide IDEQ authority to consider and adopt alternative measures as an alternative to BART. See IDAPA 58.01.01.668.06.[4] The EPA approved this BART Alternative rule when it approved the Idaho BART Authority rule. 76 FR 33652 (June 9, 2011).

Sources subject to BART must be in compliance with the BART emission limitations as soon as practical but no later than 5 years after EPA approves the implementation plan revision. 40 CFR 51.308(e)(1)(iv). The EPA approval of Idaho's BART provisions became effective July 22, 2011, thus TASCO must be in compliance with the BART requirements no later than July 22, 2016. Under the BART Alternative, as specified in the revised permit, TASCO must comply with the emission limitations by July 22, 2016, which is well within the first long term strategy period which ends December, 2018.

III. Idaho's SIP Revision Submittal

TASCO operates a sugar beet processing facility in Nampa, Idaho, that includes a fossil fuel fired boiler referred to as the ''Riley Boiler''. The Riley Boiler is a BART eligible source and is subject to BART. In the final action on the BART provisions in the 2010 RH SIP submittal, the EPA approved IDEQ's BART determination for the Riley Boiler. 76 FR 36329. The approved BART level technology and emission limitations identified for the Riley Boiler and contained in the 2010 TASCO Tier II Operating Permit are:

PM: 14 pounds per hour (lbs/hr) and requires the emissions to be controlled using a baghouse;

SO_2: 115 lbs/hr and requires the emissions to be controlled with spray-dry flue gas desulfurization (spray-dry FGD); and

NO_x: 186 lbs/hr and requires the NO_X emissions to be controlled using low NO_X burners with overfire air (LNB–OFA).

Subsequent to the 2010 RH SIP submission and approval, TASCO submitted to IDEQ additional site-specific engineering analyses and a proposal for an alternative measure to replace the SO_2 BART determination for its facility. Dispersion modeling was conducted to compare the visibility improvement expected from the alternative control measure to visibility improvement expected from implementation of BART. Based on the new information and proposal, IDEQ revised portions of Chapter 10 of the 2010 RH SIP and submitted the revisions, along with supporting technical documentation, to the EPA. The 2012 RH SIP submittal contains, among other elements, a new NO_X BART determination for the Riley Boiler and the 2011 TASCO Tier II Operating Permit for the Riley Boiler.

The 2012 RH SIP submittal revises the NO_X BART determination for the Riley Boiler. The 2010 RH SIP submittal identified low NO_X burners (LNB), LNB with overfire air (OFA), and selective catalytic reduction (SCR) as all technically feasible NO_X controls for the Riley Boiler. The State evaluated the cost effectiveness of each technology and determined that: LNB is cost effective at $921/ton; LNB–OFA is cost effective at $1270/ton with an incremental cost over LNB at $2431/ton. At that time, the State determined that SCR had a cost effectiveness value of $3768/ton and an incremental cost over LNB–OFA of $10,245/ton. In the 2010 RH SIP submittal, Idaho determined that SCR is not cost effective based on the incremental cost of SCR over the cost of LNB–OFA. In the final action on Idaho's 2010 RH SIP submittal, the EPA approved the State's BART determination. As explained, based on additional on-site engineering analysis conducted by TASCO, Idaho subsequently determined that neither LNB–OFA nor SCR are technically feasible at this facility. See 2012 RH SIP submittal, Chapter 10, Section 10.5. In

[3] Upon EPA's final action, TASCO filed a petition for review in the Ninth Circuit Court of Appeals challenging EPA's approval of Idaho's BART determination for their Nampa facility. See *Amalgamated Sugar* v. *EPA,* No. 11–72445 (9th Cir.) The case is pending before the Ninth Circuit.

[4] Specifically the IDEQ BART Alternative rule provides: ''BART Alternative. As an alternative to the installation of BART for a source or sources, the Department may approve a BART alternative. If the Department approves source grouping as a BART alternative, only sources (including BART-eligible and non-BART eligible sources) causing or contributing to visibility impairment to the same mandatory Class I Federal Area may be grouped together: a. If a source(s) proposes a BART alternative, the resultant emissions reduction and visibility impacts must be compared with those that would result from the BART options evaluated for the source(s). b. Source(s) proposing a BART alternative must demonstrate that this BART alternative will achieve greater reasonable progress than would be achieved through the installation and operation of BART. c. Source(s) proposing a BART alternative shall include in the BART analysis an analysis and justification of the averaging period and method of evaluating compliance with the proposed emission limitation. IDAPA 58.01.01.668.06.''

the detailed engineering analysis conducted for installation of LNB–OFA, TASCO determined that there is insufficient space in the combustion chamber for LNB–OFA for adequate combustion and flame management. As also explained, TASCO and the State now consider SCR to be technically infeasible due to inadequate space between the boiler and baghouse and concerns about catalyst fouling and erosion. The analysis also determined that installation after the baghouse would not provide adequate exhaust temperature for SCR to function properly. Id. Thus, the 2012 RH SIP submittal finds that LNB is the only technically feasible NO_X control technology for the Riley Boiler.

Regardless of the revised determination of what NOx control is technically feasible for the Riley Boiler, new, more stringent, BART emission limitations for NOx were included in the State's revised BART determination and the new, more stringent, NOx and PM emission limitations are included in the revised 2011Tier II Operating Permit. See 2012 RH SIP submittal Chapter 10, Section 10.5 Table 3, and 2011 TASCO Tier II Operating Permit Condition 3.4. The revised NOx BART determination is based on LNBs for NOx control. The revised NOx BART determination for the Riley Boiler strengthens the emission limitations from 186 lbs/hr to 147 lbs/hr, and results in a 21% reduction in NOx emissions from the original BART determination for the Riley Boiler. It also changes the identified control technology for NOx upon which the BART emission limitation is based, from LNB–OFA to LNBs. As explained below, this new BART determination and more stringent emission limitations were used in the demonstration that the BART Alternative provides for greater reasonable progress to achieve natural visibility conditions than BART.

The 2012 RH SIP submittal also proposes as a BART Alternative an alternative measure to the SO_2 BART determination for the Riley Boiler. This alternative measure covers six emission units at the TASCO facility: the Riley Boiler, the Babcock & Wilcox (B&W) Boilers #1 and #2, and the South, Center, and North Pulp dryers. The alternative measure replaces the spray-dry FGD SO_2 control on the Riley Boiler with LNB NOx control on the B&W Boilers #1 & #2 and takes into account the emission reductions resulting from the shutdown of the three pulp dryers. Thus, the retrofit of the coal-fired low-NOx burners on the B&W Boilers and resulting NOx reductions and credit for the permanent shutdown of the three pulp dryers are intended to replace the BART SO_2 emission limitation for the Riley Boiler. The controls for the B&W Boilers #1 & #2 and shutdown requirements for the South Pulp Dryer in the 2011 TASCO Tier II Operating Permit, (Condition 4.1) will become Federally enforceable upon final approval of this proposal. The permanent shutdown of the Center and North pulp dryers is Federally enforceable, as required by the September 30, 2002, TASCO Tier II permit currently in the Federally approved SIP. The 2011 TASCO Tier II Operating Permit also includes a revised PM limitation for the Riley Boiler, reducing the PM emission limitation from 14 lbs/hr to 12.4 lbs/hr. The strengthened PM emission limitation results in an 11% reduction in PM emissions from the emissions expected from the BART determination previously approved.

TASCO conducted air quality dispersion modeling to estimate visibility improvement in affected Class I areas in accordance with the three-state, Washington, Idaho, and Oregon BART Modeling Protocol to demonstrate greater reasonable progress in achieving natural visibility conditions. This protocol underwent extensive review and approval and formed the basis for much of the BART modeling for regional haze conducted in the Pacific Northwest, including modeling in Idaho's 2010 RH SIP submittal. In the 2012 RH SIP submittal, the State demonstrated the visibility improving advantages of the BART Alternative by comparing the visibility improvement of the revised BART for the Riley Boiler in the 2012 RH SIP submittal with the improvement resulting from the BART Alternative. The model input emissions for SO_2, NOx and PM were determined for all six emission units included in the alternative measure: the Riley Boiler (SO_2, NOx, and PM), B&W Boilers #1 and #2 (NOx), and the three coal-fired pulp dryers (SO_2, NOx and PM). Three scenarios were modeled for all six emission units: baseline (pre-BART), revised BART for Riley Boiler, and the BART Alternative.

Emissions from the TASCO facility impairs visibility at seven mandatory Class I areas within 300 kilometers (km): Eagle Cap Wilderness Area, Oregon; Craters of the Moon National Monument, Idaho; Hells Canyon Wilderness Area, Oregon; Jarbidge Wilderness Area, Nevada; Sawtooth Wilderness Area, Idaho; Selway-Bitteroot Wilderness Area, Idaho; and the Strawberry Wilderness Area, Oregon. The results of this modeling effort for all seven Class I areas are presented in the 2012 RH SIP submittal, Chapter 10, Section 10.5, Table 6. The deciview impact for the 22nd highest day over the 2003 to 2005 time period is presented for each of the seven Class I areas. The submittal shows the number of days with impairment greater than 0.5 dv in the 2003 to 2005 time period.

The Table below presents the modeled visibility, at all Class I areas within 300 km of the TASCO facility at baseline conditions (2003 to 2005), under the revised BART, and under the proposed BART Alternative. As shown, the proposed BART Alternative achieves greater reasonable progress toward natural conditions than would be achieved through the installation, operation and maintenance of BART.

TABLE 1—MODELED VISIBILITY CONDITIONS

Class I area	Baseline visibility impact (dv) [a d]	Visibility impact under proposed revised BART (dv) [b d]	Visibility impact under proposed BART alternative (dv) [c d]	Additional visibility improvement with BART alternative vs revised BART (dv) [d]	Days above 0.5 dv baseline [e]	Days above 0.5 dv under revised BART [e]	Days above 0.5 dv under BART alternative [e]	Decrease in days >0.5 dv from BART alternative vs revised BART [e]
Eagle Cap Wilderness, OR	2.201	1.512	1.411	0.101	195	149	126	23
Craters of the Moon Wilderness, ID	0.393	0.267	0.245	0.022	10	4	3	1
Hells Canyon Wilderness, ID/OR	1.582	1.092	1.059	0.033	129	87	80	7
Jarbidge Wilderness, NV	0.375	0.256	0.234	0.022	8	5	5	0

TABLE 1—MODELED VISIBILITY CONDITIONS—Continued

Class I area	Baseline visibility impact (dv) [a d]	Visibility impact under proposed revised BART (dv) [b d]	Visibility impact under proposed BART alternative (dv) [c d]	Additional visibility improvement with BART alternative vs revised BART (dv) [d]	Days above 0.5 dv baseline [e]	Days above 0.5 dv under revised BART [e]	Days above 0.5 dv under BART alternative [e]	Decrease in days >0.5 dv from BART alternative vs revised BART [e]
Sawtooth Wilderness, ID	0.47	0.319	0.307	0.012	18	6	6	0
Selway-Bitterroot Wilderness, ID	0.439	0.281	0.298	(0.017)	15	3	4	(1)
Strawberry Mountain Wilderness, OR	1.462	1.076	0.917	0.159	80	62	51	11

[a] Includes pre-BART emissions of all sources involved in BART and the BART Alternative: Riley Boiler, B&W Boilers 1&2 and three pulp dryers.
[b] Includes all sources involved in BART and the BART Alternative under BART operations: Riley Boiler (LNB + SD–FGD), B&W Boilers 1&2, three pulp dryers operating.
[c] Includes all sources involved in BART and the BART Alternative under BART Alternative operations: Riley Boiler (LNB), B&W Boilers 1&2 (LNB), three pulp dryers shut down.
[d] The 22nd highest dv value for the three-year period (2003–2005).
[e] Total number of days in the three-year period that exceed 0.5 dv.

IV. The EPA's Evaluation of the SIP Revision Submittal

1. Revised BART Determination for the Riley Boiler

The provisions of 40 CFR part 51, Appendix Y, followed by Idaho, set forth the process used to identify control technologies and to consider the five statutory factors that must be evaluated as part of a BART determination. After site specific consideration of the factors, the best achievable retrofit technology is identified and the BART emission limitation is specified.

As discussed previously in this notice, based on a revised analysis conducted and provided by TASCO, Idaho determined that SCR is technically infeasible for the Riley Boiler. This new finding does not affect the State's final BART determination because, as the EPA previously agreed, Idaho's determination found that even if SCR was technically feasible it was not cost effective and thus, would not qualify as BART. 76 FR 3632. Thus, the 2012 RH SIP submittal determination that SCR is technically infeasible does not change the EPA's previous agreement that SCR is not BART for this facility. The EPA previously approved the NO_X BART emission limitation for the Riley Boiler of 186 lbs/hr, based on LNB–OFA control technology. However, TASCO's further engineering analysis determined that while there is insufficient space in the combustion chamber for LNB–OFA for adequate combustion and flame management, LNB alone could achieve greater NO_X control than the LNB–OFA control. Accordingly, Idaho revised its NO_X BART determination to reflect the technology change, greater control and tighter emission limitations. The compliance date of July 22, 2016 remains unchanged.

In the 2012 RH SIP submittal, Idaho strengthened the NO_X BART emission limitation to 147 lbs/hr based on TASCO's reassessment of LNB performance for the Riley Boiler. In light of TASCO's revised analysis that the original BART determination is not technically feasible and because the revised BART determination results in a more stringent NO_X BART emission limitation, the EPA is proposing to vacate our original BART determination and approve the revised NO_X BART determination and this new limitation for the TASCO facility.

The EPA previously approved Idaho's PM BART emission limitation for the Riley Boiler of 14 lbs/hr, based on baghouse control technology as provided in the 2010 RH SIP submittal. In the 2012 RH SIP submittal, Idaho strengthened the PM emission limitation to 12.4 lbs/hr, based on TASCO's analysis of the performance of the baghouse. The revised PM emission limitation is more stringent than the limitation previously approved and therefore the EPA is proposing to approve this revised PM limitation as a SIP strengthening measure.

2. Alternative to BART for the TASCO facility

The 2012 RH SIP submittal includes a proposed alternative measure to the previously approved SO_2 BART determination for Riley Boiler. This alternative measure is intended to replace the SO_2 BART emission limitation of 115 lb/hr for the Riley Boiler [5] with a combined NO_X emission limitation on the B&W Boilers #1 and #2 of 103 lbs/hr, and takes into account the emission reductions resulting from the permanent shutdown of three coal-fired pulp dryers. The baseline emissions for all three pulp dryers are: NO_X—191.2 lbs/hr; SO_2—17.9 lbs/hr; and PM–927 lbs/hr. These emissions were permanently eliminated when the pulp dryers were shutdown.

Installation of LNB control and establishing emission limitations on the B&W Boilers, along with permanently eliminating the emissions associated with the three pulp dryers, result in a total reduction in NO_X of 221 t/y, SO_2 of 20.6 t/y, and PM of 113 t/y. The B&W Boilers are non-BART units. The pulp dryers were shutdown because installation of a drying process using waste steam from the boilers instead of the pulp dryers reduced the fuel demand that resulted in a lower cost operation, eliminating the need for the pulp dryers. The shutdown of the pulp dryers is not required under the CAA. Thus, these emission reductions may be considered surplus. The total emissions are reduced under the BART Alternative measure compared to both the original 2010 RH SIP approved BART determination and the revised BART determination in the 2012 RH SIP submittal.

As presented in Table 1 above, dispersion modeling of visibility in all Class I areas within 300 km of the TASCO facility demonstrates there is overall greater progress towards achieving natural conditions under the BART Alternative. In particular, there is greater progress in the Eagle Cap Wilderness Area (the Class I area most impacted by emissions from the TASCO facility) of 0.101 dv under the BART alternative than under the revised BART determination and in the Strawberry Mountain Wilderness Area of 0.159 dv.

The 2011 TASCO Tier II Operating Permit, Permit Condition 3.3 requires compliance with the BART Alternative by July 22, 2016, the same compliance

[5] Current statewide regulations limit the sulfur content of coal to 1% by weight. IDAPA 58.01.01.725.04. This limit would not be affected by the action proposed today and the limit remains applicable to the TASCO facility.

date as the approved BART. Additionally, the permit provides that unless LNBs have been installed and operating, as required in Permit Condition 3.7, on and after July 22, 2016, the Riley Boiler may be fired only using natural gas, and that on, and after July 22, 2016, the Riley Boiler may not be fired with coal until such date that the coal-fired LNBs are installed and operated in accordance with the permit. See 2011 TASCO Tier II Operating Permit, Permit Condition 3.9. Permit condition 14.9 of TASCO's Tier I Operating Permit T1–050020, issued May 23, 2006, required the North and Central pulp dryers to be permanently shut down and Permit Condition 4.1 of the 2011 TASCO Tier II Operating Permit, requires the South Pulp Dryer to be permanently shutdown. Thus, there is no delay in compliance with BART requirements under the BART Alternative.

The 2011 TASCO Tier II Operating Permit contains the emission limitations discussed above. See 2011 TASCO Tier II Operating Permit, Permit Condition 3.4 and 3.5. The permit also contains requirements for a non-visibility impairing pollutant, specifically carbon monoxide (CO). Permit Condition 3.12 requires performance testing for CO. The EPA proposes no action on this permit condition, as it does not pertain to visibility.

The second paragraph of Condition 3.3 of the Permit allows TASCO to submit a request to obtain IDEQ approved alternatives to BART and to revise the Permit and explains that IDEQ will process the request in accordance with its permitting rules. The condition further provides that the request must be submitted in time for any such revision to the permit and the corresponding revision to the RH SIP to be approved prior to July 22, 2016. This provision is administrative in nature and addresses the State's procedure for possible future revisions to the permit. As such it is not necessary or appropriate for EPA to act on this provision. Nevertheless, we note that a revision to a Federally approved permit must meet applicable Federal requirements before it could be incorporated into the Federally approved SIP. The EPA cannot assure Idaho or TASCO that any submitted BART Alternative measure will be approved until that measure has been thoroughly evaluated by the EPA as meeting Federal requirements.

V. The EPA's Proposed Action

The EPA is proposing to vacate our previous BART determination for the TASCO facility and to approve Idaho's 2012 RH SIP submittal including the revised NO_X BART determination for the TASCO Riley Boiler and the 2011 TASCO Tier II Operating Permit containing the BART Alternative conditions 1.2 including the table of Regulated Emission Point Sources Table, 3.2, 3.3 (first paragraph only), 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 3.11, 3.13, 3.14, 3.15, 3.16, and 4.1. Specifically, the EPA proposes to approve new BART emission limitations for NO_X, the revised PM emission limitations and the BART Alternative at the TASCO facility because they provide greater overall reasonable progress toward achieving natural conditions in affected Class I areas than the previously approved BART determination for the TASCO facility.

VI. Statutory and Executive Order Review

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

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the rule neither imposes substantial direct compliance costs on tribal governments, nor preempts tribal law. Therefore, the requirements of section 5(b) and 5(c) of the Executive Order do not apply to this rule.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, and Visibility.

Dated: June 14, 2013.

R. David Allnutt,

Acting Regional Administrator, Region 10.

[FR Doc. 2013–15442 Filed 6–27–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2012–0640] FRL–9829–3

RIN 2060–AR64

Kraft Pulp Mills NSPS Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of public comment period.

SUMMARY: The EPA is announcing that the period for providing public comments on the May 23, 2013, proposed rule titled, ''Kraft Pulp Mills NSPS Review'' is being extended by 15 days.

DATES: *Comments.* The public comment period for the proposed rule published May 23, 2013 (78 FR 31315), is being extended by 15 days to July 23, 2013, in order to provide the public additional time to submit comments and supporting information.

ADDRESSES: *Comments.* Written comments on the proposed rule may be submitted to the EPA electronically, by mail, by facsimile or through hand delivery/courier. Please refer to the proposal (78 FR 31315) for the addresses and detailed instructions.

Docket. Publicly available documents relevant to this action are available for public inspection either electronically at *http://www.regulations.gov* or in hard copy at the EPA Docket Center, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying. The EPA has established the official public docket No. EPA–HQ–OAR–2012–0640.

World Wide Web. The EPA Web site containing information for this rulemaking is: *http://www.epa.gov/ttn/atw/pulp/pulppg.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Kelley Spence, Natural Resources Group (E143–03), Sector Policies and Programs Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–3158; fax number: (919) 541–3470; and email address: *spence.kelley@epa.gov.*

SUPPLEMENTARY INFORMATION:

Comment Period

In response to requests from industry representatives and environmental groups, the EPA is extending the public comment period for an additional 15 days. The public comment period will end on July 23, 2013, rather than July 8, 2013.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 21, 2013.

Gina McCarthy,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 2013–15609 Filed 6–27–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 272

[Docket No. FRA–2008–0131, Notice No. 1]

RIN 2130–AC00

Critical Incident Stress Plans

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: FRA issues this proposed rule in accordance with a statutory mandate that the Secretary of Transportation require certain major railroads to develop, and submit to the Secretary for approval, critical incident stress plans that provide for appropriate support services to be offered to their employees who are affected by a ''critical incident'' as defined by the Secretary. The NPRM proposes a definition of the term ''critical incident,'' the elements appropriate for the rail environment to be included in a railroad's critical incident stress plan, the type of employees to be covered by the plan, a requirement that a covered railroad submit its plan to FRA for approval, and a requirement that a railroad adopt and comply with its FRA-approved plan.

DATES: Written comments must be received by August 27, 2013. Comments received after that date will be considered to the extent possible without incurring additional delay or expense.

FRA does not believe that a public, oral hearing will be necessary. However, if FRA receives a specific request for a public, oral hearing prior to July 29, 2013, FRA will schedule a hearing and publish a supplemental notice in the **Federal Register** to inform interested parties of the date, time, and location of any such hearing.

ADDRESSES: *Comments:* Comments related to Docket No. FRA–2008–0131, Notice No. 1, may be submitted by any of the following methods:

- *Web site:* The Federal eRulemaking Portal, *www.Regulations.gov.* Follow the Web site's online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12–140 on the Ground level of the West Building, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name, docket name, and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://www.Regulations.gov,* including any personal information provided. Please see the discussion under the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.Regulations.gov* at any time or visit the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12–140, on the Ground level of the West Building, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For program issues: Dr. Bernard J. Arseneau, Medical Director, Office of Railroad Safety, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone: (202) 493–6232), *Bernard.Arseneau@dot.gov;* or Ronald Hynes, Director, Office of Safety Assurance and Compliance, Office of Railroad Safety, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone: (202) 493–6404), *Ronald.Hynes@dot.gov.* For legal issues: Veronica Chittim, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE., Washington, DC 20950 (telephone: (202) 493–0273), *Veronica.Chittim@dot.gov.*

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

This NPRM proposes a regulation that would require each Class I railroad, intercity passenger railroad, and commuter railroad to establish and implement a critical incident stress plan for certain employees of the railroad who are directly involved in, witness, or respond to, a critical incident. FRA seeks comment on all aspects of this proposal.

Although FRA has never regulated critical incident stress plans, many railroads have had some form of critical incident stress plan in place for many years. This rulemaking responds to the Rail Safety Improvement Act of 2008 (Public Law 110–432, Div. A) (RSIA) mandate that the Secretary of Transportation establish regulations to define ''critical incident'' and to require certain railroads to develop and implement critical incident stress plans.

As discussed in detail below, FRA reviewed the applicable science and information received through the Railroad Safety Advisory Committee (RSAC), and as required by Congress, FRA proposes a definition for ''critical incident'' and proposes a set of minimum standards for critical incident stress plans. This approach provides covered employees with options for relief following a critical incident, yet allows for substantial flexibility within the regulatory framework so that railroads may adapt their plans commensurate with their needs. The proposal defines a ''critical incident'' as either — (1) An accident/incident reportable to FRA under 49 CFR part 225 that results in a fatality, loss of limb, or a similarly serious bodily injury; or (2) A catastrophic accident/incident reportable to FRA under part 225 that could be reasonably expected to impair a directly-involved employee's ability to perform his or her job duties safely. The proposed set of minimum standards for critical incident stress plans include allowing a directly-involved employee to obtain relief from the remainder of the tour of duty, providing for the directly-involved employee's transportation to the home terminal (if applicable), and offering a directly-involved employee appropriate support services following a critical incident. The proposed rule would require each applicable railroad to submit its plan to FRA for approval.

FRA has analyzed the economic impacts of this proposed rule against a ''status quo'' baseline that reflects present conditions (*i.e.* primarily what applicable railroads are already doing with respect to critical incident policy). Based on both RSAC meetings and discussions with the rail industry, FRA's analysis assumes that all railroads affected by the proposed rule currently have policies that include a critical incident stress plan, thereby reducing the costs of compliance associated with the proposed rule. In estimating these compliance costs, FRA included costs associated with training supervisors on how to interact with railroad employees who have been affected by a critical incident, employee training, counseling, and other support services, and costs associated with the submission of the critical incident stress plan to FRA for approval. FRA estimates that the costs of the proposed rule for a 20-year period would total $1,943,565. Using a 7 percent and a 3 percent discount rate, the total discounted costs will be $1,337,830 and $1,615,519, respectively.

The proposed rule contains minimum standards for employee training, leave, counseling, and other support services. These standards would help create benefits by providing employees with knowledge, coping skills, and services that would help them: (1) Recognize and cope with symptoms of normal stress reactions that commonly occur as a result of a critical incident; (2) reduce their chance of developing a disorder such as depression, Post-Traumatic Stress Disorder (PTSD), or Acute Stress Disorder (ASD) as a result of a critical incident; and (3) recognize symptoms of psychological disorders that sometimes occur as a result of a critical incident and know how to obtain prompt evaluation and treatment of any such disorder, if necessary. FRA anticipates that implementation of the proposed rule would yield benefits by reducing long-term healthcare costs associated with treating PTSD, ASD, and other stress reactions; and costs that accrue either when an employee is unable to return to work for a significant period of time or might leave railroad employment due to being affected by PTSD, ASD, or another stress reaction. In addition, safety risk posed by having a person who has just been involved in a critical incident performing safety critical functions is also reduced. The majority of the quantifiable benefits identified by FRA's analysis are associated with railroad employee retention and a reduction of long-term healthcare costs associated with PTSD cases that were not treated appropriately after a critical incident. FRA expects that the proposed rule would decrease the number of employees who leave the railroad industry due to PTSD, ASD, or other stress reactions, as early treatment for potential PTSD cases following exposure to a critical incident would reduce both the likelihood of developing PTSD and the duration of PTSD or another stress reaction. The proposed rule would therefore increase the early identification of PTSD and provide more immediate healthcare to the cases that develop. FRA estimates that the present value of the quantifiable benefits for a 20-year period would total $2,630,000. Using a 7 percent and a 3 percent discount rate, the total discounted benefits would be $1,505,622 and $2,023,548, respectively. Overall, FRA finds that the value of the anticipated benefits would justify the cost of implementing the proposed rule. FRA seeks comments on all aspects of the economic impacts of its proposal.

II. Overview of Critical Incidents and Critical Incident Stress Plans

A. Statutory Mandate and Authority To Conduct This Rulemaking

On October 16, 2008, the RSIA was enacted. Section 410 of the RSIA (Section 410) mandates that the Secretary of Transportation (Secretary) require ''each Class I railroad carrier, each intercity passenger railroad carrier, and each commuter railroad carrier to develop and submit for approval to the Secretary a critical incident stress plan that provides for debriefing, counseling, guidance, and other appropriate support services to be offered to an employee affected by a critical incident.'' *See* Section 410(a). RSIA mandates that the plans include provisions for relieving employees who are involved in, or who witness, critical incidents from their tours of duty, and for providing leave for such employees from their normal duties as may be necessary and reasonable to receive preventive services and treatment related to the critical incident. *See* Section 410(b). The Secretary is specifically required to define the term ''critical incident'' for purposes of this rulemaking. *See* Section 410(c). The Secretary has delegated his responsibilities under the RSIA to the Administrator of FRA. *See* 49 CFR 1.89(b). In the Section-by-Section Analysis below, FRA discusses how the proposed regulatory text addresses each portion of the Section 410 mandates. This proposed rule is also issued pursuant to FRA's general rulemaking authority at 49 U.S.C. 20103.

As required by Section 410(c), within 30 days after enactment of the RSIA, FRA initiated action within the DOT to commence a rulemaking to define the

term ''critical incident.'' Additionally, as required by Section 410(a), FRA consulted with the Department of Health and Human Services (HHS) and the Department of Labor (DOL) in preparing this proposed rule. Specifically, in addition to consulting with representatives of HHS and DOL, FRA provided those departments with an advance copy of this proposed regulation and requested input on FRA's approach. FRA has incorporated the suggestions provided by both HHS's Substance Abuse and Mental Health Services Administration (SAMHSA) and DOL's Wage and Hour Division.

B. Factual Background [1]

Highway-rail grade crossing accidents and trespasser incidents along the railroad right-of-way are an unfortunate reality for employees in the railroad industry. Railroad work carries the risk that a covered employee will be directly involved in a critical incident, often outside the control of the railroad employees, which can lead to severe emotional and psychological distress, including Post Traumatic Stress Disorder (PTSD) and the more immediate Acute Stress Disorder (ASD).[2] There are concerns about the impact of exposure to traumatic incidents on employees in safety-sensitive jobs, most notably engineers and conductors.

Until this proposed rule, a national, uniform approach to critical incident response in the railroad industry did not exist, with only a handful of States taking action through statutes or regulations to aid critical incident response in the railroad industry. With this proposed rule, FRA seeks to define the term ''critical incident'' in the railroad setting, which if met, would trigger the requirement that appropriate support services be offered to railroad employees affected by such incidents.

PTSD and ASD can develop following any traumatic event that threatens personal safety or the safety of others, or causes serious physical, cognitive or emotional harm. While such disorders are most often initiated by a threat to one's life or the witnessing of brutal injury or traumatic death—in combat situations, for example, or during violent accidents or disasters—any overwhelming life experience can trigger the disorders, especially if the event is perceived as unpredictable and uncontrollable. Individuals exposed to traumatic events experience alterations in their neurologic, endocrine, and immune systems, which have been linked to adverse changes in overall health.[3] These changes and symptoms can be ameliorated if treated appropriately, usually with psychotherapy and/or medications. However, PTSD and ASD often go undiagnosed, as few primary care providers routinely assess for it and more often than not, attribute the symptoms to less serious forms of depression, anxiety, and general emotional distress.[4]

In recent years approximately 2,500 highway-rail crossing accidents and 900 casualties to persons trespassing on railroad property (trespassers) have occurred in the United States annually. Each one of these incidents, as well as other traumatic events such as railroad accidents or incidents resulting in serious injury or death to railroad employees, hold potential for causing ASD, PTSD, or other health and safety-related problems, in any railroad employee who is present. Some locomotive engineers and conductors have had the misfortune of experiencing multiple potential PTSD/ASD-invoking events over the course of their careers.[5]

Exposure of railroad employees, particularly locomotive engineers and conductors, to prototypical potentially traumatic exposures is well established. Incursion events, such as vehicular accidents at highway-rail grade crossings and pedestrian incursions onto the railroad right-of-way (frequently as a method of suicide) often involve fatalities and the injuries sustained may be gruesome. Locomotive engineers and conductors, because of their proximity to the accident scene, must often tend to the injured and secure the scene, compounding the extent and the duration of exposure. In particular, locomotive engineers may be alone in the cab when an on-the-track accident occurs. Further, train crews are required to report the incident, secure the train, and often leave the train and examine the victims. Crew members may even provide first aid if victims are alive, and wait, sometimes for long periods, for assistance or instructions.

Systematic empirical studies of the health impact on railroad personnel of this kind of experience are limited. The best designed studies have been European and show clinically diagnosed PTSD in 7 to 14 percent of those exposed. FRA has found no empirical studies of treatment efficacy and impact within the U.S. railroad population, presumably due to the relatively small population annually treated and the different locations and systems involved in railroad employees' identification and care.

If left untreated, mental health conditions carry significant costs for employers in the form of ''presenteeism,'' when employees come to work, but have lowered productivity.[6] Presenteeism can have catastrophic safety consequences for railroads. Symptoms such as sleep difficulties, trouble concentrating, hypervigilance and exaggerated sensory reactions—often leading sufferers to misuse alcohol to reduce the stress—compromise workers' safety at work and the safety of others, and lower

[1] Much of this background information and review of the literature is derived from the independent final report prepared by FRA grantee, Dr. Richard Gist, in support of Grant FR–RRD–0024–11–01, titled, ''Proposed Key Elements of Critical Incident Intervention Program For Reducing the Effects of Potentially Traumatic Exposure On Train Crews to Grade Crossing and Trespasser Incidents.'' *See* Docket No. FRA–2008–0131. Articles cited in this NPRM are available for viewing at FRA upon request.

[2] ASD is ''a mental disorder that can occur in the first month following a trauma. The symptoms that define ASD overlap with those for PTSD.'' ASD can lead to PTSD, but does not always. A ''PTSD diagnosis cannot be given until symptoms have lasted for one month.'' U.S. Department of Veterans Affairs, National Center for PTSD, available at *http://www.ptsd.va.gov/public/pages/acute-stress-disorder.asp* (last accessed January 28, 2013).

[3] In a study of 830 train drivers in Norway, the 48 percent of participants who had experienced at least one on-the-track accident reported considerably more health problems than those who reported no such exposure. Their symptoms included musculoskeletal, gastrointestinal, and sleep pattern issues and continued from the incident to the time of the study (for some participants up to ten years). This study also revealed that the more pronounced initial reactions to on-the-track accidents, the more severe and persistent were the health complaints post-exposure. Vatshelle, A. & Moen, B.E. (1996). Serious on-the-track accidents experienced by train drivers: Psychological reactions and long-term health effects. *Journal of Psychosomatic Research,* 42(1), 43–52. *See also* Wignall, E.L., Dickson, J.M., Vaughan, P., Farrow, T.F.D., Wilkinson, I.D., Hunter, M.D., & Woodruff, P.W.R. (2004). Smaller hippocampal volume in patients with recent-onset posttraumatic stress disorder. *Biological Psychiatry,* 56(11), 832–836.

[4] Gerrity M.S., Corson, K., & Dobscha S.K. (2007). Screening for posttraumatic stress disorder in Veterans' Affairs primary care patients with depression symptoms. *Journal of General Internal Medicine,* 22(9), 1321–1324.

[5] The Associated Press, Fatal Collisions Traumatize Nation's Train Engineers, August 14, 2009. Saed Hindash, *The Star-Ledger.* Death by Train. June 18, 2009. *http://www.nj.com/insidejersey/index.ssf/2009/06/death_by_train.html* (''Over a 40-year career, the average engineer will be involved in five to seven incidents, says Darcy, who has had seven fatalities.'').

[6] Kessler, R.C. (2000). Posttraumatic stress disorder: The burden to the individual and society. *Journal of Clinical Psychiatry,* 61(suppl. 5), 4–12. Kessler, R.C., & Greenberg, P.E. (2002). The economic burden of anxiety and stress disorders. In K.L. Davis, D. Charney, J.T. Coyle, & C. Nemeroff (Eds.), *Neuropsychopharmacology: The Fifth Generation of Progress.* Philadelphia: Lippincott, Williams & Wilkins. Pilette, P.C. (2005). Presenteeism and productivity: Two reasons employee assistance programs make good business cents. *Annals of the American Psychotherapy Association,* 8(1), 12–14.

employees' productivity on the job. One study revealed that employees are more likely to engage in workplace presenteeism than calling in sick (absenteeism).[7]

Most major railroads have plans to provide their employees with assistance and intervention following traumatic events. Most of these programs have been in existence for a number of years, usually as part of a railroad's ''Employee Assistance Program'' (EAP). The descriptions of interventions, timing, and delivery in these programs are often ''transplanted'' from programs created for fire, rescue, and emergency services personnel in the 1980s and 1990s. These approaches, particularly those built around ''critical incident stress debriefing'' and related interventions, have come under increasing scrutiny as independent research has reported such interventions to not be helpful in certain situations and even to paradoxically inhibit the natural recovery of certain vulnerable participants. Accordingly, most authoritative guidelines now caution against the routine application of these approaches and some now list them as directly contraindicated.

While there are variations among railroads' existing programs, there are also substantial similarities reflected with respect to critical elements mandated by statute.[8] For example, many railroads provide assistance and intervention following critical incidents, often through the use of the railroad's EAP. The majority of existing plans allow for immediate relief from duty upon request for the remainder of the tour of duty, as well as transportation to the home terminal for affected employees. Finally, many plans allow for additional leave following the tour of duty upon request, often involving contact with occupational medicine or EAP representatives.[9] Therefore, several of these common elements are incorporated into this proposed rule.

III. Overview of the RSAC

In March 1996, FRA established RSAC, which provides a forum for developing consensus recommendations to the Administrator of FRA on rulemakings and other safety program issues. 61 FR 9740 (Mar. 11, 1996). RSAC's charter under the Federal Advisory Committee Act (Pub. L. 92–463) was most recently renewed in 2012. 77 FR 28421 (May 14, 2012).

RSAC includes representation from all of FRA's major stakeholders, including railroads, labor organizations, suppliers and manufacturers, and other interested parties. An alphabetical list of RSAC members includes the following:

AAR;
American Association of Private Railroad Car Owners (AAPRCO);
American Association of State Highway and Transportation Officials (AASHTO);
American Chemistry Council (ACC);
American Petroleum Institute (API);
American Public Transportation Association (APTA);
American Short Line and Regional Railroad Association (ASLRRA);
American Train Dispatchers Association (ATDA);
Association of Railway Museums (ARM);
Association of State Rail Safety Managers (ASRSM);
Brotherhood of Locomotive Engineers and Trainmen (BLET);
Brotherhood of Maintenance of Way Employes Division (BMWED);
Brotherhood of Railroad Signalmen (BRS);
The Chlorine Institute, Inc.;
Federal Transit Administration (FTA);*
The Fertilizer Institute;
High Speed Ground Transportation Association;
Institute of Makers of Explosives;
International Association of Machinists and Aerospace Workers;
International Brotherhood of Electrical Workers (IBEW);
Labor Council for Latin American Advancement;*
League of Railway Industry Women;*
National Association of Railroad Passengers;
National Association of Railway Business Women;*
National Conference of Firemen & Oilers;
National Railroad Passenger Corporation (Amtrak);
National Railroad Construction and Maintenance Association (NRCMA);
National Transportation Safety Board (NTSB);*
Railway Passenger Car Alliance;
Railway Supply Institute;
Safe Travel America;
Secretaria de Comunicaciones y Transporte;*
Sheet Metal Workers International Association;
Tourist Railway Association Inc.;
Transport Canada; *
Transport Workers Union of America;
Transportation Communications International Union/BRC (TCIU);
Transportation Security Administration (TSA); and
United Transportation Union (UTU).

* *Indicates associate, non-voting membership.*

When appropriate, FRA assigns a task to RSAC, and after consideration and debate, RSAC may accept or reject the task. If the task is accepted, RSAC establishes a working group that possesses the appropriate expertise and representation of interests to develop recommendations to FRA for action on the task. These recommendations are developed by consensus. A working group may establish one or more task forces to develop facts and options on a particular aspect of a given task. The task force then provides that information to the working group for consideration.

If a working group comes to a unanimous consensus on recommendations for action, the proposal is presented to the full RSAC for a vote. If the proposal is accepted by a simple majority of RSAC, the proposal is formally recommended to FRA. FRA then determines what action to take on the recommendation. Because FRA staff members play an active role at the working group level in discussing the issues and options and in drafting the language of the consensus proposal, FRA is often favorably inclined toward the RSAC recommendation.

However, FRA is in no way bound to follow the RSAC recommendation, and the agency exercises its independent judgment on whether the recommended rule achieves the agency's regulatory goal, is soundly supported, and is in accordance with policy and legal requirements. Often, FRA varies in some respects from the RSAC recommendation in developing the actual regulatory proposal or final rule. Any such variations would be noted and explained in the rulemaking document issued by FRA. If the working group or RSAC is unable to reach consensus on recommendations for action, FRA will proceed to resolve the issue through traditional rulemaking proceedings.

IV. RSAC Critical Incident Working Group

The Critical Incident Task Force (Task Force) was formed as part of the Medical Standards Working Group, and its task statement (Task No. 09–02) was accepted by RSAC on September 10, 2009. On July 2, 2010, FRA solicited bids for a grant to assess the current knowledge of post-traumatic stress interventions and to advance evidence-based recommendations for controlling the risks associated with traumatic exposures in the railroad setting. On March 11, 2011, FRA awarded the grant to the National Fallen Firefighters

[7] Caverley, N., Cunningham, J.B., & MacGregor, J.M. (2007). Sickness presenteeism, sickness absenteeism, and health following restructuring in a public service organization. *Journal of Management Studies,* 44(2), 304–319.

[8] The Association of American Railroads (AAR) provided a matrix to the RSAC Critical Incident Working Group (CIWG) summarizing key characteristics of programs as submitted by nine member railroads. Several railroads also submitted their current policies regarding critical incidents in the workplace.

[9] Unpaid, job-protected leave under the Family and Medical Leave Act (FMLA) may be available to an employee involved in a critical incident. FMLA leave may be considered where an eligible employee of a covered employer suffers a serious health condition as a result of the incident. For additional guidance on the FMLA, please contact the United States Department of Labor or visit *www.dol.gov.*

Foundation. On May 20, 2011, the Task Force was reformulated into an independent working group, the Critical Incident Working Group (CIWG). Task No. 09–02 (amended to reflect the new independent working group) specifies that the purpose of the CIWG is to provide advice regarding the development of implementing regulations for Critical Incident Stress Plans as required by the RSIA. The Task further assigns the CIWG to do the following: (1) Define what a ''critical incident'' is that requires a response; (2) review available data, literature, and standards of practice concerning critical incident programs to determine appropriate action when a railroad employee is involved in, or directly witnesses, a critical incident; (3) review any evaluation studies available for existing railroad critical incident programs; (4) describe program elements appropriate for the rail environment, including those requirements set forth in the RSIA; (5) provide an example of a suitable plan (template); and (6) assist in the preparation of an NPRM.

The CIWG met on June 24, 2011; September 8–9, 2011; October 11–12, 2011; and December 13, 2011. At the conclusion of the December 2011 meeting, an informal task force was formed to consider the substantive agreements made by the CIWG and to draft regulatory language around those agreements for the CIWG's consideration and vote. The small task force presented the language to the full CIWG for an electronic vote on August 6, 2012. The CIWG reached a consensus on all but one item [10] and forwarded a proposal to the full RSAC on August 21, 2012. RSAC voted to approve the CIWG's recommended text on September 27, 2012 and that recommended text provided the basis for this NPRM. While the CIWG did discuss a general template flow chart of a suitable critical incident stress plan, as recommended by the Grantee's Final Report, a specific model plan that could be adapted and adopted by railroads was not developed by the CIWG. Instead, the CIWG focused its efforts on the definition of critical incident and the program elements essential for the proposed regulatory text.

In addition to FRA staff, the members of the CIWG include the following:

AAR, including members from BNSF Railway Company (BNSF), Canadian National Railway (CN), Canadian Pacific Railway (CP), CSX Transportation, Inc. (CSX), The Kansas City Southern Railway Company (KCS), Norfolk Southern Railway Company (NS), Northeast Illinois Regional Commuter Railroad Corporation (Metra), and Union Pacific Railroad Company (UP);

Amtrak;

APTA, including members from Greater Cleveland Regional Transit Authority; Long Island Rail Road (LIRR); MTA—Metro-North Railroad; and Southern California Regional Rail Authority (SCRRA);

ASLRRA (representing short line and regional railroads);

ATDA;

BLET;

BMWED;

BRC/TCIU;

BRS;

NRCMA; and

UTU.

Staff from DOT's John A. Volpe National Transportation Systems Center attended all of the meetings of the CIWG and contributed to the technical discussions.

FRA has greatly benefited from the open, informed exchange of information during the meetings. In developing this NPRM, FRA relied heavily upon the work of the CIWG.

V. FRA's Approach to Critical Incident Stress Plans

In this NPRM, FRA proposes a definition for the term ''critical incident'' and proposes minimum criteria that must be addressed by each railroad's critical incident stress plan. The proposed regulatory text would allow a railroad to utilize its existing critical incident stress plan as a base, making modifications as necessary to ensure compliance with the minimum standards proposed in this NPRM. The proposed rule would provide each railroad with the opportunity to conform its critical incident stress plan's screening and intervention components to current best practices and standards for evidence-based care. This flexible, standards-based approach allows for innovation and plan modification in response to new scientific developments in this field.

VI. Section-by-Section Analysis

Subpart A—General

Subpart A of the proposal contains the general provisions of the rule, including a statement of the rule's purpose, an application section, a statement of general duty, the critical incident stress plan coverage section, a definitions section that includes the central definition of a ''critical incident,'' and a statement pertaining to penalties. As discussed further in the definitions section, § 272.9, this proposal defines a ''critical incident'' as either—(1) An accident/incident reportable to FRA under 49 CFR Part 225 that results in a fatality, loss of limb, or a similarly serious bodily injury; or (2) A catastrophic accident/incident reportable to FRA under part 225 that could be reasonably expected to impair a directly-involved employee's ability to perform his or her job duties safely.

Section 272.1 Purpose

Proposed paragraph (a) of section 272.1 includes a formal statement of the rule's purpose. Proposed paragraph (b) of this section effectively explains that the proposed rule would set a minimum standard for critical incident stress plans and that the rule would not constrain a railroad from implementing a critical incident stress plan containing provisions beyond those proposed, provided that any additional provisions are not inconsistent with the rule.

Section 272.3 Application

Consistent with Section 410(a), proposed section 272.3 provides that the requirements of this part only apply to each Class I railroad, including the National Railroad Passenger Corporation, each intercity passenger railroad, and each commuter railroad. However, FRA encourages other railroads to implement critical incident stress plans and procedures consistent with this proposed regulation. FRA understands that many Class II and Class III railroads that would not be subject to this rule in fact do have critical incident stress plans in place. FRA notes that critical incident stress plans would be particularly useful for Class II and Class III railroads that are located in geographical locations prone to critical incidents, such as those locations with a large number of highway-rail grade crossings.

Section 272.5 General Duty

This proposed paragraph provides that a railroad subject to this part must adopt a written critical incident stress plan approved by the FRA under § 272.103 and must comply with that plan. Should a railroad subject to this part make a material modification to the approved plan, the railroad is required to adopt the modified plan approved by the FRA under § 272.103 and to comply with that plan as revised. As discussed in the section-by-section analysis of § 272.103 below, a material modification is a substantive change to a plan, not a

[10] Consensus was not reached on the issue of whether a railroad should be required to provide labor organizations' general chairpersons (in addition to the international/national president of the labor organization) with a copy of a railroad's critical incident stress plan.

minor update such as an address or similar change.

Section 272.7 Coverage of a Critical Incident Stress Plan

A large percentage of critical incidents occur where persons intentionally place themselves in front of a moving train (suicides) or drive around highway grade crossing warning signs, shortly before a train approaches, and a train crew is unable to stop the train in time to avoid hitting them. The crewmembers involved may be traumatized after such an event, even though there was nothing they could have done to prevent the collision. The purpose of this proposed rule is to effectuate the intent of the RSIA that train crews will be assisted following such events. After extensive discussions in the CIWG, FRA believes that other railroad-related accidents, such as those that occur in car shops, maintenance-of-way situations, or other non-main-track locations involving railroad operations, should also be covered by this proposed regulation. This extension provides additional benefits, but with little additional cost, as many railroad critical incident stress plans already extend beyond the grade crossing and trespasser context. Thus, as explained below FRA intends in this proposal that railroads make use of these critical incident stress plans to aid directly involved employees in situations other than suicides and trespassers.

To make it clear which railroad employees would be covered by this regulation, FRA is proposing language similar to the RSIA for safety-related employees and similar to existing regulatory language pertaining to railroad employees who perform safety sensitive functions. *See* 49 U.S.C. 20102(4) (defining ''safety-related railroad employee'') and 49 CFR 209.303. As proposed, this part would cover railroad employees subject to the hours of services laws or regulations (49 U.S.C. 21103, 21104, 21105 or 49 CFR Part 228, subpart F), railroad employees that inspect, repair, or maintain railroad right-of-way or structures, and railroad employees who inspect, repair, or maintain locomotives, passenger cars, or freight cars, when directly involved in a critical incident.

Thus, this regulation would include an employee who performs work covered under the hours of service laws or regulations, as well as an employee who performs work that is not typically subject to the hours of service laws, but during a tour of duty, performs work covered by the hours of service laws. This regulation would also cover employees who are responsible for inspecting, repairing, and maintaining the right-of-way of a railroad, such as a person who would be included in the definitions of ''roadway worker'' and ''railroad bridge worker'' found in 49 CFR 214.7. Also included would be railroad employees who inspect, install, repair, or maintain track, roadbed, and signal and communication systems of a railroad and railroad employees who inspect, repair, or maintain locomotives, passenger cars, or freight cars. Paragraph (c) of this section was adjusted from the consensus CIWG language to maintain consistency with 49 CFR Part 209, as suggested during the full RSAC meeting on September 27, 2012. The words ''inspect, install, repair, or'' were added to the original phrase ''[r]ailroad employees who maintain the right-of-way or structures.''

In this manner, FRA proposes to cover other employees besides locomotive engineers and conductors who could be psychologically affected or even traumatized by a critical incident as a result of railroad operations. But, by including a coverage section that would be more limited than the entire field of railroad employees, FRA is reducing the costs to railroads while ensuring that those employees who could most benefit from the regulation are included. For example, a railroad track maintainer is welding track on a siding and sees a train collide with an automobile at a nearby highway-rail grade crossing. Since the track maintainer witnessed the incident while performing his or her job duties arising from railroad operations (maintaining track), as proposed, the maintainer would be covered by the rule. In contrast, a railroad administrative assistant who works in a railroad's headquarters building would not be specifically covered by this proposed regulation if he or she witnesses an injury in the office. Although FRA does not propose to cover office injuries or accidents, FRA encourages railroads to apply their critical incident stress plans in any situation where it could be beneficial to the railroad and its employees, even if this proposed regulation would not cover the particular situation at issue or the specific railroad employee involved.

Section 272.9 Definitions

Proposed § 272.9 defines a number of terms used in this proposed part. A few of these terms have definitions that are similar to, but may not exactly mirror, definitions of the same terms used elsewhere in FRA's regulations. Definitions may differ from those in other FRA regulations because a particular word or phrase used in the definition in another FRA regulation does not have context within this proposed part.

FRA proposes to define the term *accident/incident* to mean an accident/incident that is reportable under FRA's accident/incident reporting regulations at 49 CFR Part 225 (Part 225). While substantially the same as the consensus CIWG definition, ''an accident or incident reportable under part 225 of this chapter,'' the phrasing was altered for clarity to say that accident/incident has the meaning assigned to that term by part 225 of this chapter.

The definitions of *Administrator* and *Associate Administrator* are standard definitions used in other parts of this chapter of the Code of Federal Regulations. Consistent with its use in other parts of FRA's regulations, in this part, the term *Associate Administrator* means the Associate Administrator for Railroad Safety/Chief Safety Officer.

FRA proposes to define *Class I* to have the same meaning as assigned to the term by the regulations of the Surface Transportation Board (49 CFR Part 1201; General Instructions 1–1). This instruction states that for purposes of accounting and reporting, Class I railroads have ''annual carrier operating revenues of $250 million or more after applying the railroad revenue deflator formula shown in Note A.'' Note A states that ''[t]he railroad revenue deflator formula is based on the Railroad Freight Price Index developed by the Bureau of Labor Statistics. The formula is as follows: Current Year's Revenues × (1991 Average Index/Current Year's Average Index).'' This proposed definition of ''Class I'' is similar to the definitions of ''Class I'' found elsewhere in FRA's regulations. *See, e.g.,* 49 CFR 217.4; 219.5; and 244.9. *See also* 49 U.S.C. 20102(1).

FRA proposes to define *commuter railroad* to mean a railroad, as described by 49 U.S.C. 20102(2), including public authorities operating passenger train service, that provides regularly-scheduled passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979. In this manner, FRA proposes to mirror the applicability language in 49 CFR 239.3. *See also* 49 CFR Part 209, Appendix A.

Railroads operated entirely by contract operators, such that the contractor organization itself meets the definition of a Class I railroad, intercity passenger railroad, or commuter railroad, would be subject to this rule. In these circumstances, FRA assumes that the contract operator would utilize the critical incident stress plan developed by the reporting railroad.

FRA proposes to define *critical incident* to reflect the recommendations made by the CIWG. By limiting the definition of ''critical incident'' to a subset of those accidents/incidents that are reportable under Part 225, FRA proposes to exclude from the definition all incidents that do not arise from the operation of the railroad. This language is consistent with the CIWG language, but was modified to replace ''accident/incident'' with ''accident/incident reportable to FRA under part 225 of this chapter'' to enhance the understanding of that term. To clarify FRA's position, FRA provides the following examples. If a train crewmember that is being transported in a van (*i.e.,* the crewmember is in deadhead status and on duty) is directly involved in an accident/incident that results in a fatality, loss of limb, or a similarly serious bodily injury, that crewmember would be included in the scope of this proposed regulation, as that event arose from the operation of a railroad, and would be reportable under Part 225. In contrast, if a deadheading crewmember riding in the van sees a motor-vehicle accident on a public highway that does not otherwise involve the van, this incident would not be an accident/incident arising from railroad operations nor would it be reportable under Part 225, and thus would be excluded from the scope of the proposed definition of ''critical incident.'' While a reportable accident/incident could cover many incidents that relate to railroad operations, this proposed definition of ''critical incident'' includes only an accident/incident that results in a fatality, loss of limb, or a similarly serious bodily injury or a catastrophic accident/incident reportable to FRA under part 225 of this chapter that could be reasonably expected to impair a directly-involved employee's ability to perform his or her job duties safely. Accordingly, minimal injuries in the railroad workplace would not be included in the scope of this proposed definition. Similarly, as explained below, ''near miss'' scenarios (*i.e.,* situations which when seen in hindsight could have resulted in an accident, but did not) would not be included.

Paragraph (1) of the definition is designed to reflect the presumed statutory intent to include an event that results in a fatality, loss of limb, or a similarly serious bodily injury. This element is intended to encompass the typical events that occur along the railroad right-of-way, involving highway-rail grade crossing accidents and trespasser incursions that could affect a directly-involved employee. This element also includes events resulting from railroad operations such as those in a railroad shop where an employee witnesses a workplace accident that results in another person's death or extreme injury.

Paragraph (2) of the definition expands the definition beyond an accident/incident leading to another person's actual physical harm, to include a catastrophic accident/incident reportable to FRA under part 225 of this chapter that could be reasonably expected to impair a directly-involved employee's ability to perform his or her job duties safely. FRA understands this paragraph to mean an accident/incident that had the potential for catastrophic consequences (*i.e.,* could have caused a fatality, loss of limb, or other similarly serious bodily injury), that could be reasonably expected to impair a directly-involved employee's ability to perform his or her job duties safely. In this manner, a critical incident is intended to include an event, such as a serious derailment or accident that *could have* caused a fatality, loss of limb, or similarly serious bodily injury, but fortunately did not. The following examples are meant to clarify the meaning of the definition.

Example 1: A fuel tanker truck is blocking a grade crossing. The train crew cannot stop their approaching train in enough time to avoid striking the tanker truck. Although the accident could have caused serious injury or death to the driver of the tanker truck and/or to the train crew, it is learned later that the tanker truck was unoccupied and the tanker truck was not loaded with fuel. The accident/incident causes damage to the locomotive, the tanker truck, and nearby track structure, causing sufficient damage to exceed the dollar reporting threshold under 49 CFR 225.19(c) and thereby making the accident reportable under 49 CFR 225.11. This type of accident/incident had the potential for catastrophic consequences (*i.e.,* could have caused a fatality, loss of limb, or other similarly serious bodily injury), that could be reasonably expected to impair a directly-involved employee's ability to perform his or her job duties safely. Thus, this proposed rule intends to cover the employees involved in this type of event as the event would be considered a ''critical incident.''

Example 2: A train derails, and railroad employees who have been working alongside the track are in danger of being seriously hurt, but in fact, the employees are able to run to safety and avoid being harmed by the derailing equipment. The employees' legitimate, reasonable fear for their own safety may cause a negative stress-reaction that could be reasonably expected to impair a directly-involved employee's ability to perform his or her job duties safely. Therefore the event of running to save one's own life is included in the term ''critical incident'' and those directly involved employees are covered by this proposed rule. In contrast, if several freight cars derail, but there is no involvement of the train crew or a high risk of serious injury, that type of event will not fall under the definition of a critical incident.

Additionally, this proposed rule does *not* directly apply to ''near miss'' scenarios. A ''near miss'' is an event, seen in hindsight, in which an accident could have occurred, but was narrowly avoided. For example, an automobile is rendered inoperable on the railroad tracks at a highway-rail grade crossing, but the automobile is able to get out of the way of the oncoming train, so that a collision is averted. While a ''near miss'' event could cause a negative stress-reaction in the train crew in the example above, research demonstrates that such reaction would typically only occur in situations where, for example, an individual had been involved in a prior similar incident which had catastrophic consequences or there were other issues at play. FRA believes that such ''near miss'' issues should be handled by each railroad on an individual basis, as the applicable science does not appear to support including ''near miss'' scenarios in the rule generally. Although FRA requests comment on all aspects of this proposed rule, FRA specifically requests comment on this proposed definition of ''critical incident.'' In particular, FRA requests comment as to whether the proposed definition should contain explicit language excluding ''near miss'' scenarios.

FRA proposes that a *directly-involved employee* mean a railroad employee covered in proposed § 272.7 who falls into any of three stated subcategories: (1) Whose actions are closely connected to the critical incident; (2) who witnesses the critical incident in person as it occurs or who witnesses the immediate effects of the critical incident in person; or (3) who is charged to directly intervene in, or respond to, the critical incident (excluding railroad police officers or investigators who routinely respond to and are specially trained to handle emergencies). The first subcategory would include an employee covered under § 272.7 whose actions are closely connected to the critical incident, such as the locomotive engineer or the conductor who operates the train that hits a car or pedestrian at a crossing. The second subcategory is an employee covered under § 272.7 who is a witness to the critical incident, such as an employee who is working alongside the track when the highway-rail grade crossing collision occurs, and either sees the incident happen or

comes upon the casualties of the incident. The phrase ''witnesses . . . in person'' is intended to exclude employees who only hear about the accident/incident (such as over the radio) and are not otherwise directly involved in the accident/incident. The third subcategory would include an employee covered under § 272.7 who is charged to directly intervene in, or respond to, the highway-rail grade crossing accident/incident, such as craft and supervisory employees who are called out to the scene. In this way, a first line or second line railroad supervisor, or a shop or other railroad employee who responds to a critical incident, is able to seek counseling and guidance as outlined in the critical incident stress plan if needed. Consistent with the intent of the CIWG, specific regulatory language was added to clarify that this definition is not intended to cover non-railroad emergency responders, such as emergency medical technicians, local police officers, or local firefighters. Nor is the proposed rule intended to cover railroad police officers and railroad investigators who routinely respond to such incidents and are specially trained to handle such emergency matters.

FRA proposes to define *FRA* as the Federal Railroad Administration, 1200 New Jersey Ave. SE., Washington, DC 20590.

FRA proposes that *home terminal* mean an employee's regular reporting point at the beginning of the tour of duty.

FRA proposes that *intercity passenger railroad* mean a railroad, as described by 49 U.S.C. 20102(2), including public authorities operating passenger train service, which provides regularly-scheduled passenger service between large cities. In this manner, FRA proposes to mirror the applicability language in 49 CFR 239.3. *See also* 49 CFR Part 209, Appendix A.

Section 272.11 Penalties

Consistent with other FRA regulations, the proposed rule lists the penalties that may be imposed for noncompliance. This section provides minimum and maximum civil penalty amounts determined in accordance with 49 U.S.C. 21301 and 21304 and the Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101–410, 104 Stat. 890, 28 U.S.C. 2461, note, as amended by Section 31001(s)(1) of the Debt Collection Improvement Act of 1996, Public Law 104–134, 110 Stat. 1321–373, April 26, 1996.

Subpart B—Plan Components and Approval Process

This subpart contains the basic components of the critical incident stress plan required by this proposed rule and the elements of the approval process. This proposed rule affords railroads considerable discretion in the administration of their critical incident stress plans.

Section 272.101 Content of A Critical Incident Stress Plan

The objective of the regulation is to allow each railroad to utilize its existing critical incident stress plan (if any) as a base, making modifications as necessary to ensure compliance with the minimum standards proposed and to enhance conformity of the plan's screening and intervention components to current best practices and standards for evidence-based care. Each plan to be presented to FRA for review and approval should document that the railroad has taken sufficient steps to establish how each element of the plan can be satisfactorily executed in covered critical incidents.

Proposed § 272.101 would require that a railroad's critical incident stress plan contain at least provisions for carrying out the objectives described in paragraphs (a)–(g) of the section. Among these designated objectives are allowing a directly-involved employee to obtain relief from the remainder of the tour of duty, providing for the directly-involved employee's transportation to the home terminal (if applicable), and offering a directly-involved employee appropriate support services following a critical incident. The specific details of each plan may vary, but the plans must be consistent with this section.

Under proposed paragraph (a) of the section, the plan must provide for ''[i]nforming each directly-involved employee as soon as practicable of the stress relief options that he or she may request[.]'' Paragraph (a) would require that a critical incident stress plan contain a provision that the railroad will notify directly-involved employees as soon as it is practicable after the critical incident in question that they may choose to be relieved from the remainder of the tour of duty. Although all employees covered under § 272.7 should already be cognizant of the opportunity to request relief following a critical incident, directly-involved employees must be reminded of this option for relief as soon as it is practicable after the occurrence of an incident. FRA's intent with this provision is to emphasize that an employee's opportunity for relief from service must be effectively communicated to covered employees. Of course, if a covered employee has been seriously injured and has already been relieved from duty for the remainder of the tour, it is not necessary to notify the employee of the opportunity to be relieved.

FRA recommends that a typical plan specify an appropriate time to notify affected employees of the option to seek relief, such as, ''employees must be notified at the incident site of their opportunity to be relieved.'' This reminder of the option to seek relief must be made during the early communications between the employee and the dispatcher and/or railroad management, before the employee has already continued on his or her tour of duty or much time has elapsed.

Under proposed paragraph (b) of the section, the plan must provide for ''[o]ffering timely relief from the balance of the duty tour for each directly-involved employee, after the employee has performed any actions necessary for the safety of persons and contemporaneous documentation of the incident.'' In accordance with proposed paragraph (a), FRA would expect directly-involved employees to be informed of their opportunity for relief from service. Consistent with that notification, in accordance with proposed paragraph (b), employees that choose to avail themselves of that opportunity for relief must be relieved of duty in a timely fashion. A directly-involved employee may have to perform certain actions following a critical incident, such as rendering aid to injured persons, tending to important safety issues, securing the train, notifying appropriate personnel, and assisting in documenting the circumstances of the critical incident. FRA recommends that critical incident stress plans outline an instructive protocol that explains what tasks and responsibilities the employee is expected to perform following a critical incident. For example, this instructive protocol might establish the proper points of contact and other communication procedures (both within the organization and official emergency responders), identify tasks that must be completed, and describe how to evaluate the incident.

While it may not be feasible to relieve employees within the first few minutes following a critical incident, relief should be provided as soon as possible. Directly-involved employees should be relieved in an efficient manner, without jeopardizing the safety of persons (themselves, other employees, and any victims of a critical incident, whether or

not they are employees). If the directly-involved employees are waiting for an essential railroad official or a coroner to arrive on the scene, relief may not be feasible until such official arrives, but directly-involved employees should not have to remain at a critical incident site for any time beyond what is necessary. FRA recognizes that bad weather or other circumstances could delay the safe transportation of employees. However, directly-involved employees must be relieved without delay to the extent practicable.

FRA notes that not every employee will take advantage of the relief that must be offered. However, each plan must allow for the directly-involved employee to request relief even if the employee initially stated after the event that he or she wished to continue on with the tour of duty. FRA expects the option to seek relief to remain available for the duration of the directly-involved employee's tour of duty.

Finally, there are some instances where the immediate relief of an employee is not the most constructive aid. Many employees simply want to get to their home terminal without having to wait for the train to be re-crewed. Although relief must be offered to all directly-involved covered employees, and the railroad must not deny a request for relief, this part does not require an employee to avail him or herself to this option. If leave from the tour of duty were mandated by this part, it could hinder some instances where an employee's continuation of duty serves as a coping mechanism, which has been shown, at least in some instances, to provide certain benefits to the employee. However, FRA does not intend for this option to supersede a railroad's authority to decide that an employee should not continue his or her tour of duty and must be relieved for safety-reasons, for the well-being of the employee, or for other reasons.

Under proposed paragraph (c) of the section, the plan must provide for ''offering timely transportation to each directly-involved employee's home terminal, if necessary.'' As outlined in proposed paragraph (b), FRA intends to convey with the proposed term ''timely relief'' that the directly-involved employee must be relieved as soon as practicable following the critical incident, provided that all essential tasks have been performed. Similarly, FRA understands that it may take some time to arrange and provide transportation to an employee's home terminal. Railroads must make a good faith, reasonable effort to transport directly-involved employees safely from the incident site as soon as possible after their request for such relief, with the understanding that this transportation may not be immediate (a directly-involved employee may need to wait for a van to arrive). Directly-involved employees must not, however, be required to remain at the critical incident site for any time beyond what is necessary.

Under proposed paragraph (d) of the section, the plan must provide for ''offering counseling, guidance, and other appropriate support services to each directly-involved employee.'' For purposes of this paragraph, the statutory term ''appropriate support services'' means early and proximal intervention according to evidence-based standards. This interpretation allows providers to adapt their work as necessary, without any single, limiting approach being required.

The railroad's plan should contain elements that have been demonstrated to help mitigate, attenuate, and limit stressful impacts as well as provide intervention and treatment after the fact. The phrase ''other appropriate support services'' is designed to be flexible to account for new approaches. Research shows that five basic principles hold a demonstrated positive impact on resiliency and resolution: (1) Restoring a sense of safety; (2) calming anxiety and agitation; (3) enhancing self-efficacy; (4) building connectedness; and (5) facilitating hope.[11] As suggested by the Grantee's final report, railroad plans should consider an evidence-based approach to early assistance designed to facilitate resiliency and establish a basis for subsequent intervention based on systematic screening and stepped care employing evidence-based treatment as indicated. A series of well researched, public domain resources is available to support each step of early intervention and stepped care, including the following: (1) Several approaches have been developed around the principles of ''psychological first aid,'' evidence-informed approaches to early interactions with those affected by potentially traumatic events intended to facilitate these basic principles (*e.g., Psychological First Aid,* a manual on early assistance developed by the National Center for Post Traumatic Stress Disorder (NCPTSD) and the Substance Abuse and Mental Health Services Administration (SAMHSA);[12] *Curbside Manner: Stress First Aid for the Street* from the National Fallen Firefighters Foundation *Everyone Goes Home* project; *Mental Health First Aid* from the National Council for Behavioral Health Centers); (2) *Trauma Screening Questionnaire,* a 10-item quick screen with documented sensitivity, specificity, and efficiency to identify those for whom further assessment and treatment may be indicated;[13] and (3) *Web-based approaches to clinician training* to enable journeyman providers open access at little or no cost to training and consultation in evidence-based treatments for PTSD, anxiety, and depression.[14]

Taken together, these resources provide a foundation for the adaptation of any analogous existing railroad programs to meet current standards of care. For example, programs for fire and emergency medical services personnel have been substantially redesigned to be more consistent with empirical evidence respecting variability in individual reactivity and resilience; organizational roles in preparation, response, and recovery; and implementation of standards respecting screening, assessment, and specialty care.[15] Similar adaptations are underway in other workplace settings.[16]

FRA notes that the specific intervention element of ''critical stress debriefing'' in the scientific literature is contraindicated, as it has not been shown to be effective and may actually be harmful in some instances. ''Critical stress debriefing'' is an intervention

[11] Hobfoll, S.E., Watson, P.J., Bell, C.C., *et al.* (2007). Five essential elements of immediate and mid-term mass trauma intervention: Empirical evidence. *Psychiatry,* 70(4), 283–315.

[12] Brymer, M., Jacobs, A., Layne, C., Pynoos, R., Ruzek, J., Steinberg, A., Vernberg, E, & Watson, P. (2006). *Psychological first aid: Field operations guide* (2d. Ed.). National Center for PTSD. Available online at *http://www.ptsd.va.gov/professional/manuals//manual-pdf/pfa/PFA_2ndEditionwithappendices.pdf.* Accessed January 2, 2013.

[13] Brewin, C.R., Rose, S., Andrews, B., Green, J., Tata, P., McEvedy, C., Turner, S., & Foa, E.B. (2002). Brief screening instrument for post-traumatic stress disorder. *British Journal of Psychiatry,* 181, 158–162.

[14] National Crime Victims Center, Trauma-Focused Cognitive-Behavioral Therapy (2005) (Web training site accessible at *http://tfcbt.musc.edu*). National Crime Victims Center, Cognitive Processing Therapy (2009) (Web training site accessible at *https://cpt.musc.edu*).

[15] Gist, R. & Taylor, V.H. (2008). Occupational and organizational issues in emergency medical services behavioral health. *Journal of Workplace Behavioral Health,* 23(3), 309–330. Gist, R., & Taylor, V.H. (2009). Prevention and intervention for psychologically stressful events. In R. Bass, J.H. Brice, T.R. Delbridge, & M.R. Gunderson (Eds.), *Medical Oversight of EMS* (Vol. 2, pp. 386–396). Dubuque, IA: Kendall/Hunt Publishing.

[16] VandePol, B., Labardee, L., & Gist, R. (2006). The evolution of Psychological First Aid. *Journal of Employee Assistance,* 36, 18–20. VandePol, B., Labardee, L., Gist, R., & Braverman, M. (2006). Strategic specialty partnerships: Enabling the EAP for evidence informed best practices in workplace crisis response. In R.P. Maiden, R. Paul, & C. Thompson (Eds.), *Workplace disaster preparedness, response, and management,* pp. 119–131.

approach that requires a participant, through a formal interview process, to relive and discuss the traumatic experience, shortly following a traumatic event. The intent of ''critical stress debriefing'' is to resolve the emotional aftermath of the incident. According to current research, however, ''critical stress debriefing,'' the central intervention of most critical incident programs, shows no preventive efficacy and well-controlled studies suggests risk of impaired recovery for some participants, especially the most severely symptomatic.[17] Thus, FRA interprets the RSIA requirement in Section 410(a) that critical incident stress plans ''provide for debriefing, counseling, guidance, and other appropriate services'' to require services that provide effective, appropriate guidance and support, rather than requiring a rigid application of ''critical stress debriefing'' intervention methods. FRA expects that the questioning and investigatory purposes involved in ''debriefing'' will still occur as part of any response to a critical incident, but that the specific intervention element of ''critical stress debriefing'' will not be a component of a railroad's plan as an appropriate support service.

Further, by including ''appropriate support services'' in the regulatory text, mirroring the statutory text, it is not FRA's intent to assess or approve the clinical quality of services or providers. However, if a railroad's plan proposes to utilize a method that is shown to be contraindicated and may cause harm, the plan will not be approved. For example, if a plan requires ''critical stress debriefing,'' FRA will disapprove the plan, as this would not be an ''appropriate support service.'' While volunteer ''peer-to-peer'' support services and psychoeducation services may be helpful, they lack direct empirical demonstrations of efficacy and, in some settings, have also raised concern.[18] Thus, if a peer support program is utilized, it should follow specific protocols: it should complement but not supplant professional roles, the definition of roles and boundaries should be emphasized, and the relationship to occupational medicine and/or EAP should be specified in the plan.

Under proposed paragraph (e) of the section, the plan must provide for ''[p]ermitting relief from the duty tour(s) subsequent to the critical incident, for an amount of time to be determined by each railroad, if requested by a directly-involved employee as may be necessary and reasonable[.]'' In this provision, FRA proposes that railroad plans address how much additional time off an employee affected by a critical incident may receive at the employee's option and what procedures must be followed in that event. Many railroads currently offer relief from the immediate tour of duty along with transportation to the employee's home terminal, then provide up to three days off along with consultation with an EAP, if any, and/or occupational medicine staff. This section would provide directly-involved employees with an opportunity, away from the railroad environment, to cope with having experienced a critical incident. This is an amount of time to be determined by each railroad to allow for a reasonable amount of rest and time following a critical incident (without necessitating a clinical diagnosis). This proposed part is neutral on the amount of additional relief a railroad should permit beyond the tour of duty during which the critical incident occurred. The specific language in this proposal was modified from the RSAC-approved language to include a qualifier on the requirement: ''for an amount of time to be determined by each railroad . . . as may be necessary and reasonable'' to add context and clarity on the intent of the provision.

Under paragraph (f) of the section, the plan must provide for ''[p]ermitting each directly-involved employee such additional leave from normal duty as may be necessary and reasonable to receive preventive services or treatment related to the incident or both.'' Beyond an initial ''coping'' period, as specified in paragraph (e), additional time must be provided to affected employees for preventive services and treatment as needed for the adverse effects of the critical incident. Many railroads' plans currently permit leave in addition to the duty tour(s) subsequent to the critical incident discussed in paragraph (e) if a clinical diagnosis supports the need to fulfill the employee's request. Paragraph (f) reinforces that each railroad's critical incident stress plan must provide for additional relief to be provided as necessary and reasonable to receive the preventive services or treatment related to the incident, as required by the RSIA.

Under proposed paragraph (g) of this section, the plan must provide for ''[a]ddressing how the railroad's employees operating or otherwise working on track owned by or operated over by a different railroad will be afforded the protections of the plan.'' This proposal was not discussed specifically in the CIWG, but was added to ensure that situations where railroad employees operate or otherwise work on track owned by or operated over by a different railroad are addressed. FRA recognizes that there may be instances where a critical incident occurs while one railroad's employees are operating over another railroad's track. For example, if track maintainers employed by Railroad A witness a critical incident involving Railroad B's train, both Railroad A's track maintainers and Railroad B's train crew must be covered by an approved critical incident stress plan. In this example, provided that this proposed regulation applies to Railroad A, Railroad A's employees would logically be covered by Railroad A's critical incident stress plan, even if the critical incident did not specifically occur with Railroad A's equipment. As such, each railroad's plan must address how the critical incident stress plan would be implemented to account for situations where multiple railroads are involved.

Section 272.103 Submission of Critical Incident Stress Plan for Approval by FRA

FRA encourages railroads to which this part would apply and labor organizations representing employees to whom this part would apply to discuss the railroad's proposed critical incident stress plan prior to formal submission of the plan to FRA for approval. This collaborative discussion should help ensure that plans are drafted and adapted to meet the needs of all potentially affected by the plan. This proposed section envisions that at a minimum, potentially-affected employees would have an opportunity to comment and to discuss the contents of the plan at an early stage, prior to implementation. Because collaborative efforts will likely benefit railroad employees and railroad management, each railroad required to submit a critical incident stress plan should aspire to consult with, employ good faith, and use its best efforts to reach agreement with all of its covered employees on the contents of the plan. However, such endeavors would not be required by this proposed regulation.

In paragraphs (b) and (c) of this section, the railroad must provide the international/national president of any non-profit employee labor organization representing a class or craft of the railroad's employees subject to this part with a copy of the railroad's critical

[17] McNally, R.J., Bryant, R.A., & Ehlers, A. (2003). Does early psychological intervention promote recovery from posttraumatic stress? *Psychological Science in the Public Interest,* 4(2).

[18] Lohr, J.M., Hooke, W., Gist, R., & Tolin, D.F. (2003). Novel and controversial treatments for trauma-related stress disorders. In S.O. Lilienfeld, S.J. Lynn, & J.M. Lohr (Eds.), *Science and pseudoscience in clinical psychology* (pp. 243–272). New York: Guilford Press.

incident stress plan and any material modification thereof. This requirement is intended to be consistent with other proposed and final FRA regulations, such as the NPRM on training standards (77 FR 6412, Feb. 7, 2012) and the final rule on conductor certification (76 FR 69802, Nov. 9, 2011). FRA encourages the union officials to distribute the notice broadly within each organization, so that all covered employees are made aware of the elements of the railroad's plan.

FRA notes that some members of the CIWG expressed their wish that this part require each railroad to notify not only the international/national president, but also the general chairpersons, of any non-profit employee labor organization representing a class or craft of the railroad's employees subject to this part. The issue of whether to require notification of the general chairpersons (in addition to the international/national president) was a point of contention in the CIWG, and a consensus was not reached. Labor representatives argued that general chairpersons are the designated collective bargaining representatives, and in many cases, the international/national presidents do not have standing on railroad property. For these reasons, labor representatives believe notifications should be sent to the general chairpersons because each plan is an on-property issue unique to each railroad and because a railroad would not be unduly burdened by contacting the relevant general chairpersons.

In response, railroad representatives and AAR argue that nothing in the RSIA requires that each railroad send a copy of its plans to each general chairperson, and they do not want to set a precedent that might be cited in a future rulemaking. Prior FRA regulations have required informing only the international/national presidents, rather than general chairpersons. Railroad and AAR representatives expressed the view that it would be less burdensome for each railroad to notify a single person at each organization, who can then pass along the information to the most relevant persons. There are many general chairpersons in each organization,[19] which would add to the cost of compliance of the proposed rule, if FRA proposed to require each railroad to notify general chairpersons directly. FRA notes that the recent publication of the System Safety Program NPRM, 77 FR 55372 (Sept. 7, 2012), includes a consultation requirement, in proposed § 270.102(b)(4), and ''a service list containing the names and contact information for the international/national president and general chairperson of any non-profit employee labor organization representing a class or craft of the railroad's directly affected employees.'' The RSIA mandate for system safety and risk reduction programs specifically required consultation. The RSIA mandate for critical incident stress plans does not. FRA seeks comments on this issue.

The proposal contemplates that railroads may submit existing critical incident stress plans to FRA for approval that have previously been established through any applicable collective bargaining agreement. However, FRA proposes that, in order to satisfy the eventual final rule, any preexisting critical incident stress plan would have to contain all prescribed elements of the plan as set forth in the regulation, and such a plan would have to be submitted to FRA pursuant to this section for review. Thus, FRA would approve critical incident stress plans previously vetted through the collective bargaining agreement process, provided that those plans meet the criteria specified in the final regulation. As proposed, FRA's regulation would constitute a minimum standard and would not negate any higher standards set by a collective bargaining agreement.

Under paragraph (e) of proposed § 272.103, ''[a]fter FRA's initial approval of a railroad's critical incident stress plan, if the railroad makes a material modification of the plan, the railroad shall submit to FRA for approval a copy of the plan as it has been revised to reflect the material modification within 30 days of making the material modification.'' The plan should be reviewed periodically for effectiveness and updated when it is prudent to do so. When material modifications are made, the railroad must submit the materially modified plan to FRA for approval. ''Material modification'' refers to substantive changes made to the plan, and is not intended to refer to minor updates, such as address modifications, or the like.

Under paragraph (f) of proposed § 272.103, ''[u]pon FRA approval of a railroad's critical incident stress plan and any material modification of the critical incident stress plan, the railroad must make a copy of the railroad's plan and the material modification available to the railroad's employees identified in § 272.7.'' This paragraph is intended to ensure that all relevant employees of the railroad are aware of the railroad's critical incident stress plan and the specific requirements of the plan. For a railroad to implement its critical incident stress plan so as to fulfill the objective of the plan, which is to aid employees who experience critical incidents, all relevant employees of the railroad, from managers at headquarters to employees at the local level, must be made aware of the railroad's critical incident stress plan and the specific requirements of the plan and must be trained on how to implement the requirements of the plan relevant to the employee.[20]

Under paragraph (g) of proposed § 272.103, ''[e]ach railroad subject to this part must make a copy of the railroad's plan available for inspection and reproduction by the Federal Railroad Administration.'' This section addresses FRA's specific authority to inspect and enforce the proposed regulation, as is stated in other FRA regulations.

Section 272.105 Option To File Critical Incident Stress Plan Electronically

This section proposes the option for each railroad to which this part applies to file any plan submissions electronically. FRA intends to create a secure document submission site and will need basic information from each railroad before setting up the user's account. The points of contact information in proposed paragraph (b) are necessary in order to provide secure access.

Proposed paragraphs (c), (e), and (f) are intended to allow FRA to make the greatest use of an electronic database. It is anticipated that FRA may be able to approve or disapprove all or part of a critical incident stress plan and generate automated notifications by email to a railroad's points of contact. Thus, FRA wants each point of contact to understand that by providing any email addresses, the railroad is consenting to receive approval and disapproval notices from FRA by email. Railroads that allow notice from FRA by email would gain the benefit of receiving such notices quickly and efficiently.

Proposed paragraph (d) is necessary to provide FRA's mailing address for those railroads that need to submit something in writing to FRA. For those railroads, requesting electronic submission, the

[19] For example, one organization for a Class I railroad has as many as 40 general chairpersons. AAR states that on BNSF, CSX, NS, and UP, there are 154 general chairpersons. During the RSAC process, AAR indicated its intent to provide cost estimates related to this issue during this NPRM's comment period.

[20] FRA intends that any training requirements for implementing these plans would be covered by the new training regulation, 49 CFR Part 243. FRA would expect all railroad plans to provide for training to employees and supervisors concerning what each covered employee should do following a critical incident.

list of information specified in proposed paragraph (b) is required. Otherwise, those railroads that choose to submit printed materials to FRA must deliver them directly to the specified address. Some railroads may choose to deliver a CD, DVD, or other electronic storage format to FRA rather than requesting access to upload the documents directly to the secure electronic database; although this will be an acceptable method of submission, FRA would encourage each railroad to utilize the electronic submission capabilities of the system. Of course, if FRA does not have the capability to read the type of electronic storage format sent, FRA can reject the submission.

Finally, FRA is considering whether to mandate electronic submission. FRA is strongly leaning toward finalizing this option because the agency will be devoting significant resources to develop the electronic submission process. It will be more costly for the agency to develop the electronic submission process and have to upload written submissions into the electronic database itself. FRA expects that there are few, if any, railroads who do not have Internet access and an email address, or who cannot otherwise meet the minimum requirements for electronic submission. FRA requests comments on whether mandatory electronic submission is objectionable to any railroad.

Appendix A to Part 272—Schedule of Civil Penalties

In the final rule, Appendix A will contain a detailed penalty schedule similar to that FRA has issued for most of its existing rules. Because such penalty schedules are statements of policy, notice and comment are not required prior to their issuance. *See* 5 U.S.C. 553(b)(3)(A). Nevertheless interested parties are invited to submit their views on what penalties may be appropriate.

VII. Regulatory Impact and Notices

A. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

This proposed rule has been evaluated in accordance with existing policies and procedures and determined to be non-significant under both Executive Orders 12866 and 13563 and DOT policies and procedures. *See* 44 FR 11034, February 26, 1979. FRA has prepared and placed in the docket a Regulatory Impact Analysis (RIA) addressing the economic impact of this proposed rule. As part of the RIA, FRA has assessed the quantitative costs and benefits from the implementation of this proposed rule.

The purpose of the proposed rule is to enhance safety by mandating that certain railroads (each Class I railroad, intercity passenger railroad, and commuter railroad) have a critical incident stress plan intended to mitigate the long-term negative effects of critical incidents upon railroad employees. Specifically the proposal would help ensure that every railroad employee covered by the rule who works for these railroads and who is affected by a critical incident can receive the support services needed.

The Railroad Safety Advisory Committee (RSAC) formed a working group to provide advice and recommendations on the regulatory matters involving critical incident stress plans.[21] Based on both RSAC meetings and discussions with the rail industry, FRA's analysis in the RIA assumes that all railroads affected by the proposed rule currently have policies that include a critical incident stress plan, thereby reducing the costs of compliance associated with the proposed rule. FRA requests comments on this assumption.

FRA's analysis follows DOT's revised ''Guidance on the Economic Value of a Statistical Life in US Department of Transportation Analyses,'' published in March 2013. Based on real wage growth forecasts from the Congressional Budget Office, DOT's guidance estimates that there will be an expected 1.07 percent annual growth rate in median real wages over the next 20 years (2013–2033) and assuming an income elasticity of 1.0 adjusts the Value of Statistical Life (VSL) in future years in the same way. Real wages represent the purchasing power of nominal wages. VSL is the basis for valuing avoided casualties. FRA's analysis further accounts for expected wage growth by adjusting the taxable wage component of labor costs. Other non-labor hour based costs and benefits are not impacted. FRA estimates that the costs of the proposed rule for a 20-year period would total $1.9 million, with a present value (PV, 7%) of $1.3 million and (PV, 3%) of $1.6 million. In estimating these compliance costs, FRA included costs associated with training supervisors on how to interact with railroad employees who have been affected by a critical incident, additional costs associated with greater use of Employee Assistance Programs, and costs associated with the submission of critical incident stress plans to FRA. FRA also estimates that the quantifiable benefits of the proposed rule for a 20-year period would total $2.6 million, with a present value (PV, 7%) of $1.5 million and (PV, 3%) of $2.0 million. FRA is confident that potential benefits of the proposed rule would exceed the total costs.

TABLE 1—20-YEAR COSTS FOR PROPOSED RULEMAKING

	Present value (7 percent)	Present value (3 percent)
Training	$1,135,685	$1,342,391
Submission of Critical Incident Stress Plans for approval by FRA	114,266	153,415
EAP Specialist	87,879	119,713
Total	1,337,830	1,615,519

The RIA also explains the likely benefits of this proposed rule, providing quantified estimates of the benefits where feasible. The proposed rule contains minimum standards for employee training, leave, counseling, and other support services. These standards would help create benefits by providing employees with knowledge, coping skills, and services that would help them: (1) Recognize and cope with symptoms of normal stress reactions that commonly occur as a result of a critical incident; (2) reduce their chance of developing a disorder such as depression, Post-Traumatic Stress Disorder (PTSD), or Acute Stress Disorder (ASD) as a result of a critical

[21] This RSAC working group reached consensus on all items but one: whether a railroad should be required to provide its critical incident stress plan to the general chairperson of a labor organization, in addition to the organization's international/national president.

incident; and (3) recognize symptoms of psychological disorders that sometimes occur as a result of a critical incident and know how to obtain prompt evaluation and treatment of any such disorder, if necessary.

Specifically, FRA anticipates that implementation of the proposed rule would yield benefits by reducing long-term healthcare costs associated with treating PTSD, ASD, and other stress reactions; and costs that accrue either when an employee is unable to return to work for a significant period of time or might leave railroad employment due to being affected by PTSD, ASD, or another stress reaction.

The majority of the quantifiable benefits identified are associated with railroad employee retention and a reduction of long-term healthcare costs associated with PTSD cases that were not treated appropriately after a critical incident. FRA estimates that one-half of one percent of railroad employees who develop PTSD exit the railroad industry. According to this estimate, one railroad employee would leave the railroad industry due to PTSD every ten years. If an employee is unable to return to work, the railroad not only loses an experienced employee, but also must train a new employee. FRA expects that the proposed rule would decrease the number of new employees that have to be trained to backfill for those who leave the railroad industry due to PTSD, ASD, or other stress reactions, as early treatment for potential PTSD cases following exposure to a critical incident by reducing both the likelihood of developing and the duration of PTSD or another stress reaction. The proposed rule would also increase the early identification and treatment of PTSD thus reducing long-term healthcare costs. Overall, FRA finds that the value of the anticipated benefits would justify the cost of implementing the proposed rule.

TABLE 2—20-YEAR BENEFITS FOR PROPOSED RULEMAKING

	Present value (7 percent)	Present value (3 percent)
Reduction in Long-term Healthcare Costs	$1,445,288	$1,953,784
Retention of Employees (reduced backfilling costs)	60,334	69,764
Total	1,505,622	2,023,548

B. Initial Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) and Executive Order 13272 (67 FR 53461; August 16, 2002) require agency review of proposed and final rules to assess their impact on small entities. FRA developed the proposed rule in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) to ensure potential impacts of rules on small entities are properly considered.

The Regulatory Flexibility Act requires an agency to review regulations to assess their impact on small entities. An agency must prepare an initial regulatory flexibility analysis (IRFA) unless it determines and certifies that a rule, if promulgated, would not have a significant economic impact on a substantial number of small entities (SEIOSNOSE). FRA has not determined whether this proposed rule would have a SEIOSNOSE. Therefore, FRA is publishing this IRFA to aid the public in commenting on the potential small business impacts of the requirements in the proposed rule. FRA invites all interested parties to submit data and information regarding the potential economic impact on small entities that would result from the adoption of the proposed rule. FRA will consider all comments received in the public comment process when making a final determination.

The proposed rule would apply to each Class I railroad, intercity passenger railroad, and commuter railroad as defined by this part. Based on information currently available, FRA estimates that no small entities would be required to create a critical incident stress plan, and therefore, no small business would be negatively impacted by the proposed rule. FRA estimates that the total cost of the proposed rule for the railroad industry over a 20-year period would be $1,943,565, with a present value (PV, 7) of $1,337,830 and (PV, 3) of $1,615,519. Based on information currently available as noted above, FRA estimates that zero percent of the total railroad costs associated with implementing the proposed rule would be borne by small entities. The total regulatory cost in the RIA for this proposed rule is the basis for the estimates in this IRFA, and the RIA has been placed in the docket for public review. It provides extensive information about the total costs of the proposed regulation.

Based on the railroad reporting data from 2011, there are 719 Class III railroads. Due to the applicability of the proposed rule, however, none of these railroads would be impacted. The railroad reporting data also shows that there are 30 intercity passenger and commuter railroads.[22] Although two of these railroads are considered small entities, they do not fall within the proposed rule's definition of a ''commuter railroad,'' which means a railroad, as described by 49 U.S.C. 20102(2), including public authorities operating passenger train service, that provides regularly-scheduled passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979. Therefore FRA finds that there are 28 intercity passenger and commuter railroads that will incur additional costs by the proposed rule. FRA requests comments on the finding that no small entities would be impacted by this proposed regulation.

In accordance with the Regulatory Flexibility Act, an IRFA must contain:

(1) A description of the reasons why the action by the agency is being considered.

(2) A succinct statement of the objectives of, and legal basis for, the proposed rule.

(3) A description—and, where feasible, an estimate of the number—of small entities to which the proposed rule will apply.

(4) A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirements and the types of professional skills necessary for preparation of the report or record.

[22] This total includes the Alaska Railroad, which is categorized as a Class II railroad.

(5) An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule.

1. Reasons for Considering Agency Action

This rulemaking responds to requirements in the Rail Safety Improvement Act of 2008 (RSIA) (Pub. L. 110–432, Div. A) that the Secretary of Transportation, as delegated to the Administrator of FRA (49 CFR 1.89(b)), establish regulations to define critical incident, and to require certain railroads to develop and implement critical incident stress plans.

The purpose of this proposed rule is to enhance safety by mandating that railroads have a critical incident stress plan that may help mitigate the long-term negative effects of critical incidents upon covered railroad employees. One of the most important assets to the railroad industry is its labor force. The railroads spend significant resources training their workforces. Although all of the railroads potentially affected by the proposed rule have policies that include critical incident stress plans, the proposed rule would promote implementation as intended to every applicable employee covered by a critical incident stress plan and also ensure that all such plans meet certain minimum Federal requirements.

After reviewing the critical incident stress plans of various railroads, FRA determined that the most cost efficient and beneficial way to help ensure implementation of the plan for railroad employees covered who witness a critical incident was to implement the requirements found in this proposed rule. FRA anticipates that the railroad industry will accept the proposed requirements.

2. A Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The purpose of the proposed rule is to require each Class I, intercity passenger, and commuter railroad to develop a critical incident stress plan. This plan would cover every applicable railroad employee who witnessed a critical incident while working.

Section 410 of RSIA requires the Secretary of Transportation, as delegated to the Administrator of the Federal Railroad Administration, to prescribe a regulation mandating that certain railroads develop and implement critical incident stress plans. A Railroad Safety Advisory Committee (RSAC) working group was formed and tasked to define a critical incident, which made sure that the railroad industry and labor unions were included in the rulemaking process. The working group reached a consensus on all but one item [23] and forwarded a proposal to the full RSAC on August 21, 2012. The full RSAC voted to approve the working group's recommended text on September 27, 2012, and that recommended text provided the basis for this NPRM. This proposed regulation would be codified in Title 49, Code of Federal Regulations, part 272.

3. A Description of, and Where Feasible, an Estimate of Small Entities to Which the Proposed Rule Would Apply

The universe of entities that must be considered in an IRFA generally includes only those small entities that are reasonably expected to be directly regulated by the proposed action. This proposed rule would affect Class I railroads (including the National Railroad Passenger Corporation (''Amtrak'')), intercity passenger railroads, and commuter railroads as defined in the scope of the proposed rule.

''Small entity'' is defined in 5 U.S.C. 601. Section 601(3) defines a ''small entity'' as having the same meaning as ''small business concern'' under section 3 of the Small Business Act. This includes any small business concern that is independently owned and operated, and is not dominant in its field of operation. Section 601(4) likewise includes within the definition of ''small entities'' not-for-profit enterprises that are independently owned and operated, and are not dominant in their field of operation.

The Small Business Administration (SBA) stipulates in its size standards that the largest a railroad business firm that is ''for profit'' may be and still be classified as a ''small entity'' is 1,500 employees for ''line haul operating railroads'' and 500 employees for ''switching and terminal establishments.'' Additionally, 5 U.S.C. 601(5) defines as ''small entities'' governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000.

Federal agencies may adopt their own size standards for small entities in consultation with the SBA and in conjunction with public comment. Pursuant to that authority, FRA has published a final statement of agency policy that formally establishes ''small entities'' or ''small businesses'' as being railroads, contractors, and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR 1201.1–1, which is $20 million or less in inflation-adjusted annual revenues; and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less. *See* 68 FR 24891, May 9, 2003, codified at 49 CFR part 209, Appendix C. The $20 million-limit is based on the Surface Transportation Board's revenue threshold for a Class III railroad. Railroad revenue is adjusted for inflation by applying a revenue deflator formula in accordance with 49 CFR 1201.1–1. FRA is proposing to use this definition of ''small entity'' for this rulemaking. Any comments received pertinent to its use will be addressed in the final rule.

Railroads

FRA finds that there are 7 Class I and 28 intercity passenger and commuter railroads, including Amtrak and the Alaska Railroad, affected by this proposed rule. Amtrak, the Alaska Railroad, and the 7 Class I railroads are not considered to be small entities. All of the affected commuter railroads are part of larger public transportation agencies that receive Federal funds and serve major jurisdictions with populations greater than 50,000; based on the definition, therefore, they are not considered small entities.

4. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule, Including an Estimate of the Class of Small Entities That Will Be Subject to the Requirements and the Type of Professional Skill Necessary for Preparation of the Report or Record

For a thorough presentation of cost estimates, please refer to the RIA, which has been placed in the docket for this rulemaking.

As FRA believes that no small entities will be affected by this proposed rule, there would also be no cost impacts on small businesses. Railroads operated entirely by contract operators, such that the contractor organization itself meets the definition of a commuter railroad, Class I, or intercity passenger railroad, would be subject to this rule. In these circumstances, FRA assumes that the contract operator would utilize the critical incident stress plan developed by the reporting railroad. FRA will hold the reporting railroads responsible for defects or deficiency, not the contracted operators. Therefore, FRA does not expect that the proposed rule will

[23] Consensus was not reached on the issue of whether a railroad should be required to provide labor organizations' general chairpersons (in addition to the international/national president of the labor organization) with a copy of a railroad's critical incident stress plan.

directly impact any contractors that are considered to be small entities.

5. An Identification, to the Extent Practicable, of All Relevant Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

FRA is not aware of any relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule.

FRA invites all interested parties to submit comments, data, and information demonstrating the potential economic impact that would result from adoption of the proposals in this NPRM. FRA will consider all comments received in the public comment period for this NPRM when making a final determination of the rulemaking's economic impact on small entities.

C. Executive Order 13175

FRA analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments'').

Because this rule does not significantly or uniquely affect tribes and does not impose substantial and direct compliance costs on Indian tribal governments, the funding and consultation requirements of Executive Order 13175 do not apply, and a tribal summary impact statement is not required.

D. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
272.103 – RR Submission of Updated/Modified Existing Critical Incident Stress Plan.	34 Railroads	34 modified plans	16 hours	544
RR Copies of Updated Critical Incident Stress Plans to 5 Employee Labor Organizations.	34 Railroads	170 plan copies	5 minutes	14.17
Rail Labor Organization Comments to FRA on RR Critical Incident Stress Plan.	5 Labor Organizations	65 comments	3 hours	195
Rail Labor Organization that Comment Copy has been served on Railroad.	5 Labor Organizations	65 certifications	15 minutes	16
Copy to RR Employees of Updated/Modified Critical Incident Stress Plans.	170,000 Employees	170,000 copies	5 minutes	14,167
Copy to FRA Inspector Upon Request of Critical Incident Stress Plan.	34 Railroads	136 plan copies	5 minutes	11.33
272.105 – RR Request to FRA for Electronic Submission of Critical Incident Stress Plan or Review of Written Materials.	34 Railroads	34 requests	60 minutes	34

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: Whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan, Information Clearance Officer, at 202–493–6292, or Ms. Kimberly Toone at 202–493–6137.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Mr. Robert Brogan or Ms. Kimberly Toone, Federal Railroad Administration, 1200 New Jersey Avenue SE., 3rd Floor, Washington, DC 20590. Comments may also be submitted via email to Mr. Brogan or Ms. Toone at the following address: *Robert.Brogan@dot.gov; Kim.Toone@dot.gov*.

OMB is required to make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

E. Environmental Impact

FRA has evaluated this proposed rule in accordance with its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this action is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. 64 FR 28547, May 26, 1999. In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this final rule that might trigger the need for a more detailed environmental review. As a result, FRA finds that this

proposed rule is not a major Federal action significantly affecting the quality of the human environment.

F. Federalism Implications

Executive Order 13132, ''Federalism'' (64 FR 43255, Aug. 10, 1999), requires FRA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

FRA has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 13132. If adopted, this proposed rule would not have a substantial direct effect on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. FRA has also determined that this proposed rule would not impose substantial direct compliance costs on State and local governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Moreover, FRA notes that RSAC, which endorsed and recommended the majority of this proposed rule, has as permanent members, two organizations representing State and local interests: AASHTO and ASRSM. Both of these State organizations concurred with the RSAC recommendation made in this rulemaking. RSAC regularly provides recommendations to the Administrator of FRA for solutions to regulatory issues that reflect significant input from its State members. To date, FRA has received no indication of concerns about the federalism implications of this rulemaking from these representatives or from any other representatives of State government.

However, this proposed rule could have preemptive effect by operation of law under 49 U.S.C. 20106 (Section 20106). Section 20106 provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the ''local safety or security hazard'' exception to Section 20106.

In sum, FRA has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 13132. As explained above, FRA has determined that this proposed rule has no federalism implications, other than the possible preemption of State laws under Section 20106. Accordingly, FRA has determined that preparation of a federalism summary impact statement for this proposed rule is not required.

G. Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) [currently $140,800,000] in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. This proposed rule will not result in the expenditure, in the aggregate, of $140,800,000 or more in any one year, and thus preparation of such a statement is not required.

H. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' *See* 66 FR 28355 (May 22, 2001). Under the Executive Order a ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) that is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this proposed rule in accordance with Executive Order 13211. FRA has determined that this proposed rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this final rule is not a ''significant energy action'' within the meaning of the Executive Order.

I. Privacy Act Statement

FRA wishes to inform all interested parties that anyone is able to search the electronic form of any written communications and comments received into any agency docket by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Interested parties may also review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or visit *http://www.regulations.gov/#!privacyNotice*.

List of Subjects in 49 CFR Part 272

Accidents, Critical incident, Penalties, Railroads, Railroad employees, Railroad safety, Safety, and Transportation.

The Proposed Rule

For the reasons discussed in the preamble, FRA proposes to amend chapter II, subtitle B of Title 49 of the Code of Federal Regulations as follows:

■ 1. Add a new part 272 to read as follows:

PART 272—CRITICAL INCIDENT STRESS PLANS

Subpart A—General

Sec.
272.1 Purpose.
272.3 Application.

272.5 General duty.
272.7 Coverage of a critical incident stress plan.
272.9 Definitions.
272.11 Penalties.

Subpart B—Plan Components and Approval Process

272.101 Content of a critical incident stress plan.
272.103 Submission of critical incident stress plan for approval by the Federal Railroad Administration.
272.105 Option to file critical incident stress plan electronically.
Appendix A to Part 272—Schedule of Civil Penalties

Authority: 49 U.S.C. 20103, 20107, 20109, note; 28 U.S.C. 2461, note; 49 CFR 1.89; and Sec. 410, Div. A, Public Law 110–432, 122 Stat. 4888.

Subpart A—General

§ 272.1 Purpose.

(a) The purpose of this part is to promote the safety of railroad operations and the health and safety of railroad employees, especially those who are directly involved in a critical incident by requiring that the employing railroad offers and provides appropriate support services, including appropriate relief, to the directly-involved employees following that critical incident.

(b) Nothing in this part constrains a railroad from implementing a critical incident stress plan that contains additional provisions beyond those specified in this rule (including provisions covering additional incidents or persons), provided that such additional provisions are not inconsistent with this rule.

§ 272.3 Application.

This part applies to each

(a) Class I railroad, including the National Railroad Passenger Corporation;

(b) Intercity passenger railroad; or

(c) Commuter railroad.

§ 272.5 General duty.

A railroad subject to this part shall adopt a written critical incident stress plan approved by the Federal Railroad Administration under § 272.103 and shall comply with that plan. Should a railroad subject to this part make a material modification to the approved plan, the railroad shall adopt the modified plan approved by the Federal Railroad Administration under § 272.103 and shall comply with that plan, as revised.

§ 272.7 Coverage of a critical incident stress plan.

The critical incident stress plan of a railroad subject to this part shall state that it covers, and shall cover, the following individuals employed by the railroad if they are directly involved (as defined in § 272.9) in a critical incident:

(a) Railroad employees who are subject to the hours of service laws at—

(1) 49 U.S.C. 21103 (that is, train employees not subject to subpart F of part 228 of this chapter regarding the hours of service of train employees engaged in commuter or intercity rail passenger transportation);

(2) 49 U.S.C. 21104 (signal employees); or

(3) 49 U.S.C. 21105 (dispatching service employees);

(b) Railroad employees who are subject to the hours of service regulations at subpart F of part 228 of this chapter (regarding the hours of service of train employees engaged in commuter or intercity rail passenger transportation);

(c) Railroad employees who inspect, install, repair, or maintain railroad right-of-way or structures; and

(d) Railroad employees who inspect, repair, or maintain locomotives, passenger cars, or freight cars.

§ 272.9 Definitions.

As used in this part—

Accident/incident has the meaning assigned to that term by part 225 of this chapter.

Administrator means the Administrator of the Federal Railroad Administration or the Administrator's delegate.

Associate Administrator means the Associate Administrator for Railroad Safety and Chief Safety Officer of the Federal Railroad Administration or that person's delegate.

Class I has the meaning assigned to that term by the regulations of the Surface Transportation Board (49 CFR Part 1201; General Instructions 1–1).

Commuter railroad means a railroad, as described by 49 U.S.C. 20102(2), including public authorities operating passenger train service, that provides regularly-scheduled passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979.

Critical incident means either—

(1) An accident/incident reportable to FRA under part 225 of this chapter that results in a fatality, loss of limb, or a similarly serious bodily injury; or

(2) A catastrophic accident/incident reportable to FRA under part 225 of this chapter that could be reasonably expected to impair a directly-involved employee's ability to perform his or her job duties safely.

Directly-involved employee means a railroad employee covered under § 272.7—

(1) Whose actions are closely connected to the critical incident;

(2) Who witnesses the critical incident in person as it occurs or who witnesses the immediate effects of the critical incident in person; or

(3) Who is charged to directly intervene in, or respond to, the critical incident (excluding railroad police officers or investigators who routinely respond to and are specially trained to handle emergencies).

FRA means the Federal Railroad Administration, 1200 New Jersey Ave. SE., Washington, DC 20590.

Home terminal means an employee's regular reporting point at the beginning of the tour of duty.

Intercity passenger railroad means a railroad, as described by 49 U.S.C. 20102(2), including public authorities operating passenger train service, which provides regularly-scheduled passenger service between large cities.

§ 272.11 Penalties.

(a) *Civil penalties.* A person who violates any requirement of this part, or causes the violation of any such requirement, is subject to a civil penalty of at least $650 and not more than $25,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $105,000 per violation may be assessed. Each day that a violation continues is a separate offense. *See* Appendix A to part 209 for a statement of agency civil penalty policy.

(b) *Criminal penalties.* A person who knowingly and willfully falsifies a record or report required by this part may be subject to criminal penalties under 49 U.S.C. 21311.

Subpart B—Plan Components and Approval Process

§ 272.101 Content of a critical incident stress plan.

Each critical incident stress plan under this part shall include, at a minimum, provisions for—

(a) Informing each directly-involved employee as soon as practicable of the stress relief options that he or she may request;

(b) Offering timely relief from the balance of the duty tour for each directly-involved employee, after the employee has performed any actions

necessary for the safety of persons and contemporaneous documentation of the incident;

(c) Offering timely transportation to each directly-involved employee's home terminal, if necessary;

(d) Offering counseling, guidance, and other appropriate support services to each directly-involved employee;

(e) Permitting relief from the duty tour(s) subsequent to the critical incident, for an amount of time to be determined by each railroad, if requested by a directly-involved employee as may be necessary and reasonable;

(f) Permitting each directly-involved employee such additional leave from normal duty as may be necessary and reasonable to receive preventive services or treatment related to the incident or both; and

(g) Addressing how the railroad's employees operating or otherwise working on track owned by or operated over by a different railroad will be afforded the protections of the plan.

§ 272.103P Submission of critical incident stress plan for approval by the Federal Railroad Administration.

(a) Each railroad subject to this part shall submit to the Federal Railroad Administration, Office of Railroad Safety, 1200 New Jersey Avenue SE, Washington, DC 20590, for approval, the railroad's critical incident stress plan no later than 12 months after the effective date of the final rule.

(b) Each railroad subject to this part shall—

(1) Simultaneously with its filing with FRA, serve, either by hard copy or electronically, a copy of the submission filed pursuant to paragraph (a) of this section or a material modification filed pursuant to paragraph (e) of this section on the international/national president of any non-profit employee labor organization representing a class or craft of the railroad's employees subject to this part; and

(2) Include in its submission filed pursuant to paragraph (a) of this section or a material modification filed pursuant to paragraph (e) of this section a statement affirming that the railroad has complied with the requirements of paragraph (b)(1) of this section, together with a list of the names and addresses of the persons served.

(c) Not later than 90 days after the date of filing a submission pursuant to paragraph (a) of this section or a material modification pursuant to paragraph (e) of this section, a labor organization representing a class or craft of the railroad's employees subject to this part, may file a comment on the submission or material modification.

(1) Each comment shall be submitted to the Associate Administrator for Railroad Safety/Chief Safety Officer, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590; and

(2) The commenter shall certify that a copy of the comment was served on the railroad.

(d) A critical incident stress plan is considered approved for purposes of this part if and when FRA notifies the railroad in writing that the critical incident stress plan is approved, or 120 days after FRA has received the railroad's critical incident stress plan, whichever occurs first.

(e) After FRA's initial approval of a railroad's critical incident stress plan, if the railroad makes a material modification of the critical incident stress plan, the railroad shall submit to FRA for approval a copy of the critical incident stress plan as it has been revised to reflect the material modification within 30 days of making the material modification.

(f) Upon FRA approval of a railroad's critical incident stress plan and any material modification of the critical incident stress plan, the railroad must make a copy of the railroad's plan and the material modification available to the railroad's employees identified in § 272.7.

(g) Each railroad subject to this part must make a copy of the railroad's plan available for inspection and reproduction by the FRA.

§ 272.105 Option to file critical incident stress plan electronically.

(a) Each railroad to which this part applies is authorized to file by electronic means any critical incident stress plan submissions required under this part in accordance with the requirements of this section.

(b) Prior to the railroad submitting its first critical incident stress plan submission electronically, the railroad shall provide the Associate Administrator with the following information in writing:

(1) The name of the railroad;

(2) The names of two individuals, including job titles, who will be the railroad's points of contact and will be the only individuals allowed access to FRA's secure document submission site;

(3) The mailing addresses for the railroad's points of contact;

(4) The railroad's system or main headquarters address located in the United States;

(5) The email addresses for the railroad's points of contact; and

(6) The daytime telephone numbers for the railroad's points of contact.

(c) A railroad that electronically submits an initial critical incident stress plan, informational filing, or new portions or revisions to an approved critical incident stress plan required by this part shall be considered to have provided its consent to receive approval or disapproval notices from FRA by email.

(d) A request for electronic submission or FRA review of written materials shall be addressed to the Associate Administrator for Railroad Safety/Chief Safety Officer, Federal Railroad Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

(e) FRA may electronically store any materials required by this part regardless of whether the railroad that submits the materials does so by delivering the written materials to the Associate Administrator and opts not to submit the materials electronically.

(f) A railroad that opts not to submit the materials required by this part electronically, but provides one or more email addresses in its submission, shall be considered to have provided its consent to receive approval or disapproval notices from FRA by email or mail.

Appendix A to Part 272—Schedule of Civil Penalties

A civil penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $105,000 for any violation where circumstances warrant. *See* 49 U.S.C. 21301, 21304 and 49 CFR part 209, Appendix A.

Issued in Washington, DC, on June 11, 2013.

Joseph C. Szabo,

Administrator.

[FR Doc. 2013–15417 Filed 6–27–13; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket Nos. FWS–R1–ES–2012–0017; FWS–R1–ES–2013–0012; 4500030113]

RIN 1018–AX72; RIN 1018–AZ54

Endangered and Threatened Wildlife and Plants; Threatened Status and Designation of Critical Habitat for *Eriogonum codium* (Umtanum Desert Buckwheat) and *Physaria douglasii* subsp. *tuplashensis* (White Bluffs Bladderpod)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearings.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce notice of two public hearings associated with the recent reopening of the comment period on our May 15, 2012, proposed listing and designation of critical habitat for *Eriogonum codium* (Umtanum desert buckwheat) and *Physaria douglasii* subsp. *tuplashensis* (White Bluffs bladderpod) under the Endangered Species Act of 1973, as amended (Act).

DATES: *Public Hearings:* We will hold two public hearings on Thursday, July 11, 2013. One hearing will occur from 9 a.m. to 12 p.m. at the Benton County Justice Center in Kennewick, Washington, and another hearing will occur at the TRAC Center in Pasco, Washington, from 3 p.m. to 5 p.m. and continuing from 6 p.m. to 8 p.m. (see **ADDRESSES**).

Written Comments: We will consider comments received or postmarked on or before July 22, 2013, or at the public hearings. Please note comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**) must be received by 11:59 p.m. Eastern Time on the closing date. Any comments that we receive after the closing date may not be considered in the final decisions on these actions.

ADDRESSES:

Document Availability: You may obtain copies of the proposed rule at *http://www.regulations.gov* at Docket No. FWS–R1–ES–2012–0017 (proposed listing) and Docket No. FWS–R1–ES–2013–0012 (proposed designation of critical habitat) for Umtanum desert buckwheat and White Bluffs bladderpod; from the Washington Fish and Wildlife Office's Web site (*http://www.fws.gov/wafwo/HanfordPlants.html*); or by contacting the Washington Fish and Wildlife Office directly (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearings: The first of two public hearings for the Umtanum desert buckwheat and White Bluffs bladderpod will be held on July 11, 2013, at the Benton County Justice Center, 7122 West Quinault Place, Building A, Kennewick, Washington, 99336–7665. The second public hearing will be held on July 11, 2013, at the TRAC Center, 6600 Burden Blvd., Pasco, Washington, 99301. People needing reasonable accommodation in order to attend and participate in either public hearing should contact Ken Berg, Manager, Washington Fish and Wildlife Office, as soon as possible (see **FOR FURTHER INFORMATION CONTACT**).

Comment Submission: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Submit comments on the proposed listing rule to FWS–R1–ES–2012–0017. Submit comments on the proposed critical habitat rule to FWS–R1–ES–2013–0012.

(2) *By Hard Copy:*

Submit comments on the proposed listing rule by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R1–ES–2012–0017, Division of Policy and Directives Management, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, MS 2042–PDM, Arlington, VA 22203.

Submit comments on the proposed critical habitat rule by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R1–ES–2013–0012, Division of Policy and Directives Management, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, MS 2042–PDM, Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Ken Berg, Manager, Washington Fish and Wildlife Office, 510 Desmond Drive, Suite 102, Lacey, WA 98503–1263; by telephone (360) 753–9440; or by facsimile (360) 534–9331. 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 the reopened comment period and public hearings on our proposed listing and designation of critical habitat for the *Eriogonum codium* (Umtanum desert buckwheat) and *Physaria douglasii* subsp. *tuplashensis* (White Bluffs bladderpod) that was published in the **Federal Register** on May 15, 2012 (77 FR 28704). We will consider all information and recommendations from all interested parties.

As to the proposed listing determination, we are particularly interested in comments concerning:

(1) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to these species and regulations that may be addressing those threats.

(2) Additional information concerning the historical and current status, range, distribution, and population size of these species, including the locations of any additional populations.

(3) Any information on the biological or ecological requirements of the species, and ongoing conservation measures for the species and their habitats.

(4) Current or planned activities in the areas occupied by these species and possible impacts of these activities on these species.

As to the proposed critical habitat determination, we are particularly interested in comments concerning:

(5) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act, including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(6) Specific information on:

(a) The amount and distribution of the species' habitat;

(b) What areas occupied by the species at the time of listing that contain features essential for the conservation of the species we should include 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 to the conservation of the species and why.

(7) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(8) Any foreseeable economic, national security, or other relevant impacts that may result from designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities and the benefits of including or excluding areas from the proposed designation that are subject to these impacts.

(9) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

If you submitted comments or information on the proposed rule (77 FR 28704) during the initial comment period from May 15, 2012, to July 16,

2012, please do not resubmit them. We have incorporated them into the public record as part of the original comment period, and we will fully consider them in our final determinations.

You may submit your comments and materials concerning the proposed rules by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on *http://www.regulations.gov* as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule, will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R1–ES–2012–0017 for the proposed listing action and at Docket No. FWS–R1–ES–2013–0012 for the proposed critical habitat designation, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

On May 15, 2012, we published a proposed rule to list *Eriogonum codium* (Umtanum desert buckwheat) and *Physaria douglasii* subsp. *tuplashensis* (White Bluffs bladderpod) as threatened and to designate critical habitat for these species (77 FR 28704). We proposed to designate a total of approximately 344 acres (139 hectares) of critical habitat for *Eriogonum codium* in Benton County, Washington, and approximately 2,861 acres (1,158 hectares) of critical habitat for *Physaria douglasii* subsp. *tuplashensis* in Franklin County, Washington. That proposal had a 60-day comment period, ending July 16, 2012.

On April 23, 2013, we published final rules for these proposed actions. We published the final listing rule under Docket No. FWS–R1–ES–2012–0017 (78 FR 23984) and the final critical habitat rule under Docket No. FWS–R1–ES–2013–0012 (78 FR 24008). The provisions of the final rules did not change from what was proposed. Both final rules had an effective date of May 23, 2013.

On May 23, 2013, we published a notice reopening the comment period on our May 15, 2012, proposed listing and designation of critical habitat (78 FR 30839) and published a document to delay the effective date of the April 23, 2013 final rules for an additional 6 months—until November 22, 2013 (May 23, 2013; 78 FR 30772). We delayed the effective date of the final rules and reopened the comment period on the proposed rules to allow us time to follow proper procedure in accordance with 16 U.S.C. 1533(b)(5). If, after review of any comments received during this reopened comment period, we determine that we should revise the final rules, we will announce this decision and our course of action in a document published in the **Federal Register**.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 20, 2013.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–15531 Filed 6–25–13; 4:15 pm]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2012–0067; 4500030114]

RIN 1018–AY63

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Arctostaphylos franciscana*

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; revision and reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on the September 5, 2012, proposed designation of critical habitat for *Arctostaphylos franciscana* (Franciscan manzanita) under the Endangered Species Act of 1973, as amended (Act). We also announce the availability of the draft economic analysis (DEA) for the proposed critical habitat designation and an amended required determinations section of the proposal. In addition, in this document, we have corrected the acreage calculations for our September 5, 2012, proposal due to a mapping error. We also propose to increase the September 5, 2012, proposed designation of critical habitat for *A. franciscana* by approximately 73 acres (30 hectares) by adding two additional units in the City and County of San Francisco, California. We are reopening the comment period on the September 5, 2012, proposed rule for an additional 30 days to allow all interested parties an opportunity to comment simultaneously on that proposed critical habitat, the revisions to proposed critical habitat described in this document, the associated DEA, and the amended required determinations section. Comments previously submitted need not be resubmitted and will be fully considered in preparation of the final rule.

DATES: The comment period for the proposed rule published September 5, 2012 (77 FR 54517), is reopened. We will consider comments received or postmarked on or before July 29, 2013. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date. Any comments that we receive after the closing date may not be considered in the final decision on this action.

ADDRESSES: *Document availability:* You may obtain copies of the DEA and this document on the internet at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2012–0067, or by mail from the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Written Comments: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Search for Docket No. FWS–R8–ES–2012–0067, which is the docket number for this rulemaking.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R8–ES–2012–0067; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Karen Leyse, Listing Coordinator, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage

Way, W–2605, Sacramento, California 95825; telephone 916–414–6600; facsimile 916–414–6612. 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 comment period on our proposed designation of critical habitat for *Arctostaphylos franciscana* that was published in the **Federal Register** on September 5, 2012 (77 FR 54517), the revisions to that proposed designation of critical habitat that are described in this document, 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 Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat may not be prudent.

(2) Specific information on:

(a) Areas containing the physical and biological features essential to the conservation of *A. franciscana* that we should include in the final critical habitat designation and why. Include information on the distribution of these essential features and what special management considerations or protections may be required to maintain or enhance them;

(b) Areas proposed as revised critical habitat that do not contain the physical and biological features essential for the conservation of the species and that should not be designated as critical habitat;

(c) Areas not occupied or not known to be occupied at the time of listing that are essential for the conservation of the species and why; and

(d) Information on the projected and reasonably likely impacts of climate change on *A. franciscana* and proposed critical habitat and whether the critical habitat may adequately account for these potential effects.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(4) Information on the new areas that we are proposing for critical habitat designation in this document.

(5) Information that may assist us identifying or clarifying the physical and biological features essential to the conservation of *A. franciscana.*

(6) Whether any specific areas being proposed as critical habitat for *A. franciscana* 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. See the Exclusions section of the September 5, 2012, proposed rule (77 FR 54517) for further discussion. We have not proposed to exclude any areas from critical habitat. However, we have received requests from the Presidio Trust and the National Park Service (NPS) to exclude some areas within the proposed Units 1, 2, and some areas within proposed Subunits 3A, 4B, and 5A and all of Subunit 3A at the Presidio. We will examine conservation actions for *A. franciscana,* including current management planning documents, in our consideration of these areas for exclusion from the final designation of critical habitat for *A. franciscana,* under section 4(b)(2) of the Act. We specifically solicit comments on the inclusion or exclusion of these areas.

(7) Any foreseeable economic, national security, or other relevant impacts that may result from designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities, and the benefits of including or excluding areas from the proposed designation that are subject to these impacts.

(8) Information on the extent to which the description of probable economic impacts in the DEA is complete and accurate, and specifically:

(a) Whether there are incremental costs of critical habitat designation (for example, costs attributable solely to the designation of critical habitat for *A. franciscana*) that have not been appropriately identified or considered in our economic analysis, including costs associated with future administrative costs or project modifications that may be required by Federal agencies related to section 7 consultation under the Act; and

(b) Whether there are additional project modifications that may result from the designation of critical habitat for *A. franciscana* and what those potential project modifications might represent.

(9) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

If you submitted comments or information on the proposed rule (77 FR 54517) during the initial comment period from September 5, 2012, to November 5, 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. Our final determination concerning critical habitat will take into consideration all written comments and any additional information we receive during both comment periods. On the basis of public comments, we may, during the development of our final determination, find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

You may submit your comments and materials concerning the proposed revised rule or DEA by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on *http://www.regulations.gov* as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule, this document, and the DEA, will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R8–ES–2012–0067, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule (77 FR 54517), this document, and the DEA on the Internet at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2012–0067, or by mail from the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

It is our intent to discuss only those topics directly relevant to the

designation of critical habitat for *Arctostaphylos franciscana* in this document. For more information on previous Federal actions concerning *A. franciscana,* refer to the proposed designation of critical habitat published in the **Federal Register** on September 5, 2012 (77 FR 54517). For more information on the taxonomy or biology of *A. franciscana* or its habitat, refer to the final listing rule published in the **Federal Register** on September 5, 2012 (77 FR 54434), which is available online at *http://www.regulations.gov* (at Docket No. FWS–R8–ES–2010–0049 or from the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). More information on *A. franciscana* and its habitat is also available in the Recovery Plan for Coastal Plants of the Northern San Francisco Peninsula (Service 2003), which is available from the Environmental Conservation Online System (ECOS) (*http://ecos.fws.gov/ecos*) and the Sacramento Fish and Wildlife Office Web site (*http://www.fws.gov/sacramento/*).

Previous Federal Actions

On September 5, 2012, we published a final rule to list *A. franciscana* (77 FR 54434) and a proposed rule to designate critical habitat for *A. franciscana* (77 FR 54517). We proposed to designate as critical habitat approximately 318 acres (ac) (197 hectares (ha)) that we have now corrected to 197 ac (80 ha) in 11 units located in the City and County of San Francisco, California. That proposal had a 60-day comment period, ending November 5, 2012. We will submit for publication in the **Federal Register** a final critical habitat designation for *A. franciscana* after we receive public comment on the revisions to the proposed critical habitat described in this document, the DEA, and the amended required determinations provided in this document.

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.

Corrections to the Proposed Critical Habitat

We have corrected the acreage calculations for our September 5, 2012, proposal (77 FR 54517) due to a mapping error. The September 5, 2012, proposal identified 318 ac (129 (ha); the corrected total acreage is 197 ac (80 ha) for the 11 units proposed (see Revisions to Proposed Critical Habitat). We are providing corrected acreage because we have learned that our original acreage calculations were inadvertently made using a map projection that is used for web-based mapping (WGS84) rather than the local area projection used as a standard by the Service (UTM NAD83). The WGS84 projection is not designed for accurate local area measurement and resulted in inflated acreages, which have been corrected. The total acreage that we proposed has been recalculated, resulting in a total acreage of 197 ac (80 ha) proposed in the September 5, 2012, proposed rule (77 FR 54517). Please see Table 1 for revised acreages for each of these units.

TABLE 1—CRITICAL HABITAT UNITS FOR *Arctostaphylos Franciscana* PROPOSED ON SEPTEMBER 5, 2012 (77 FR 54517): PUBLISHED AND CORRECTED ACREAGES

[Area estimates reflect all land within critical habitat unit boundaries.]

Critical habitat unit	Land ownership by type	Published acres (hectares)	Corrected acres (hectares)
1. Fort Point	Federal	12 (5)	7.7 (3.1)
	State	0	0
	Local	0	0
	Private	0	0
2. Fort Point Rock	Federal	36 (15)	21.3 (8.6)
	State	0	0
	Local	0	0
	Private	0	0
3A. World War II Memorial	Federal	1 (0.6)	0.8 (0.3)
	State	0	0
	Local	0	0
	Private	0	0
3B. World War II Memorial	Federal	2 (0.7)	1.1 (0.5)
	State	0	0
	Local	0	0
	Private	0	0
4A. Immigrant Point	Federal	0.7 (0.3)	0.4 (0.2)
	State	0	0
	Local	0	0
	Private	0	0
4B. Immigrant Point	Federal	6 (3)	4.0 (1.6)
	State	0	0
	Local	0	0
	Private	0	0
5A. Inspiration Point	Federal	21 (9)	13.2 (5.4)
	State	0	0
	Local	0	0
	Private	0	0
5B. Inspiration Point	Federal	3 (1)	2.1 (0.9)
	State	0	0

TABLE 1—CRITICAL HABITAT UNITS FOR *Arctostaphylos Franciscana* PROPOSED ON SEPTEMBER 5, 2012 (77 FR 54517): PUBLISHED AND CORRECTED ACREAGES—Continued

[Area estimates reflect all land within critical habitat unit boundaries.]

Critical habitat unit	Land ownership by type	Published acres (hectares)	Corrected acres (hectares)
	Local	0	0
	Private	0	0
6. Corona Heights	Federal	0	0
	State	0	0
	Local	10 (4)	6.1 (2.5)
	Private	0	0
7. Twin Peaks	Federal	0	0
	State	0	0
	Local	62 (25)	42.2 (17.1)
	Private	9 (4)	1.6 (0.6)
8. Mount Davidson	Federal	0	0
	State	0	0
	Local	11 (4)	6.6 (2.6)
	Private	1 (0.5)	0.7 (0.3)
9. Diamond Heights	Federal	0	0
	State	0	0
	Local	34 (14)	21.3 (8.6)
	Private	0.3 (0.1)	0*
10. Bernal Heights	Federal	0	0
	State	0	0
	Local	24 (10)	14.9 (6.0)
	Private	0.3 (0.1)	0
11. Bayview Park	Federal	0	0
	State	0	0
	Local	56 (23)	42.2 (17.1)
	Private	29 (12)	11.0 (4.4)
Total	Federal	83 (34)	.....
	State	0	0
	Local	196 (79)	.....
	Private	40 (16)	.....
	Total acreage	318 (129)	197.3 (79.8)

NOTE: Area sizes may not sum due to rounding. Acreages are carried out to one decimal place to show small units. Areas less than 0.1 ac are denoted as 0*.

Revisions to Proposed Critical Habitat Designation

On September 5, 2012, we proposed 11 units, consisting of approximately 318 ac (129 ha) in City and County of San Francisco, California, as critical habitat for *Arctostaphylos franciscana* (77 FR 54517). As stated above, we are correcting the acreage of the original proposal to a total of 197 ac (80 ha).

We are now proposing to increase the designation by approximately 73 ac (30 ha) to a total of approximately 270 ac (109 ha) in 13 critical habitat units in the City and County of San Francisco, California. We propose this increase based on additional information on habitat suitability that San Francisco Parks and Recreation Department (SFPRD) staff provided to us. The additional areas include: Two subunits in Unit 9 (Diamond Heights) so that the unit now consists of three subunits; and two new units at McLaren Park: Unit 12 (McLaren Park East), which consists of two subunits, and Unit 13 (McLaren Park West). Below, under Revised Proposed Critical Habitat: Additional Units, we provide an updated unit description for proposed Unit 9 and unit descriptions for proposed Units 12 and 13. We also modified the methods we used to delineate the proposed critical habitat; see ''Methods'' below.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. We review available information pertaining to the habitat requirements of the species. In accordance with the Act and its implementing regulations at 50 CFR 424.12(e), we consider whether designating additional areas—outside those currently occupied as well as those occupied at the time of listing, if listing occurs before the designation of critical habitat—are necessary to ensure the conservation of the species. We are proposing to designate critical habitat in areas within the geographical area currently occupied by the species (see final listing determination published in the **Federal Register** on September 5, 2012 (77 FR 54434)). We also are proposing to designate specific areas outside the geographical area occupied by the species at the time of listing (in this case, the geographical area currently occupied by the species), which were historically occupied but are presently unoccupied, because such areas are essential for the conservation of the species.

This section provides details of the criteria and process we used to delineate the proposed critical habitat for *Arctostaphylos franciscana.* The areas being proposed for critical habitat within this document and previous proposed rule are based largely on habitat characteristics identified from the ''rediscovery site'' near Doyle Drive, the currently occupied transplantation site, and historically occupied areas identified in voucher specimens and historical records. We also used the Recovery Plan for Coastal Plants of the Northern San Francisco Peninsula (Service 2003, pp. 1–322); the Conservation Plan for *Arctostaphylos franciscana* (the Franciscan Manzanita)

(Chasse *et al.* 2009, pp. 1–44); the Raven's Manzanita Recovery Plan (Service 1984, pp. 1–73), which provide habitat characteristics of the historically co-occurring species; and information received from peer reviewers and the public on our proposed listing for *A. franciscana* (76 FR 55623; September 8, 2011). Due to the rapid development of the San Francisco peninsula and limited historical information on plant location and distribution, it is difficult to determine the exact range of the species. Given the amount of remaining habitat available with the appropriate characteristics, we looked at all areas within the vicinity of San Francisco that met our criteria as potential habitat. Based on this information, we propose to designate critical habitat in areas within the geographical area currently occupied by *A. franciscana* (which is the same as the geographical area occupied by the species at the time of listing) and unoccupied areas that are essential for the conservation of the species (see the Distribution and Habitat section in the September 5, 2012, proposed designation (77 FR 54517) for more information on the range of the species.

Although a recovery plan for *Arctostaphylos franciscana* has not been developed, the species is discussed along with the endangered *A. hookeri* ssp. *ravenii* (Raven's manzanita) in the Recovery Plan for Coastal Plants of the Northern San Francisco Peninsula (Service 2003). The taxonomic name for Raven's manzanita has been changed to *A. montana* ssp. *ravenii.* The recovery plan calls for a three-part strategy in conserving *A. montana* ssp. *ravenii,* as well as additional recommendations for establishment in areas outside the Presidio at historic and other rock outcrop sites in conjunction with *A. franciscana* (Service 2003, pp. 75–77). The strategy includes: (1) Protecting the existing plant and surrounding habitat; (2) increasing the number of independent populations throughout suitable habitat within the Presidio; and (3) restoring the natural ecological interactions of the species with its habitat, including allowing gene flow with *A. franciscana.* As mentioned above, the recovery plan also identifies establishing additional areas, along with populations of *A. franciscana,* within rock outcrops throughout suitable habitat. We believe that a recovery strategy for *A. franciscana* would be similar to the recovery strategy for *A. montana* ssp. *ravenii* in many aspects, based on: (1) The existence of only one ''wild'' individual of each species; (2) the species' co-occurrence in similar habitat within the Presidio and elsewhere at historical locations; and (3) the seeming dependence of *A. montana* ssp. *ravenii* on *A. franciscana* to produce viable seed and maintain gene flow with *A. franciscana* in the absence of more than the single individual or clones of *A. montana* ssp. *ravenii.* In order to accomplish portions of this strategy, we have identified areas we believe are essential to the conservation of *A. franciscana* through the following criteria:

(1) Determine, in accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, the physical or biological habitat features essential to the conservation of the species and which may require special management considerations or protection.

(2) Identify multiple independent sites for *A. franciscana.* These sites should be throughout the historic range of the species (generally on the San Francisco peninsula north of Mount Davidson) within or near rock outcrops of various origins but especially on ridges or slopes within serpentine or greenstone formations along the Franciscan fault zone between Potrero Hills and the Golden Gate (see Figure 2 in the September 5, 2012, proposed rule at 77 FR 54517).

(3) In accordance with section 2(b) of the Act, select areas that would conserve the ecosystem upon which the species depends. This includes areas that contain the natural ecological interactions of the species with its habitat or areas with additional management that may be enhanced. The conservation of *A. franciscana* is dependent on several factors including, but not limited to, selection of areas of sufficient size and configuration to sustain natural ecosystem components, functions, and processes (such as full sun exposure, summer fog, natural fire and hydrologic regimes, intact mycorrhizal or edaphic interactions); protection of existing substrate continuity and structure; connectivity among groups of plants of this species within geographic proximity to facilitate gene flow among the sites through pollinator activity and seed dispersal; and sufficient adjacent suitable habitat for vegetative reproduction and population expansion.

(4) In selecting areas to propose as critical habitat, consider factors such as size, connectivity to other habitats, and rangewide recovery considerations. We rely upon principles of conservation biology, including: (a) Resistance and resiliency, to ensure sufficient habitat is protected throughout the range of the species to support population viability (e.g., demographic parameters); (b) redundancy, to ensure multiple viable populations are conserved throughout the species' range; and (c) representation, to ensure the representative genetic and life history of *A. franciscana* are conserved.

We have determined that the additional units and subunits we are proposing as critical habitat in this document are essential for the conservation and recovery of *A. franciscana* because they provide the physical or biological features necessary for the reestablishment of wild populations of *A. franciscana* within the species' historical range. Due to the small number of individual plants and low population size, suitable habitat and space for expansion or reintroduction are essential to achieving population levels that would be necessary for recovery.

We have identified the additional units and subunits in part because of information indicating that some critical habitat units may be or may become unsuitable for *A. franciscana* because of soilborne pathogens or plant diseases. Therefore, it is important to identify as many independent units as feasible to increase the odds that at least some of these would remain free of these pathogens into the foreseeable future (Swiecki 2013, p. 3). The additional units proposed below provide further resistance, resiliency, and redundancy. Additionally, the McLaren Park West and McLaren Park East units would provide connectivity between the Bayview Park and Diamond Heights units.

Methods

In order to identify the physical or biological features on the ground based on our criteria outlined above, we used the following methods to delineate the proposed critical habitat:

(1) We compiled and reviewed all available information on *A. franciscana* habitat and distribution from historic voucher specimens, literature, and reports.

(2) We also compiled and reviewed all available information on *A. montana* ssp. *ravenii* habitat and distribution from similar sources, as these two species have similar habitat requirements and often occurred together historically.

(3) We reviewed available information on rock outcrops, bedrock, and areas identified as serpentine, greenstone, or of Franciscan formation within the San Francisco peninsula and surrounding areas south of Mount Davidson and north into Marin County to determine

the extent of these features on the landscape.

(4) We compiled species occurrence information including historic record locations, the current occupied site within the Presidio, and information on the ''rediscovery site'' near Doyle Drive.

(5) We then compiled all this information into a Geographic Information System (GIS) database using ESRI ArcMap 10.0.

(6) We screen digitized and mapped the specific areas on which are found those physical or biological features essential to the conservation of the species or other areas determined to be essential for the conservation of the species.

Additionally, in the analysis for the additional areas we are proposing as critical habitat in this document, we used the following methods to delineate the proposed critical habitat:

(1) We used additional information we received about the suitability of habitat through our November 15, 2012, site visit and discussions with SFPRD staff. In our analysis for the proposed rule we had missed portions of Diamond Heights and McLaren Park as appropriate habitat.

(2) We examined higher-resolution imagery (0.3 meter pixel resolution versus 1.0 meter pixel resolution that was used in the September 5, 2012, proposed critical habitat). We used U.S. Geological Survey High Resolution Orthoimage USNG 10SEG325910. Orthoimage are remotely sensed image data in which the displacement of features in the image caused by terrain relief and sensor orientation have been mathematically removed. The natural color orthoimages were produced at 0.3-meter (approximately 1-foot) pixel resolution. We reviewed the remaining habitat available with the appropriate characteristics. We looked at all additional areas within San Francisco City and County that met our criteria as potential critical habitat. We double-checked suitable habitat we located against imagery that was used in the September 5, 2012, critical habitat.

(3) We mapped critical habitat. The image data were acquired between October 20, 2003, and January 21, 2004, using North American Datum (NAD) 83 Universal Transverse Mercator Zone 10N coordinates.

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical and biological features for *A. franciscana.* The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands, especially within such an urbanized area as San Francisco. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of the proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical and biological features in the adjacent critical habitat.

The units of critical habitat are proposed for designation based on sufficient elements of physical or biological features being present to support life-history processes for *A. franciscana.* Some units contain all of the identified elements of physical or biological features and support multiple life-history processes. Some units contain only some elements of the physical or biological features necessary to support the use of that habitat by *A. franciscana.*

The critical habitat designation is defined by the maps, as modified by any accompanying regulatory text, presented at the end of this document in the Proposed Regulation Promulgation section. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points, or both, on which each map is based available to the public on *http://www.regulations.gov* at Docket No. FWS–R8–ES–2012–0067, on our Internet site *at http://www.fws.gov/sacramento,* and at the Fish and Wildlife office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT** above).

Revised Proposed Critical Habitat: Additional Units

We are now proposing to increase the proposed critical habitat designation for *Arctostaphylos franciscana* by: Adding two subunits to Unit 9 (Diamond Heights) so that the unit now consists of three subunits; and by adding two additional units at McLaren Park: Unit 12 (McLaren Park East), which consists of two subunits, and Unit 13 (McLaren Park West). The additional units provide an increase of approximately 73 ac (30 ha) above the September 5, 2012, proposed designation (77 FR 54517). We have updated the unit description for proposed Unit 9, and we have added unit descriptions for proposed Units 12 and 13. Please refer to the September 5, 2012, proposed designation (77 FR 54517) for information on the other proposed units. Table 2 shows the occupancy status of the newly proposed subunits of Unit 9, and Units 12, and 13, while Table 3 provides the acreage of each of those areas, by subunit.

TABLE 2—OCCUPANCY OF ARCTOSTAPHYLOS FRANCISCANA IN REVISED AND NEWLY PROPOSED CRITICAL HABITAT UNITS

Unit	Occupied at time of listing?	Currently occupied?
9. Diamond Heights	No	No.
12. McLaren Park East	No	No.
13. McLaren Park West	No	No.

TABLE 3—REVISED AND NEWLY PROPOSED CRITICAL HABITAT UNITS FOR ARCTOSTAPHYLOS FRANCISCANA

[Area estimates reflect all land within critical habitat boundaries]

Critical habitat unit	Land ownership by type	Acres (hectares)
9A. Diamond Heights *	Federal	0 (0)
	State	0 (0)
	Local	21.3 (8.6)

TABLE 3—REVISED AND NEWLY PROPOSED CRITICAL HABITAT UNITS FOR ARCTOSTAPHYLOS FRANCISCANA—Continued

[Area estimates reflect all land within critical habitat boundaries]

Critical habitat unit	Land ownership by type	Acres (hectares)
	Private	0*
9B. Diamond Heights	Federal	0 (0)
	State	0 (0)
	Local	5.7 (2.3)
	Private	0 (0)
9C. Diamond Heights	Federal	0 (0)
	State	0 (0)
	Local	8.2 (3.3)
	Private	3.2 (1.3)
12A. McLaren Park East	Federal	0 (0)
	State	0 (0)
	Local	14.3 (5.8)
	Private	0 (0)
12B. McLaren Park East	Federal	0 (0)
	State	0 (0)
	Local	12.3 (5.0)
	Private	0 (0)
13. McLaren Park West	Federal	0 (0)
	State	0 (0)
	Local	29.7 (12.0)
	Private	0 (0)
Total	Federal	0 (0)
	State	0 (0)
	Local	91.5 (37)
	Private	3.2 (1.3)

NOTE: Area sizes may not sum due to rounding. Total includes subunit 9A which was included in the September 5, 2012 proposal (77 FR 54517). Acreages are carried out to one decimal place to show small units. Areas less than 0.1 ac are denoted as 0*.

*Subunit 9A was known as Unit 9 in the September 5, 2012, proposed critical habitat. Subunit 9A has not changed in acreage or configuration.

Unit 9: Diamond Heights

Unit 9 consists of a total of approximately 38 ac (16 ha) and is located near Diamond Heights Boulevard (Blvd.) south of Turquoise Way, and O'Shaughnessy Blvd. This unit is comprised of three subunits. Subunit 9A (22 ac (9 ha)), which is located near Diamond Heights Blvd. south of Turquoise Way, was proposed as Unit 9 in the proposed rule published on September 5, 2012 (77 FR 54517). Subunit 9B (6 ac (2 ha)) is located east of O'Shaughnessy Blvd., and subunit 9C (11 ac (4 ha)) is located west of O'Shaughnessy Blvd. Unit 9 is currently unoccupied. The unit is within an area that: Experiences summer fog; is located on sloping terrain; and contains Franciscan Complex (greenstone) bedrock outcrops of chert, volcanic, and sedimentary materials, as well as soils derived from these formations; and open grassland habitat. The unit represents one of several areas identified for the species within the Mount Davidson area. Mount Davidson is the only site still remaining that was known to be previously occupied by the species. The units in this area would assist in establishing populations of *A. franciscana* outside the Presidio. The additional subunits provide additional rock outcrop areas within the matrix of natural land. As a result, we have determined that the area is essential for the conservation of the species, because it provides for one of multiple independent sites for *A. franciscana* and contains some of the last remaining appropriate habitat within the area.

Unit 12: McLaren Park East

Unit 12 consists of a total of approximately 27 ac (11 ha) and is located at McLaren Park south of Mansell Street (St.) near Visitacion Avenue (Ave.). This unit is comprised of two subunits. Subunit 12A (14 ac (6 ha)) is located south of Mansell St. and west of Visitacion Ave. Subunit 12B (12 ac (5 ha)) is located south of Mansell St. and east of Visitacion Ave. This unit is currently unoccupied. The unit is within an area that experiences summer fog and is located on sloping terrain. It contains Franciscan Complex (greenstone) bedrock and serpentine outcrops, soils derived from these formations, and open grassland habitat. This unit would assist in establishing an additional population of *A. franciscana* outside the Presidio and Mount Davidson areas. This unit and Unit 13 (McLaren Park West) are located roughly midway between the remaining appropriate habitat at Diamond Heights and Bayview Park and thereby provide increased connectivity between these units. As a result, we have determined that the area is essential for the conservation of the species, because it provides for one of multiple independent sites for *A. franciscana,* contains some of the last remaining appropriate habitat within the area, and provides additional connectivity between Unit 9 (Diamond Heights) and Unit 11 (Bayview Park).

Unit 13: McLaren Park West

Unit 13 consists of approximately 30 ac (12 ha) and is located at McLaren Park between Geneva Ave. and Sunnydale Ave. This unit is currently unoccupied. The unit is within an area that experiences summer fog; is located on sloping terrain; and contains Franciscan Complex (greenstone) bedrock outcrops of volcanic materials, soils derived from these formations, and open grassland habitat. Including this unit would assist in establishing additional populations of *A. franciscana* outside the Presidio and Mount Davidson areas. This unit and Unit 12 (McLaren Park East) are located roughly midway between remaining appropriate habitat at Diamond Heights and Bayview Park. As a result, we have determined that the area is essential for the conservation of the species, because

it provides for one of multiple independent sites for *A. franciscana,* contains some of the last remaining appropriate habitat within the area, and provides connectivity between Unit 9 (Diamond Heights) and Unit 11 (Bayview Park).

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 *A. franciscana,* the benefits of critical habitat include public awareness of the presence of *A. franciscana* and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for *A. franciscana* 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, we will review the requests from NPS, the Presidio Trust, and the public to exclude some areas within proposed Units 1, and 2, and some areas within proposed Subunits 3B, 4B, and 5A, as well as all of Subunit 3A at the Presidio. NPS wrote in support of an exclusion for portions of Units 1 and 2 where NPS plans remediation of contaminated soils and other cultural resource management. NPS and the Presidio Trust requested an exclusion for portions of Subunit 3B and all of Subunit 3A because of concerns that designating these subunits will impair their abilities to manage habitat for the federally endangered *A. montana* ssp. *ravenii* (Ravens' manzanita), threatened *Hesperolinon congestum* (Marin dwarf-flax), and endangered Presidio clarkia (*Clarkia franciscana*); *H. congestum* and *C. franciscana* require a more open serpentine grassland habitat than does *A. franciscana.* The Presidio Trust requested an exclusion for portions of Subunits 4B and 5A due to their designations as an historic forest zone within their vegetation management plan, the lack of suitable soils for *A. franciscana,* and/or concerns that designating these subunits will impair the Trust's abilities to manage habitat for *H. congestum* and *C. franciscana.* The final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation. Accordingly, we have prepared a DEA concerning the proposed 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 critical habitat designation for *A. franciscana.* The DEA describes the economic impacts of all potential conservation efforts for *A. franciscana;* some of these costs will likely be incurred regardless of whether we designate critical habitat. The economic impact of the proposed critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.'' The ''without critical habitat'' scenario represents the baseline for the analysis, considering protections already in place for the species (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 the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs; these are the costs we 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 retrospectively at baseline impacts incurred since the species was listed, and forecasts both baseline and incremental impacts likely to occur if we finalize the proposed critical habitat designation. For a further description of the methodology of the analysis, see Chapter 2, ''Methodology,'' of the DEA.

The DEA provides estimated costs of the foreseeable potential economic impacts of the proposed critical habitat designation for *A. franciscana* over the next 20 years (2013 to 2032), which was determined to be the appropriate period for analysis because limited planning information is available for most activities to forecast activity levels for projects beyond a 20-year timeframe. It identifies potential incremental costs as a result of the proposed critical habitat designation; these are those costs attributed to critical habitat over and above those baseline costs attributed to listing.

The DEA quantifies economic impacts of *A. franciscana* conservation efforts associated with the following categories of activity: (1) NPS and Presidio Trust management and habitat restoration activities; (2) NPS and Presidio Trust soil remediation activities; (3) road maintenance and construction activities; (4) broadcast facility maintenance and construction activities; and (5) other activities, such as SFPRD trail maintenance and species reintroduction. The DEA considers both economic efficiency and distributional effects that may result from efforts to protect *A. franciscana* and its habitat. Economic efficiency effects generally reflect the ''opportunity costs'' associated with the commitment of resources required to accomplish species and habitat conservation. The DEA also addresses how potential economic impacts are likely to be distributed.

The DEA concludes that incremental impacts resulting from the critical habitat designation would be limited to additional administrative costs of section 7 consultation. Estimating the impact of a regulation on future outcomes is inherently uncertain. Administrative time for consultations and other additional costs are project dependent and exhibit wide variability. The timing of future projects affects the present value of the cost estimates because of the time value of money, but the precise timing is uncertain. The

quantity and type of future consultations will be influenced by economic, demographic, political, and biological variables that cannot be forecast precisely.

The DEA estimates total potential incremental economic impacts in areas proposed as critical habitat over the next 20 years (2013 to 2032) to be approximately $28,222 ($1,411 annualized) in present-value terms applying a 7 percent discount rate (RTI International 2013, pp. ES–2 and 3–2). NPS and the Presidio Trust manage lands within the four proposed unoccupied critical habitat units (Units 1, 2, 3, and 4) and the one proposed occupied critical habitat unit (Unit 5) on Federal lands at the Presidio. The remaining proposed critical habitat units (Units 6 through 13) occur on non-Federal lands unoccupied by *A. franciscana.* The primary incremental economic impacts are administrative costs associated with section 7 consultations with NPS and the Presidio Trust on their activities within proposed Units 1, 2, 3, and 4.

Administrative costs associated with section 7 consultations on a variety of NPS and Presidio Trust activities (including NPS and Presidio Trust management plans, soil remediation, and unspecified activities) on Federal lands in proposed occupied and unoccupied critical habitat (Units 1, 2, 3, 4, and 5) account for approximately 91 percent of the forecast undiscounted incremental impacts (RTI International 2013, pp. ES–2 and 3–2). Within these administrative costs, the largest incremental economic impacts are associated with section 7 consultations with NPS and the Presidio Trust for unspecified activities within Units 1, 2, 3, 4, and 5; these unspecified consultations represent approximately 75 percent of the total undiscounted incremental costs and are expected to total $32,672 (undiscounted) over the 20-year period, with costs of formal consultations distributed evenly among all 5 units and costs of informal consultations distributed evenly among the 4 unoccupied units (RTI International 2013, pp. ES–2 and p. 3–2).

The second largest incremental economic impact is associated with section 7 consultations with NPS and the Presidio Trust for soil remediation activities within Units 1 and 2. These consultations represent approximately 19 percent of the total undiscounted incremental costs and are expected to total $8,083 over the 20-year period distributed evenly between the two units (RTI International 2013, p. ES–2) (all soil remediation activities are anticipated to occur within the first year, and, therefore are not discounted) (RTI International 2013, p. 3–5).

The third largest incremental economic impact is associated with section 7 consultations on federally funded trail maintenance on SFRPD lands within proposed unoccupied critical habitat Units 12 and 13. These consultations represent approximately 6 percent of the total undiscounted incremental costs and are expected to total $2,690 (undiscounted) over the next 20 years distributed evenly between the two units (RTI International 2013, p. ES–2). The SFRPD is estimated to incur costs of approximately $363 from these consultations, with the remaining costs accruing to the Service and the Federal action agency (RTI International 2013, p. ES–3).

The fourth largest incremental economic impact is associated with the reinitiation of section 7 consultation with NPS and the Presidio Trust for their management plans within proposed critical habitat Units 1 through 5. This consultation represents approximately 0.4 percent of the total incremental costs and is expected to total $115 over the 20-year period, distributed evenly among the five units (the reinitiation of consultation on the NPS and Presidio Trust management plans is anticipated to occur within the first year and, therefore, is not discounted).

With regard to other activities on non-Federal lands, the potential for Federal nexus is very low. Therefore, no consultations were estimated for miscellaneous activities on non-Federal land within Units 6 through 11. Thus, there are no anticipated incremental economic impacts associated with the designation of critical habitat within Units 6 through 11. The only other consultations that may be anticipated on non-Federal lands include reintroduction of *A. franciscana* into areas where other endangered species, such as the mission blue butterfly (*Icaricia icarioides missionensis*), are present. Reintroduction consultations are likely to be intra-Service, and costs are likely to be minimal and administrative in nature. Furthermore, the costs would be considered baseline costs.

Regarding road maintenance and construction, the California Department of Transportation indicated in a personal communication that any projects on the roads adjacent to the proposed units would not likely affect the *A. franciscana* or the proposed critical habitat; additionally, no projects are anticipated (RTA International 2013, pp. 3–1, 3–6). Similarly, no maintenance and construction projects related to radio and broadcast towers are expected to affect *A. franciscana* or the proposed critical habitat (RTA International 2013, pp. 3–1, 3–6). Lastly, any consultation regarding species reintroduction would be considered intra-Service consultation and consist of little (if any) administrative effort.

As stated earlier, we are soliciting data and comments from the public on the DEA, as well as on all aspects of the proposed rule, the revisions to that proposed rule that are described in this document, and our amended required determinations. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

Required Determinations—Amended

In our September 5, 2012, proposed rule (77 FR 54517), we indicated that we would defer our determination of compliance with several statutes and executive orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the DEA. We have now made use of the DEA data to make these determinations. In this document, we affirm the information in our proposed rule concerning Executive Orders (E.O.s) 12866 and 13563 (Regulatory Planning and Review), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), E.O. 13211 (Energy, Supply, Distribution, and Use), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), 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.*) and E.O. 12630 (Takings).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to

publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. Based on our DEA of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of our final rulemaking.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the proposed designation of critical habitat for *A. franciscana* would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as habitat restoration activities; road maintenance and construction; broadcast facility maintenance and construction; and trail maintenance. In order to determine whether it is appropriate for our agency to certify that this proposed rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where *A. franciscana* is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If we finalize this proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In the DEA, we evaluated the potential economic effects on small entities resulting from implementation of conservation actions related to the proposed designation of critical habitat for *A. franciscana.* Because the Service, Presidio Trust, NPS, and the SFRPD are the only entities with expected direct compliance costs and are not considered small entities, this rule would not result in any impact to small entities. Please refer to the DEA of the proposed critical habitat designation for a more detailed discussion of potential economic impacts.

The Service's current understanding of recent case law is that Federal agencies are only required to evaluate the potential impacts of rulemaking on those entities directly regulated by the rulemaking; therefore, they are not required to evaluate the potential impacts to those entities not directly regulated. The designation of critical habitat for an endangered or threatened species only has a regulatory effect where a Federal action agency is involved in a particular action that may affect the designated critical habitat. Under these circumstances, only the Federal action agency is directly regulated by the designation, and, therefore, consistent with the Service's current interpretation of RFA and recent case law, the Service may limit its evaluation of the potential impacts to those identified for Federal action agencies. Under this interpretation, there is no requirement under the RFA to evaluate potential impacts to entities not directly regulated, such as small businesses. However, Executive Orders 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consequently, it is the current practice of the Service to assess to the extent practicable these potential impacts, if sufficient data are available, whether or not this analysis is believed by the Service to be strictly required by the RFA. In other words, while the effects analysis required under the RFA is limited to entities directly regulated by the rulemaking, the effects analysis under the Act, consistent with the E.O. regulatory analysis requirements, can take into consideration impacts to both directly and indirectly impacted entities, where practicable and reasonable.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. Information for this analysis was gathered from the Small Business Administration, stakeholders, and the Service. Because the Service, Presidio Trust, NPS and SFRPD are the only entities with expected direct compliance costs and are not considered small entities, this rule would not result in a significant impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed critical habitat designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Executive Order 12630 (Takings)

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for *Arctostaphylos franciscana* in a takings implications assessment. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to allow actions that do require Federal funding or permits to go forward. The takings implications assessment concludes that this proposed designation of critical habitat does not pose significant takings implications for lands within or affected by the designation. However, we will further evaluate this issue as we complete our final economic analysis, and review and revise this assessment as appropriate.

References Cited

A complete list of all references we cited in the September 5, 2012, proposed rule and in this document is available on the Internet at *http://www.regulations.gov* under Docket No. FWS–R8–ES–2012–0067 or by contacting the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this notice are the staff members of the Sacramento Fish and Wildlife Office, Region 8, U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to further amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, which was proposed to be amended at 77 FR 54517, September 5, 2012, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; unless otherwise noted.

■ 2. In § 17.96(a), amend the entry for ''Family Ericaceae: *Arctostaphylos franciscana* (Franciscan manzanita)'' by:

■ a. Revising the index map at paragraph (a)(5);

■ b. Revising paragraph (a)(14); and

■ c. Adding paragraphs (a)(17) and (18).

These revisions and additions read as follows:

§ 17.96 Critical habitat—plants.

* * * * *

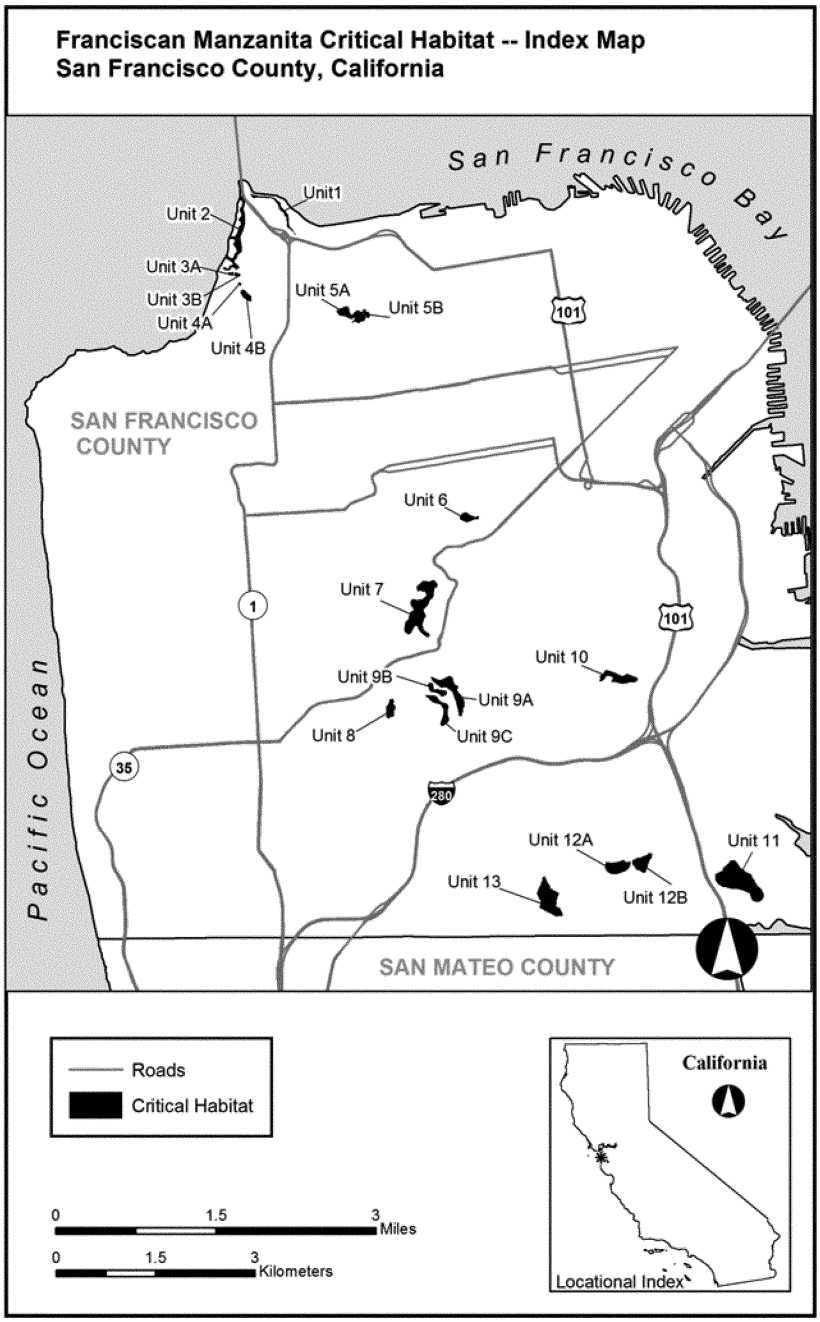
(a) * * *

Family Ericaceae: *Arctostaphylos franciscana* (Franciscan manzanita)

* * * * *

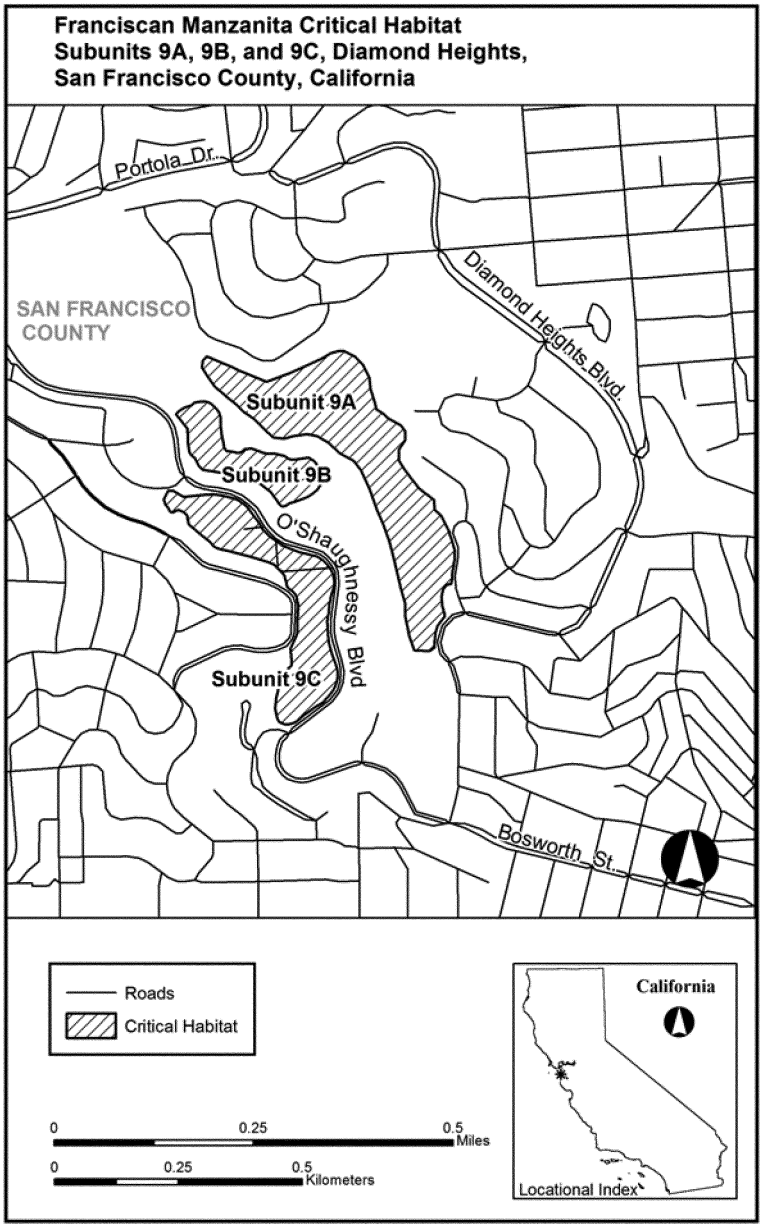
(5) Index map follows:

BILLING CODE 4310–55–P


Franciscan Manzanita Critical Habitat -- Index Map
San Francisco County, California
San Francisco Bay
Unit1
Unit 2
Unit 3A
Unit 3B
Unit 4A
Unit 4B
Unit 5A
Unit 5B
101
SAN FRANCISCO COUNTY
Unit 6
Unit 7
1
101
Unit 10
Unit 9B
Unit 9A
Unit 8
Unit 9C
35
280
Pacific Ocean
Unit 12A
Unit 11
Unit 13
Unit 12B
SAN MATEO COUNTY
Roads
Critical Habitat
0
1.5
3
Miles
0
1.5
3
Kilometers
California
Locational Index

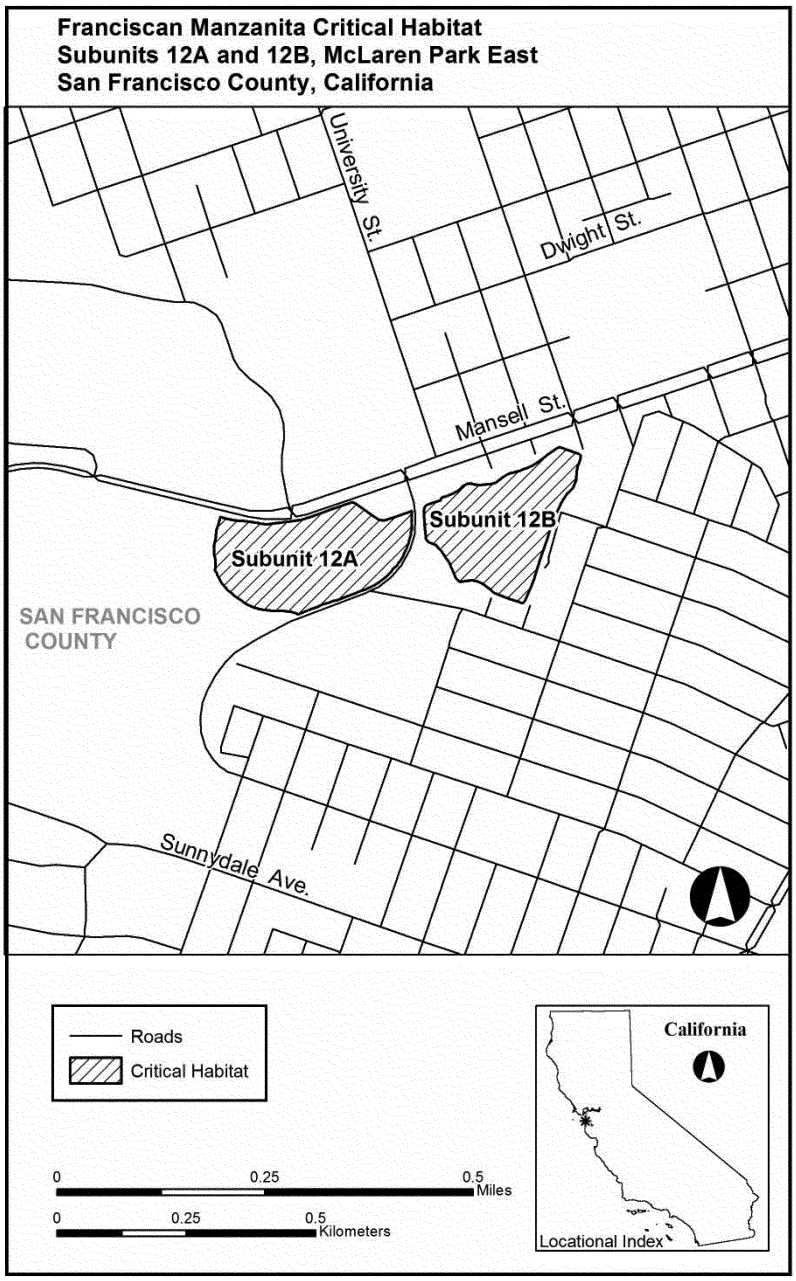
* * * * *

(14) Unit 9: Diamond Heights, San Francisco County, California. Map of Unit 9 follows:

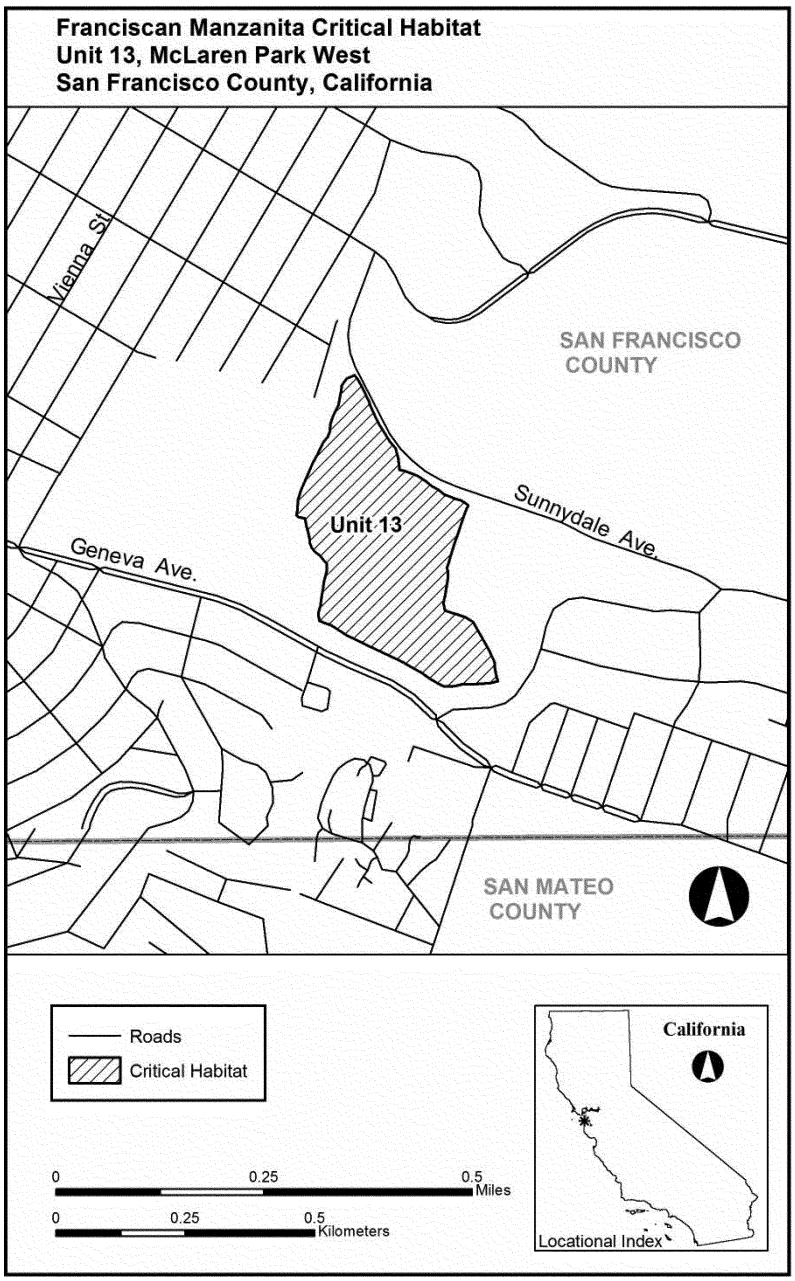


* * * * *

(17) Unit 12: McLaren Park East, San Francisco County, California. Map of Unit 12 follows:



(18) Unit 13: McLaren Park West, San Francisco County, California. Map of Unit 13 follows:



* * * * *

Dated: June 20, 2013.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–15487 Filed 6–27–13; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 78, No. 125
Friday, June 28, 2013

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

June 25, 2013.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Evaluation of Demonstrations of NSLP/SBP Direct Certification of Children Receiving Medicaid Benefits

OMB Control Number: 0584—NEW.

Summary of Collection: The Healthy, Hunger-Free Kids Act of 2010, Section 103, directs USDA to demonstrate direct certification for free lunches and breakfasts to children who are receiving Medicaid and whose households have a gross income as measured by Medicaid that does not exceed 133 percent Federal Poverty Level. In response to this Federal mandate, the Food and Nutrition Service (FNS) seeks approval to conduct data collection as part of the Evaluation of Demonstrations of NSLP/SBP Direct Certification of Children Receiving Medicaid Benefits. The overall aim of this evaluation is to estimate the effect of direct certification using Medicaid (DC–M) on meal program access, costs, and participation.

Need and Use of the Information: FNS will collect information using a study. The study will identify the challenges the States and local education agencies (LEA) face when implementing DC–M. The study will also gather data from State and LEAs to include: (1) Certification and participation records; (2) cost surveys and interviews that include certification costs, and federal benefits costs; as well as (3) challenges in conducting DC–M matching.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 2,428.

Frequency of Responses: Reporting: Quarterly, Semi-annually, Annually, Other (instrument collected 5x/yr).

Total Burden Hours: 3,162.

Food and Nutrition Service

Title: Food Program Reporting System (FPRS).

OMB Control Number: 0584—NEW.

Summary of Collection: The Food and Nutrition Service (FNS) is the Federal agency responsible for managing the domestic nutrition assistance programs. Its mission is to increase food security and reduce hunger in partnership with cooperating organization by providing children and low-income people with access to food, a healthful diet and nutrition education in a manner that supports American agriculture and inspires public confidence. FNS is consolidating certain programmatic and financial data reporting requirements under the Food Programs Reporting System (FPRS), an electronic reporting system. The purpose is to give States and Indian Tribal Organizations (ITO) agencies one portal for the various reporting required for the programs that the States and ITO operate.

Need and Use of the Information: The data collected will be used for a variety of purposes, mainly program evaluation, planning, audits, funding, research, regulatory compliance and general statistics. The data is gathered at various times, ranging from monthly, quarterly, annual or final submissions. With the information FNS would be unable to meet its legislative and regulatory reporting requirements for the affected programs.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 5,095.

Frequency of Responses: Reporting: Quarterly, Semi-annually, Monthly; Annually.

Total Burden Hours: 86,811.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2013–15606 Filed 6–27–13; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Document No. AMS–FV–13–0022]

Notice of Request for Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request for an extension and revision of a currently approved information collection for Fruit and Vegetable Market News.

DATES: Comments must be received by August 27, 2013.

ADDRESSES: Interested persons are invited to submit written comments on

the Internet at *http://www.Regulations.Gov* or to the Market News Division, Fruit & Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., Room 1529 South, Stop 0238, Washington, DC 20250–0238. Comments should make reference to the dates and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours or at *http://www.Regulations.Gov.*

FOR FURTHER INFORMATION CONTACT: Terry C. Long, Director; Fruit and Vegetable Market News Division, Fruit and Vegetable Program, (202) 720–2175, Fax: (202) 720–0011.

SUPPLEMENTARY INFORMATION:

Title: Fruit and Vegetable Market News.

OMB Number: 0581–0006.

Expiration Date of Approval: September 30, 2013.

Type of Request: Revision of a currently approved information collection.

Abstract: Collection and dissemination of information for fruit, vegetable and ornamental production and to facilitate trading by providing a price base used by producers, wholesalers, and retailers to market product.

The Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), section 203(g) directs and authorizes the collection and dissemination of marketing information including adequate outlook information, on a market area basis, for the purpose of anticipating and meeting consumer requirements, aiding in the maintenance of farm income and to bring about a balance between production and utilization.

The fruit and vegetable industry provides information on a voluntary basis that is gathered through confidential telephone and face-to-face interviews by market reporters. Reporters request supply, demand, and price information of over 330 fresh fruit, vegetable, nut, ornamental, and other specialty crops. The information is collected, compiled, and disseminated by Market News in its critical role as an impartial third party. It is collected and reported in a manner which protects the confidentiality of the respondent and their operations.

The fruit and vegetable market news reports are used by academia and various government agencies for regulatory and other purposes, but are primarily used by the fruit, vegetable and ornamental trade, which includes packers, processors, brokers, retailers, producers, and associated industries. Members of the fruit and vegetable industry regularly make it clear that they need and expect the Department of Agriculture to issue price and supply market reports for commodities of regional, national and international significance in order to assist in making immediate production and marketing decisions and as a guide to the amount of product in the supply channel. In addition, the Agricultural Marketing Service buys hundreds of millions of dollars of fruit and vegetable products each year for domestic feeding programs, and Market News data is a critical component of the decision making process.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .098 hours per response.

Respondents: Fruit, vegetable and ornamental industry, or other for-profit businesses, individuals or households, farms.

Estimated Number of Respondents: 3,168.

Estimated Number of Responses per Respondent: 197.

Estimated Total Annual Burden on Respondents: 61,161 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

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.

Dated: June 24, 2013.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2013–15562 Filed 6–27–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–NOP–13–0051; NOP–13–02]

National Organic Program: Request for an Extension of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget, for an extension of the currently approved information collection National Organic Program (NOP) Reporting and Recordkeeping Requirements.

DATES: Comments received by August 27, 2013 will be considered.

ADDRESSES: Interested persons are invited to submit written comments concerning this notice. Comments must be sent to Toni Strother, Agricultural Marketing Specialist, National Organic Program, AMS/USDA, 1400 Independence Ave. SW., Room 2646–So., Ag Stop 0268, Washington, DC 20250–0268 or by Internet: *http://www.regulations.gov*. Written comments responding to this notice should be identified with the document number AMS–NOP–13–0051; NOP–13–02. It is USDA's intention to have all comments concerning this notice, including names and addresses when provided, regardless of submission procedure used, available for viewing on the Regulations.gov (*http://www.regulations.gov*) Internet site. Comments submitted in response to this notice will also be available for viewing in person at USDA–AMS, National Organic Program, Room 2624–South Building, 1400 Independence Ave. SW., Washington, DC, from 9 a.m. to 12 noon and from 1:00 p.m. to 4 p.m., Monday through Friday (except official Federal holidays). Persons wanting to visit the USDA South Building to view comments received in response to this notice are requested to make an appointment in advance by calling (202) 720–3252.

FOR FURTHER INFORMATION CONTACT: Melissa Bailey, Ph.D., Director, Standards Division, National Organic Program, USDA–AMS, 1400 Independence Ave. SW., Room 2646–So., Ag Stop 0268, Washington, DC 20250, Telephone: (202) 720–3252, Fax: (202) 205–7808.

SUPPLEMENTARY INFORMATION:

Title: National Organic Program.

OMB Number: 0581–0191.

Expiration Date of Approval: December 31, 2013.

Type of Request: Extension of a currently approved information collection.

Abstract: The Organic Foods Production Act of 1990 (OFPA) as amended (7 U.S.C. 6501–6522) mandates that the Secretary develop the NOP to accredit eligible State program's governing State officials or private persons as certifying agents who would certify producers or handlers of agricultural products that have been produced using organic methods as provided for in OFPA. The USDA organic regulation (7 CFR part 205): (1) Established national standards governing the marketing of certain agricultural products as organically produced products; (2) assures consumers that organically produced products meet a consistent standard; and (3) facilitates interstate commerce in fresh and processed food that is organically produced.

Reporting and recordkeeping are essential to the integrity of the organic certification system. They create a paper trail that is a critical element in carrying out the mandate of OFPA and NOP. They serve the AMS mission, program objectives, and management needs by providing information on the efficiency and effectiveness of the program. The information affects decisions because it is the basis for evaluating compliance with OFPA and NOP, for administering the program, for management decisions and planning, and for establishing the cost of the program. It supports administrative and regulatory actions in response to noncompliance with OFPA and NOP.

In general, the information collected is used by USDA, State program governing State officials, and certifying agents. It is created and submitted by State and foreign program officials, peer review panel members, accredited certifying agents, organic inspectors, certified organic producers and handlers, those seeking accreditation or certification, and parties interested in changing the National List of Allowed and Prohibited Substances at sections 205.600 through 205.607. Additionally, it causes most of these entities to have procedures and space for recordkeeping.

USDA. USDA is the accrediting authority. USDA accredits domestic and foreign certifying agents who certify domestic and foreign organic producers and handlers, using information from the agents documenting their business operations and program expertise. USDA also permits States to establish their own organic certification programs after the programs are approved by the Secretary, using information from the States documenting their ability to operate such programs and showing that such programs meet the requirements of OFPA and NOP.

States. States may operate their own organic certification programs. State officials obtain the Secretary's approval of their programs by submitting information to USDA documenting their ability to operate such programs and showing that such programs meet the requirements of OFPA and NOP. The Secretary, or delegated representative, will review a State organic program not less than once during each 5-year period following the date of the initial program approval. To date, one State organic certification program is approved by USDA.

Certifying agents. Certifying agents are State, private, or foreign entities who are accredited by USDA to certify domestic and foreign producers and handlers as organic in accordance with OFPA and NOP. Each entity wanting to be an agent seeks accreditation from USDA, submitting information documenting its business operations and program expertise. Accredited certifying agents determine if a producer or handler meets organic requirements, using detailed information from the operation documenting its specific practices and on-site inspection reports from organic inspectors. Currently, there are 84 certifying agents accredited under NOP.

Administrative costs for reporting, disclosure of information, and recordkeeping vary among certifying agents. Factors affecting costs include the number and size of clients, the categories of certification provided, and the type of systems maintained.

When an entity applies for accreditation as a certifying agent, it must provide a copy of its procedures for complying with recordkeeping requirements (§ 205.504(b)(3)). Once accredited, agents have to make their records available for inspection and copying by authorized representatives of the Secretary (§ 205.501(a)(9)). USDA charges certifying agents for the time required to do these document reviews. Audits require less time when the documents are well organized and centrally located.

Recordkeeping requirements for certifying agents are divided into three categories of records with varying retention periods: (1) Records created by certifying agents regarding applicants for certification and certified operations, maintain 10-years, consistent with OFPA's requirement for maintaining all records concerning activities of certifying agents; (2) records obtained from applicants for certification and certified operations, maintain 5-years, the same as OFPA's requirement for the retention of records by certified operations; and (3) records created or received by certifying agents regarding accreditation, maintain 5-years, consistent with OFPA's requirement for renewal of agent's accreditation (§ 205.510(b)).

Organic inspectors. Inspectors, on behalf of certifying agents, conduct on-site inspections of certified operations and operations applying for certification. They report the findings from their inspection to the certifying agent. Inspectors are the agents themselves, employees of the agents, or individual contractors. We estimate that about half are certifying agents or their employees and half are individual contractors. Individuals who apply for positions as inspectors submit to the agents information documenting their qualifications to conduct such inspections. According to International Organic Inspectors Association (IOIA), there are 235 inspectors currently providing services.

Producers and handlers. Producers and handlers, domestic and foreign, apply to certifying agents for organic certification, submit detailed information documenting their specific practices, provide annual updates to continue their certification, and report changes in their practices. Producers include farmers, livestock and poultry producers, and wild crop harvesters. Handlers include those who transport or transform food and include millers, bulk distributors, food manufacturers, processors, or packers. Some handlers are part of a retail operation that processes organic products in a location other than the premises of the retail outlet. Based upon AMS NOP's 2012 List of certified organic operations, there are approximately 25,000 certified operations globally.[1] Based on past growth of the industry, AMS estimates the addition of 350 new certified organic operations a year. In addition, AMS estimates that there are 6,200 producers exempt from certification, but who must still maintain records pursuant to section 205.101(c).

Administrative costs for reporting and recordkeeping vary among certified operators. Factors affecting costs include the type and size of operation, and the type of systems maintained.

[1] AMS NOP 2012 List of certified organic operations. Available at: *http://apps.ams.usda.gov/nop/.*

AMS believes that operations using product labels containing the term ''organic'' handle an average of 20 labels annually. Based upon AMS NOP's 2012 List of certified organic operations, there are over 10,800 certified organic handlers. For each certified handler, AMS estimates that the average annual burden to develop product labels with organic claims is one hour per product label times 20 product labels per handler. The annual burden will be lower for smaller operations and higher for large operations that produce a significant volume of organic processed product.

Interested parties. Any interested party may petition the National Organic Standards Board (NOSB) for the purpose of having a substance evaluated for recommendation to the Secretary for inclusion on or deletion from the National List. Based on the number of petitions received in the past, AMS estimates 25 parties petitioning the NOSB to amend the National List in a given year. The annual burden for each interested party to prepare a complete petition is an average of 30 hours.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.61 hours per response.

Respondents: Producers, handlers, certifying agents, inspectors and State, Local or Tribal governments and interested parties.

Estimated Number of Respondents: 31,825.

Estimated Number of Responses: 838,519.

Estimated Number of Responses per Respondent: 26.35.

Estimated Total Annual Burden on Respondents: 1,347,141.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Authority: 7 U.S.C. 6501–6522.

Dated: June 25, 2013.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2013–15626 Filed 6–27–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Notice of Available Funding and Grant Application Deadlines

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Funding Availability.

SUMMARY: The Rural Utilities Service (RUS), an agency of the United States Department of Agriculture (USDA), announces the availability of $17,531,000 in grant funds and solicitation of applications for the Distance Learning and Telemedicine (DLT) Grant Program for the Fiscal Year (FY) 2013 competition.

DATES: You may submit completed applications for grants on paper or electronically per the following deadlines:

- *Paper submissions:* Paper submissions must be postmarked and mailed, shipped, or sent overnight no later than August 12, 2013 to be eligible for FY 2013 grant funding. Late or incomplete applications will not be eligible for FY 2013 grant funding.
- *Electronic submissions:* Electronic submissions must be received by August 12, 2013 to be eligible for FY 2013 grant funding. Late or incomplete applications will not be eligible for FY 2013 grant funding.

ADDRESSES: Copies of the FY 2013 Application Guides and materials for the DLT grant program may be obtained at the following sources:

(1) *The DLT Web site: http://www.rurdev.usda.gov/UTP_DLTResources.html* and

(2) You may also request application guides and materials from RUS by contacting the DLT Program at 202–720–0665.

Completed applications may be submitted in the following ways:

(1) *Paper:* Paper applications are to be submitted to the Rural Utilities Service, Telecommunications Program, 1400 Independence Ave. SW., Room 2845, STOP 1550, Washington, DC 20250–1550. Applications should be marked ''Attention: Acting Director, Advanced Services Division.''

(2) *Electronic:* Electronic applications may be submitted through Grants.gov. Information on how to submit applications electronically is available on the Grants.gov Web site (*http://www.grants.gov*). Applicants must successfully pre-register with Grants.gov to use the electronic applications option. Application information may be downloaded from Grants.gov without preregistration.

FOR FURTHER INFORMATION CONTACT: Norberto Esteves, Acting Director, Advanced Services Division, Telecommunications Programs, Rural Utilities Service. Email: *norberto.esteves@wdc.usda.gov.* Telephone: 202–720–0665, fax: 202–720–1051.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Utilities Service (RUS).

Funding Opportunity Title: Distance Learning and Telemedicine Grants.

Announcement Type: Notice of Solicitation of Applications.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.855.

Dates: You may submit completed applications for grants on paper or electronically according to the following deadlines:

- Paper submissions must be postmarked and mailed, shipped, or sent overnight no later than August 12, 2013 to be eligible for FY 2013 grant funding. Late or incomplete applications are not eligible for FY 2013 grant funding.

Electronic copies must be received by August 12, 2013 to be eligible for FY 2013 grant funding. Late or incomplete applications are not eligible for FY 2013 grant funding.

Items in Supplementary Information

I. Funding Opportunity: Brief introduction to the DLT program.

II. Minimum and Maximum Application Amounts: Projected Available Funding.

III. Eligibility Information: Who is eligible, and what kinds of projects are eligible, what criteria determine basic eligibility.

IV. SUTA: The applicant needs to notify RUS that it is seeking consideration under the 7 CFR 1700, *Substantially Underserved Trust Areas* (the SUTA regulation) and identifies the discretionary authorities of the Secretary of Agriculture described in the SUTA regulation that it seeks to have applied to its application.

V. Application and Submission Information: Where to get application materials, what constitutes a completed application, how and where to submit applications, deadlines, and items that are eligible.

VI. Application Review Information: Considerations and preferences, scoring criteria, review standards, and selection information.

VII. Award Administration Information: Award notice information, award recipient and reporting requirements.

VIII. Agency Contacts: Web, phone, fax, email, contact name.

I. Funding Opportunity

DLT grants are specifically designed to provide access to education, training and health care resources for people in rural America.

The DLT Program provides financial assistance to encourage and improve telemedicine services and distance learning services in rural areas through the use of telecommunications, computer networks, and related advanced technologies to be used by students, teachers, medical professionals, and rural residents.

The grants, which are awarded through a competitive process, may be used to fund telecommunications-enabled information, audio and video equipment and related advanced technologies which extend educational and medical applications into rural locations. Grants are made for projects where the benefit is primarily delivered to end users that are not at the same location as the source of the education or health care service.

As in years past, the FY 2013 DLT Grant Application Guide has been updated based on program experience. All applicants should carefully review and prepare their applications according to instructions in the FY 2013 Application Guide and sample materials when compiling a DLT grant application.

The Agency notes that the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–234) expressly added the category of libraries under Sec. 2333(c)(1) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 950aaa–2(a)(1)) to clearly establish that libraries are eligible to be recipients of DLT Loans and Grants. This confirms the longstanding Agency policy of considering libraries to be eligible entities under the DLT Program. The regulation for the DLT Grant Program can be found at 7 CFR part 1703, subpart E.

II. Maximum and Minimum Amount of Applications

Under 7 CFR 1703.124, the Administrator has determined the maximum amount of a grant to be made available to an applicant in FY 2013 is $500,000, and the minimum amount of a grant is $50,000, subject to availability of funding.

The Agency will make awards and execute documents appropriate to the project prior to any advance of funds to successful applicants.

DLT grants cannot be renewed. Award documents specify the term of each award. The Agency will make awards and execute documents appropriate to the project prior to any advance of funds to successful applicants. Applications from existing DLT awardees are acceptable (grant applications must be submitted during the application window) and will be evaluated as new applications.

III. Eligibility Information

A. Who is eligible for a grant? (See 7 CFR 1703.103.)

1. Only entities legally organized as one of the following are eligible for DLT financial assistance:

a. An incorporated organization or partnership,

b. An Indian tribe or tribal organization, as defined in 25 U.S.C. 450b,

c. A state or local unit of government,

d. A consortium, as defined in 7 CFR 1703.102, or

e. Other legal entity, including a private corporation organized on a for-profit or not-for-profit basis.

2. Individuals are not eligible for DLT program financial assistance directly.

3. Electric and telecommunications borrowers under the Rural Electrification Act of 1936 (7 U.S.C. 950aaa et seq.) are not eligible for grants.

4. Corporations that have been convicted of a felony (or had an officer or agency acting on behalf of the corporation convicted of a felony) within the past 24 months are not eligible. Any corporation that has any unpaid federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, is not eligible for financial assistance.

B. What are the basic eligibility requirements for a project?

1. Required matching contributions for grants: See 7 CFR 1703.125(g) and the FY 2013 Application Guide for information on required matching contributions.

a. Grant applicants must demonstrate matching contributions, in cash or in kind (new, non-depreciated items), of at least fifteen (15) percent of the total amount of financial assistance requested. Matching contributions must be used for eligible purposes of DLT grant assistance (see 7 CFR 1703.121, paragraphs V.H.1.b of this Notice and the FY 2013 Application Guide).

b. Greater amounts of eligible matching contributions may increase an applicant's score (see 7 CFR 1703.126(b)(4) and the FY 2013 Application Guide).

c. Applications that do not provide evidence of the required fifteen percent match will be declared ineligible and returned unless a SUTA waiver of matching funds is granted . See paragraphs V.H.1.c and VI.B.2.c of this Notice, and the FY 2013 Application Guide for specific information on documentation of matching contributions.

d. Applications that do not document all matching contributions in form and substance satisfactory to the Agency as described in the Application Guide are subject to disallowance which may make an application ineligible for not meeting the minimum required match.

2. The DLT grant program is designed to bring the benefits of distance learning and telemedicine to residents of rural America (see 7 CFR 1703.103(a)(2)). Therefore, to be eligible, applicants must:

a. Operate a rural community facility; or

b. Deliver distance learning or telemedicine services to entities that operate a rural community facility or to residents of rural areas, at rates calculated to ensure that the benefit of the financial assistance is passed through to such entities or to residents of rural areas.

3. Rurality.

a. All projects proposed for DLT grant assistance must meet a minimum rurality threshold, to ensure that benefits from the projects flow to rural residents. The minimum eligibility score is 20 points.

b. Each application must apply the following criteria to each of its end-user sites, and hubs that are also proposed as end-user sites, to determine a rurality score. The rurality score is the average of all end-user sites' rurality scores.

Criterion	Character	Population	DLT points
Exceptionally Rural Area	any area of the USA not included within the boundaries of any incorporated or unincorporated city, village, or borough having a population in excess of 5,000 inhabitants.	≤ 5000	45

Criterion	Character	Population	DLT points
Rural Area	any area of the USA included within the boundaries of any incorporated or unincorporated city, village, or borough having a population over 5,000 and not in excess of 10,000 inhabitants.	> 5000 and ≤ 10,000	30
Mid-Rural Area	any area of the USA included within the boundaries of any incorporated or unincorporated city, village, or borough having a population over 10,000 and not in excess of 20,000 inhabitants.	>10,000 and ≤ 20,000	15
Urban Area	any area of the USA included within the boundaries of any incorporated or unincorporated city, village, or borough having a population in excess of 20,000 inhabitants.	> 20,000	0

c. The rurality score is one of the competitive scoring criteria applied to grant applications.

4. Projects located in areas covered by the Coastal Barrier Resources Act (16 U.S.C. 3501 et seq.) are not eligible for financial assistance from the DLT Program. Please see 7 CFR 1703.123(a)(11), 7 CFR 1703.132(a)(5), and 7 CFR 1703.142(b)(3).

C. *Where to find full discussion of a Complete Application.* See Section V of this Notice and the FY 2013 Application Guide for a discussion of the items that comprise a complete application. For requirements of completed applications you may also refer to 7 CFR 1703.125 for grant applications. The FY 2013 Application Guide provides specific, detailed instructions for each item that constitutes a complete application. The Agency strongly emphasizes the importance of including every required item (as explained in the FY 2013 Application Guide) and strongly encourages applicants to follow the instructions carefully, using the examples and illustrations in the FY 2013 Application Guide. Applications which do not include all items that determine project eligibility and applicant eligibility by the application deadline will be returned as ineligible. Scoring and eligibility information not provided by the application deadline will not be solicited or considered by the Agency. Applications that do not include all items necessary for scoring will be scored as is. Please see the FY 2013 Application Guide for a full discussion of each required item and for samples and illustrations.

IV. SUTA

The 2008 Farm Bill (Pub. L. 110–246, codified at 7 U.S.C. 906f), authorizes the Substantially Underserved Trust Areas (SUTA) provisions, as implemented by RUS as regulation 7 CFR 1700, *Substantially Underserved Trust Areas* (the SUTA regulation). Under the SUTA regulation, the applicant may request the Agency apply one or more SUTA provisions to its application. To receive consideration the applicant needs to submit to RUS a completed application in compliance with 7 CFR 1703 (the DLT regulation), and include a section requesting consideration under the SUTA regulation. This section notifies RUS that the applicant is seeking consideration under the SUTA regulation and identifies the discretionary authorities the Secretary of Agriculture described in the SUTA regulation—that it seeks to have applied to its application. In this section the applicant must include the information demonstrating eligibility for consideration under the SUTA regulation, and an explanation and documentation of the high need for the DLT benefits. RUS will review the application to determine whether the applicant is eligible to receive consideration under SUTA. RUS will notify the applicant in writing whether (1) the application is eligible to receive consideration under this subpart and if one or more SUTA requests are granted; or (2) the application is not eligible to receive further consideration under the SUTA regulation. If the SUTA request is not granted, the applicant may withdraw its application or, if the application is still eligible without SUTA consideration, request that RUS treat its application as an ordinary application for processing. For more detailed guidance on how to apply for a grant under SUTA, please refer to the 2013 FY 2013 Application Guide available at *http://www.rurdev.usda.gov/UTP_DLTResources.html.*

V. Application and Submission Information

A. Where To Get Application Information

FY 2013 Application Guides, copies of necessary forms and samples, and the DLT Program regulation are available from these sources:

1. The Internet: *http://www.rurdev.usda.gov/UTP_DLTResources.html*

2. The DLT Program for paper copies of these materials: 202–720–0665.

B. Emphasis in FY 2013

1. Applicants are reminded that the DLT Grant Program is intended to meet the educational and health care needs of rural America. Hub sites may be located in rural or non-rural areas, but end-user sites need to be located in rural areas. Non-fixed sites serving a geographical service area may include non-rural areas. However, for determining rurality and NSLP scores every incorporated and non-incorporated city, village or borough must be listed and scored accordingly, including those jurisdictions which are more populated than those defined as rural. The necessary inclusion of non-rural jurisdictions in these types of projects could cause a lower rurality score by virtue of the project's geographic and demographic layout. Because of this, the applicant should make an effort to reveal how their project will focus the delivery of service to the rural residents of their service territory. From a competitive standpoint, applicants could offset the loss of rurality points by attempting to score higher in the subjective areas of needs and benefits, innovativeness, and cost effectiveness with well crafted narratives. The FY 2013 Application Guide contains language clarifying this provision of the regulation.

2. If a grant application includes a site that is included in any other DLT grant application for FY 2013, or a site that has been included in any DLT grant funded in FY 2012 or FY 2011, the application should contain a detailed explanation of the related applications or grants. The Agency must make a nonduplication finding for each grant approved, and apparent but unexplained duplication of funding for a site can prevent such a finding.

C. What constitutes a completed application?

1. For DLT Grants

a. Detailed information on each item in the table in paragraph V.C.1.h of this Notice can be found in the sections of the DLT Program regulation listed in the

table, and the DLT grant Application Guide. Applicants are strongly encouraged to read and apply both the regulation and the Applications Guide, which elaborates and explains the regulation.

(1) When the table refers to a narrative, it means a written statement, description or other written material prepared by the applicant, for which no form exists. The Agency recognizes that each project is unique and requests narratives to allow applicants to explain their request for financial assistance.

(2) When documentation is requested, it means letters, certifications, legal documents, or other third-party documentation that provide evidence that the applicant meets the listed requirement. For example, to confirm rurality scores, applicants can use printouts from the Web site *http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml.* Leveraging documentation generally will be letters of commitment from the funding sources. In-kind matches must be items purchased after the application deadline date that are essential to the project and documentation from the donor must demonstrate the relationship of each item to the project's function. Evidence of legal existence is sometimes proven by submitting articles of incorporation. The examples here are not intended to limit the types of documentation that must be submitted to fulfill a requirement. DLT Program regulations and the Application Guide provide specific guidance on each of the items in the table.

b. The DLT Application Guide and ancillary materials provide all necessary sample forms and worksheets.

c. While the table in paragraph V.C.1.h of this Notice includes all items of a completed application, the Agency may ask for additional or clarifying information for applications which, as submitted by the deadline, appear to clearly demonstrate that they meet eligibility requirements. The Agency will not solicit or accept eligibility or scoring information submitted after the application deadline.

d. Given the high volume of program interest, to expedite processing applicants are asked to submit the required application items in the order depicted in the FY 2013 Application Guide. The FY 2013 Application Guide specifies the format and order of all required items. Applications that are not assembled and tabbed in the order specified prevent timely determination of eligibility. For applications with inconsistency among submitted copies, the Agency will base its evaluation on the original signed application received by the Agency.

e. DUNS Number. The applicant for a grant must supply a Dun and Bradstreet Data Universal Numbering System (DUNS) number as part of an application. The Standard Form 424 (SF–424) contains a field for the DUNS number. The applicant can obtain the DUNS number free of charge by calling Dun and Bradstreet. Please see *http://fedgov.dnb.com/webform* for more information on how to obtain a DUNS number or how to verify your organization's number.

f. Prior to submitting an application, the applicant must register in the System for Award Management (SAM) (formerly Central Contractor Registry, (CCR)).

(1) Applicants may register for the SAM at *https://www.sam.gov/portal/public/SAM/.*

(2) The SAM registration must remain active with current information at all times while RUS is considering an application or while a Federal Grant Award or loan is active. To maintain the registration in the SAM database the applicant must review and update the information in the SAM database annually from date of initial registration or from the date of the last update. The applicant must ensure that the information in the database is current, accurate, and complete.

g. Compliance with other federal statutes. The applicant must provide evidence of compliance with other federal statutes and regulations, including, but not limited to the following:

(1) 7 CFR part 15, subpart A—Nondiscrimination in Federally Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964.

(2) 7 CFR part 3015—Uniform Federal Assistance Regulations.

(3) 7 CFR part 3017—Government-wide Debarment and Suspension (Non-procurement).

(4) 7 CFR part 3018—New Restrictions on Lobbying.

(5) 7 CFR part 3021—Government-wide Requirements for Drug-Free Workplace.

h. Table of Required Elements of a Completed Grant Application.

Application item	Required items, unless otherwise noted	
	Grants (7 CFR 1703.125 and 7 CFR 1703.126)	Comment
SF–424 (Application for Federal Assistance form)	Yes	*Completely* filled out.
Site Worksheet	Yes	Agency worksheet.
Survey on Ensuring Equal Opportunity for Applicants	Optional	OMB Form.
Evidence of Legal Authority to Contract with the Government.	Yes	Documentation.
Evidence of Legal Existence	Yes	Documentation.
Executive Summary	Yes	Narrative.
Telecommunications System Plan and Scope of Work	Yes	Narrative & documentation such as maps and diagrams.
Budget	Yes	Agency Worksheets with documentation.
Financial Information/Sustainability	Yes	Narrative.
Statement of Experience	Yes	Narrative 3-page, single-spaced limit.
Rurality Worksheet	Yes	Agency worksheet with documentation.
National School Lunch Program (NSLP) Worksheet	Yes	Agency worksheet with documentation.
Leveraging Evidence and Funding Commitments from all Sources.	Yes	Agency worksheet and source documentation.
Empowerment Zone designation	Yes	Documentation.
Request for Additional NSLP	Optional	Agency Worksheet and narrative.
Request for SUTA information	Optional	Application Guide.
Need for and Benefits derived from Project	Yes	Narrative & documentation.
Innovativeness of the Project	Yes	Narrative & documentation.

Application item	Required items, unless otherwise noted	
	Grants (7 CFR 1703.125 and 7 CFR 1703.126)	Comment
Cost Effectiveness of Project	Yes	Narrative & documentation.
Consultation with the USDA State Director, Rural Development, and evidence that application conforms to State Strategic Plan, if any.	Yes	Documentation.
Certifications		
Equal Opportunity and Nondiscrimination	Yes	Form provided in FY 2013 Application Tool Kit.
Architectural Barriers	Yes	Form provided in FY 2013 Application Tool Kit.
Flood Hazard Area Precautions	Yes	Form provided in FY 2013 Application Tool Kit.
Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.	Yes	Form provided in FY 2013 Application Tool Kit.
Drug-Free Workplace	Yes	Form provided in FY 2013 Application Tool Kit.
Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions.	Yes	Form provided in FY 2013 Application Tool Kit.
Lobbying for Contracts, Grants, Loans, and Cooperative Agreements.	Yes	Form provided in FY 2013 Application Tool Kit.
Non-Duplication of Services	Yes	Form provided in FY 2013 Application Tool Kit.
Environmental Impact/Historic Preservation Certification	Yes	Form provided in FY 2013 Application Tool Kit.
Assurance Regarding Felony Conviction or Tax Delinquent Status for Corporate Applicants.	Yes	Form provided in the FY 2013 Application Tool. Kit.

D. How many copies of an application are required?

1. Applications Submitted on Paper

a. Submit the original application and two (2) copies to RUS; and

b. Submit one (1) additional copy to the state government single point of contact (if one has been designated) at the same time as you submit the application to the Agency for the State where the project is located. If the project is located in more than one State, submit a copy to each state government single point of contact. See *http://www.whitehouse.gov/omb/grants_spoc* for an updated listing of State government single points of contact.

2. Electronically submitted applications. Grant applications may be submitted electronically. Please carefully read the FY 2013 Application Guide for guidance on submitting an electronic application. In particular, we ask that you identify and number each page in the same way you would a paper application so that we can assemble them as you intended.

a. The additional paper copy is not necessary if you submit the application electronically through Grants.gov.

b. Submit one (1) copy to the state government single point of contact (if one has been designated) at the same time as you submit the application to the Agency. If the project is located in more than one State, submit a copy to each state government single point of contact. See *http://www.whitehouse.gov/omb/grants_spoc* for an updated listing of State government single points of contact.

E. How and where to submit an application. Grant applications may be submitted on paper or electronically

1. Submitting Applications on Paper

a. Address paper applications to the Telecommunications Program, RUS, United States Department of Agriculture, 1400 Independence Ave. SW., Room 2845, STOP 1550, Washington, DC 20250–1550. Applications should be marked ''Attention: Acting Director, Advanced Services Division.''

b. Paper grant applications must show proof of mailing or shipping by the deadline consisting of one of the following:

(i) A legibly dated U.S. Postal Service (USPS) postmark;

(ii) A legible mail receipt with the date of mailing stamped by the USPS; or

(iii) A dated shipping label, invoice, or receipt from a commercial carrier.

c. Due to screening procedures at the Department of Agriculture, packages arriving via regular mail through the USPS are irradiated, which can damage the contents and delay delivery to the DLT Program. RUS encourages applicants to consider the impact of this procedure in selecting their application delivery method.

2. Electronically Submitted Applications

a. Applications will not be accepted via fax or electronic mail.

b. Electronic applications for grants will be accepted if submitted through the Federal government's Grants.gov initiative at *http://www.grants.gov/.*

c. How to use Grants.gov.

(i) Grants.gov contains full instructions on all required passwords, credentialing and software.

(ii) System for Award Management. Submitting an application through Grants.gov requires that your organization list in the System for Award Management (SAM) (formerly Central Contractor Registry, CCR). The Agency strongly recommends that you obtain your organization's DUNS number and SAM listing well in advance of the deadline specified in this notice.

(iii) Credentialing and authorization of applicants. Grants.gov will also require some credentialing and online authentication procedures. These procedures may take several business days to complete, further emphasizing the need for early action by applicants to complete the sign-up, credentialing and authorization procedures at Grants.gov before you submit an application at that Web site.

(iv) Some or all of the SAM and Grants.gov registration, credentialing and authorizations require updates. If you have previously registered at Grants.gov to submit applications electronically, please ensure that your registration, credentialing and authorizations are up to date well in advance of the grant application deadline.

d. RUS encourages applicants who wish to apply through Grants.gov to submit their applications in advance of the deadlines.

e. If a system problem occurs or you have technical difficulties with an electronic application, please use the customer support resources available at the Grants.gov Web site.

F. Deadlines

1. Paper grant applications must be postmarked and mailed, shipped, or sent overnight no later than August 12, 2013 to be eligible for FY 2013 grant funding. Late applications, applications which do not include proof of mailing or shipping as described in paragraph V.E.1.b., and incomplete applications are not eligible for FY 2013 grant funding.

2. Electronic grant applications must be received by August 12, 2013 to be eligible for FY 2013 funding. Late or incomplete applications will not be eligible for FY 2013 grant funding.

G. Intergovernmental Review

The DLT grant program is subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' As stated in paragraph V.D.1 of this Notice, a copy of a DLT grant application must be submitted to the state single point of contact if one has been designated. Please see *http://www.whitehouse.gov/omb/grants_spoc* to determine whether your state has a single point of contact.

H. Funding Restrictions

1. Eligible Purposes

a. For grants, rural end-user sites may receive financial assistance; hub sites (rural or non-rural) may also receive financial assistance if they are necessary to provide DLT services to end-user sites. Please see the Application Guide and 7 CFR 1703.101(h).

b. To fulfill the policy goals laid out for the DLT Program in 7 CFR 1703.101, the following table lists purposes for financial assistance and whether each purpose is generally considered to be eligible for the form of financial assistance. Please consult the FY 2013 Application Guide and the regulations (7 CFR 1703.102) for definitions, in combination with the portions of the regulation cited in the table) for detailed requirements for the items in the table. RUS strongly recommends that applicants exclude ineligible items from the grant and match portions of grant application budgets. However, some items ineligible for funding or matching contributions may be vital to the project. RUS encourages applicants to document those costs in the application's budget. Please see the FY 2013 Application Guide for a recommended budget format, and detailed budget compilation instructions.

	Grants
Lease or purchase of new eligible DLT equipment and facilities	Yes, equipment only.
Acquire new instructional programming that is capital asset	Yes.
Technical assistance, develop instructional material for the operation of the equipment, and engineering or environmental studies in the implementation of the project.	Yes, up to 10% of the grant.
Telemedicine or distance learning equipment or facilities necessary to the project	Yes.
Vehicles using distance learning or telemedicine technology to deliver services	No.
Teacher-student links located at the same facility	No.
Links between medical professionals located at the same facility	No.
Site development or building alteration, except for equipment installation and associated inside wiring.	No.
Land or building purchase	No.
Building Construction	No.
Acquiring telecommunications transmission facilities	No.
Internet services, telecommunications services or other forms of connectivity	No.
Salaries, wages, benefits for medical or educational personnel	No.
Salaries or administrative expenses of applicant or project	No.
Recurring project costs or operating expenses	No, (equipment & facility leases are not recurring project costs).
Equipment to be owned by the LEC or other telecommunications service provider, if the provider is the applicant.	No.
Duplicative distance learning or telemedicine services	No.
Any project that for its success depends on additional DLT financial assistance or other financial assistance that is not assured.	No.
Application Preparation Costs	No.
Other project costs not in regulation	No.
Cost (amount) of facilities providing distance learning broadcasting	No.
Reimburse applicants or others for costs incurred prior to RUS receipt of completed application.	No.

c. Discounts. The DLT Program regulation has long stated that manufacturers' and service providers' discounts are not eligible matches. The Agency will not consider as eligible any proposed match from a vendor, manufacturer, or service provider whose products or services will be used in the DLT project as described in the application. In recent years, the Agency has noted a trend of vendors, manufacturers, and other service providers offering their own products and services as in-kind matches for a project when their products or services will also be purchased with either grant or cash match funds for that project. Such activity is a discount and is therefore not an eligible match. Similarly, if a vendor, manufacturer, or other service provider proposes a cash match (or any in-kind match) when their products or services will be purchased with grant or match funds, such activity is a discount and is not an eligible match. The Agency actively discourages such matching proposals and will adjust budgets as necessary to remove any such matches, which may reduce an application's score or result in the application's ineligibility due to insufficient match.

2. Eligible Equipment & Facilities. Please see the FY 2013 Application Guide for more information regarding eligible and ineligible items. In addition, see 7 CFR 1703.102 for definitions of eligible equipment, eligible facilities, and

telecommunications transmission facilities as used in the table above.

3. Apportioning budget items. Many DLT applications propose to use items for a blend of specific DLT eligible project purposes and other purposes. RUS will consider funding such items in the overall context of the project, but such items will affect the competitive value of the project compared with other projects. The proposed project could receive a lower score in the subjective areas of the grant to the extent that its budget requests items that have limited or questionable value to the purposes of distance learning or telemedicine. See the FY 2013 Application Guide for detailed information on how to apportion use and apportioning illustrations.

VI. Application Review Information

A. Special Considerations or Preferences

1. American Samoa, Guam, Virgin Islands, and Northern Mariana Islands applications are exempt from the matching requirement up to a match amount of $200,000 (see 48 U.S.C. 1469a; 91 Stat. 1164).

2. 7 CFR 1703.112 directs that RUS Telecommunications Borrowers receive expedited consideration of a loan application or advance under the Rural Electrification Act of 1936 (7 U.S.C. 901–950aa, et. seq.) if the loan funds in question are to be used in conjunction with a DLT grant (See 7 CFR 1737 for loans and 7 CFR 1744 for advances).

B. Criteria

1. Grant application scoring criteria (total possible points: 215). See 7 CFR 1703.125 for the items that will be reviewed during scoring, and 7 CFR 1703.126 for scoring criteria.

2. Grant applications are scored competitively subject to the criteria listed below.

a. *Rurality* category—Rurality of the proposed service area (up to 45 points).

b. *NSLP* category—percentage of students eligible for the NSLP in the proposed service area (up to 35 points).

c. *Leveraging* category—matching funds above the required matching level (up to 35 points).

d. Need for services proposed in the application and the benefits that will be derived if the application receives a grant (up to 55 points).

(i) *Additional NSLP* category—up to 10 of the possible 55 possible points are to recognize economic need not reflected in the project's National School Lunch Program (NSLP) score, and can be earned only by applications whose overall NSLP eligibility is less than 50%. To be eligible to receive points under this, the application must include an affirmative request for consideration of the possible 10 points, and compelling documentation of reasons why the NSLP eligibility percentage does not represent the economic need of the proposed project beneficiaries.

(ii) *Needs and Benefits* category—up to 45 of the 55 possible points under this criterion are available to all applicants. Points are awarded based on the required narrative crafted by the applicant. RUS encourages applicants to carefully read the cited portions of the Program regulation and the FY 2013 Application Guide for full discussions of this criterion.

e. Innovativeness category—level of innovation demonstrated by the project (up to 15 points).

f. Cost Effectiveness category—system cost-effectiveness (up to 35 points).

C. Grant Review Standards

1. In addition to the scoring criteria that rank applications against each other, the Agency evaluates grant applications for possible awards on the following items, according to 7 CFR 1703.127:

a. Financial feasibility.

b. Technical considerations. If the application contains flaws that would prevent the successful implementation, operation or sustainability of a project, the Agency will not award a grant.

c. Other aspects of proposals that contain inadequacies that would undermine the ability of the project to comply with the policies of the DLT Program.

2. Applications which do not include all items that determine project eligibility and applicant eligibility by the application deadline will be returned as ineligible. Applications that do not include all items necessary for scoring will be scored as is. Please see the FY 2013 Application Guide for a full discussion of each required item and for samples and illustrations. The Agency will not solicit or consider eligibility or scoring information submitted after the application deadline.

3. The FY 2013 grant Application Guide specifies the format and order of all required items.

4. Most DLT grant projects contain numerous project sites. The Agency requires that site information be consistent throughout an application. Sites must be referred to by the same designation throughout all parts of an application. The Agency has provided a site worksheet that requests the necessary information, and can be used as a guide by applicants. RUS strongly recommends that applicants complete the site worksheet, listing all requested information for each site. Applications without consistent site information will be returned as ineligible.

5. As stated above, DLT grant applications which have non-fixed end-user sites, such as ambulance and home health care services, are scored according to the applicant's entire service area. See the FY 2013 Application Guide for specific guidance on preparing an application with non-fixed end users.

D. *Selection Process.* Grants applications are ranked by final score. RUS selects applications based on those rankings, subject to the availability of funds. RUS may allocate grant awards between medical and educational purposes, but is not required to do so. In addition, the Agency has the authority to limit the number of applications selected in any one state, or for one project, during a fiscal year. See 7 CFR 1703.127.

VII. Award Administration Information

A. Award Notices

RUS generally notifies by mail applicants whose projects are selected for awards. The Agency follows the award letter with an agreement that contains all the terms and conditions for the grant. A copy of the standard agreement is posted on the RUS Web site at *http://www.rurdev.usda.gov/UTP_DLTResources.html* . An applicant must execute and return the agreement, accompanied by any additional items required by the agreement, within the number of days shown in the selection notice letter.

B. Administrative and National Policy Requirements

The items listed in Section V of this notice, the DLT Program regulation, FY 2013 Application Guide and accompanying materials implement the appropriate administrative and national policy requirements.

C. Reporting

1. Performance reporting. All recipients of DLT financial assistance must provide annual performance activity reports to RUS until the project is complete and the funds are expended. A final performance report is also required; the final report may serve as the last annual report. The final report must include an evaluation of the success of the project in meeting DLT Program objectives. *See* 7 CFR 1703.107.

2. Financial reporting. All recipients of DLT financial assistance must provide an annual audit, beginning with the first year in which a portion of the

financial assistance is expended. Audits are governed by United States Department of Agriculture audit regulations. Please *see* 7 CFR 1703.108.

3. Recipient and Subrecipient Reporting. The applicant must have the necessary processes and systems in place to comply with the reporting requirements for first-tier sub-awards and executive compensation under the Federal Funding Accountability and Transparency Act of 2006 in the event the applicant receives funding unless such applicant is exempt from such reporting requirements pursuant to 2 CFR part 170, § 170.110(b). The reporting requirements under the Transparency Act pursuant to 2 CFR part 170 are as follows:

a. First Tier Sub-Awards of $25,000 or more in non-Recovery Act funds (unless they are exempt under 2 CFR part 170) must be reported by the Recipient to *http://www.fsrs.gov* no later than the end of the month following the month the obligation was made. Please note that currently underway is a consolidation of eight federal procurement systems, including the Sub-award Reporting System (FSRS), into one system, the System for Award Management (SAM). As result the FSRS will soon be consolidated into and accessed through *https://www.sam.gov/portal/public/SAM/.*

b. The Total Compensation of the Recipient's Executives (5 most highly compensated executives) must be reported by the Recipient (if the Recipient meets the criteria under 2 CFR part 170) to *https://www.sam.gov/portal/public/SAM/* by the end of the month following the month in which the award was made.

c. The Total Compensation of the Subrecipient's Executives (5 most highly compensated executives) must be reported by the Subrecipient (if the Subrecipient meets the criteria under 2 CFR part 170) to the Recipient by the end of the month following the month in which the subaward was made.

4. Record Keeping and Accounting.

The grant contract will contain provisions relating to record keeping and accounting requirements.

VIII. Agency Contacts

A. *Web site: http://www.rurdev.usda.gov/UTP_DLT.html.* The DLT Web site maintains up-to-date resources and contact information for DLT programs.

B. *Telephone:* 202–720–0665.

C. *Fax:* 202–720–1051.

D. *Email: dltinfo@wdc.usda.gov.*

E. *Main point of contact:* Norberto Esteves, Acting Director, Advanced Services Division, Telecommunications Program, Rural Utilities Service.

Dated: June 24, 2013.

John Charles Padalino,

Administrator, Rural Utilities Service.

[FR Doc. 2013–15597 Filed 6–27–13; 8:45 am]

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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–100–2013]

Foreign-Trade Zone 79—Tampa, Florida, Foreign-Trade Subzone 79C—Cutrale Citrus Juices USA, Inc., Application for Additional Subzone Sites

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Tampa, grantee of FTZ 79, requesting two additional sites for Subzone 79C located in Dade City and Leesburg, Florida. 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 Board (15 CFR part 400). It was formally docketed on June 24, 2013.

Subzone 79C was approved on June 17, 2013 (S–95–2013) with a site (515.57 acres) located at 602 McKean Street in Auburndale (Polk County) subject to a three-year ASF sunset provision to June 30, 2016.

The applicant is now requesting authority to include two additional sites: *Proposed Site 2* (5.03 acres)—38000 Cargill Way, Dade City (Pasco County); and, *Proposed Site 3* (35.31 acres)—11 Cloud Street, Leesburg (Lake County). The proposed subzone sites would be subject to the existing activation limit of FTZ 79 and to the existing sunset provision applicable to Site 1 of the subzone. No authorization for production activity has been requested at this time.

In accordance with the Board's regulations, Camille Evans of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 7, 2013. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to August 22, 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 Board's Web site, which is accessible via *www.trade.gov/ftz.* For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: June 24, 2013.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2013–15548 Filed 6–27–13; 8:45 am]

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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–19–2013]

Foreign-Trade Zone 189—Kent/Ottawa/Muskegon Counties, Michigan; Authorization of Production Activity; Southern Lithoplate, Inc. (Aluminum Printing Plates); Grand Rapids, Michigan

On February 22, 2013, Southern Lithoplate, Inc. submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board for its facility within FTZ 189—Site 10, in Grand Rapids, Michigan.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (78 FR 14074, 3–4–2013). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14.

Dated: June 24, 2013.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2013–15549 Filed 6–27–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Relating to Billy L. Powell, Sr.

In the Matter of: Billy L. Powell, Sr., 1911 Hickory Creek, Kingwood, TX 77339, Respondent.

The Bureau of Industry and Security, U.S. Department of Commerce (''BIS''),

has notified Billy L. Powell, Sr. of Kingwood, TX (''Powell''), of its intention to initiate an administrative proceeding against Powell pursuant to Section 766.3 of the Export Administration Regulations (the ''Regulations''),[1] and Section 13(c) of the Export Administration Act of 1979, as amended (the ''Act''),[2] through the issuance of a Proposed Charging Letter to Powell that alleges that Powell committed fifty violations of the Regulations. Specifically, the charges are:

Charges 1–50 15 CFR 764.2(e)—Acting With Knowledge of a Violation

On fifty occasions, between on or about January 14, 2006, and on or about February 23, 2008, Powell violated the Regulations by selling or transferring various oil and gas equipment parts, items subject to the Regulations [3] and the Iranian Transactions Regulations,[4] that were exported or to be exported from the United States to Iran via transshipment through the United Arab Emirates, with knowledge that a violation of the Regulations was occurring, was about to occur, or was intended to occur in connection with the items. Specifically, Powell sold or transferred the items with knowledge that licenses were required for such exports and that no licenses had been obtained. Pursuant to Section 560.204 of the Iranian Transactions Regulations administered by the Department of the Treasury's Office of Foreign Assets Control (''OFAC''), an export to a third country intended for transshipment to Iran is a transaction that requires OFAC authorization.[5] Pursuant to Section 746.7 of the Regulations, no person may engage in the exportation of an item subject to both the Regulations and the Iranian Transactions Regulations without authorization from OFAC. No OFAC authorization was obtained for the exports described herein.

Powell knew or had reason to know that he was violating the Regulations by engaging in these transactions, because prior to engaging in these transactions, Powell had knowledge of the U.S. Government's embargo on exports to Iran based on, inter alia, multiple outreach visits and contacts by U.S. law enforcement agents between 2000 and 2007, regarding the licensing requirements for exports to embargoed destinations, including Iran. In engaging in this activity, Powell committed fifty violations of Section 764.2(e) of the Regulations.

Whereas, BIS and Powell have entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations, whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein; and

Whereas, I have approved of the terms of such Settlement Agreement;

It is therefore ordered:

First, Powell shall be assessed a civil penalty in the amount of $100,000, the payment of which shall be made to the U.S. Department of Commerce within 30 days of the date of this Order.

Second, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. 3701–3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and if payment is not made by the due date specified herein, Powell will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

Third, that for a period of five (5) years from the date of this Order, Billy L. Powell, Sr., with a last known address of 1911 Hickory Creek, Kingwood, TX 77339, and when acting for or on his behalf, his successors, assigns, representatives, agents, or employees (hereinafter collectively referred to as ''Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Fourth, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from, or to facilitate the acquisition or attempted acquisition from, the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Fifth, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to the Denied Person by affiliation, ownership,

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR Parts 730–774 (2013). The charged violations occurred in 2006–2008. The Regulations governing the violations at issue are found in the 2006–2008 versions of the Code of Federal Regulations (15 CFR Parts 730–774) (2006–2008)). The 2013 Regulations set forth the procedures that apply to this matter.

[2] 50 U.S.C. app. §§ 2401–2420 (2000). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2012 (77 FR 49699 (Aug. 16, 2012)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, et seq.) (2006 & Supp. IV 2010).

[3] These items were designated as EAR99, which is a designation for items subject to the Regulations but not listed on the Commerce Control List. 15 CFR 734.3(c) (2006–2008).

[4] 31 CFR Part 560 (2006–2008). Administered by the Treasury Department's Office of Foreign Assets Control (''OFAC''), the ITR were renamed the Iranian Transactions and Sanctions Regulations (''ITSR'') and reissued in their entirety by OFAC on October 22, 2012. See 77 FR 64,664 (Oct. 22, 2012). Section 560.204 remains unchanged in pertinent part. See 31 CFR 560.204 (2006–2008 and 2012).

[5] See also 15 CFR 734.2(b)(6).

control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of the Order.

Sixth, that the Proposed Charging Letter, the Settlement Agreement, and this Order shall be made available to the public.

Seventh, that this Order shall be served on Powell, and shall be published in the **Federal Register**.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Issued this 19th day of June, 2013.

David W. Mills,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2013–15253 Filed 6–27–13; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with May anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

DATES: *Effective Date:* June 28, 2013.

FOR FURTHER INFORMATION CONTACT: Brenda E. Waters, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various antidumping and countervailing duty orders and findings with May anniversary dates.

All deadlines for the submission of various types of information, certifications, or comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting time.

Notice of No Sales

If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (''POR''), it must notify the Department within 60 days of publication of this notice in the **Federal Register**. All submissions must be filed electronically at *http://iaaccess.trade.gov* in accordance with 19 CFR 351.303. *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011). Such submissions are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended (''Act''). Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy must be served on every party on the Department's service list.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the POR. We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties having an APO within seven days of publication of this initiation notice and to make our decision regarding respondent selection within 21 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the applicable review.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department has found that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance has prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

Separate Rates

In proceedings involving non-market economy (''NME'') countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an

exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994). In accordance with the separate rates criteria, the Department assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate rate eligibility, the Department requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on the Department's Web site at *http://www.trade.gov/ia* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to the Department no later than 60 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding [1] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[2] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Status Application will be available on the Department's Web site at *http://www.trade.gov/ia* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Status Application, refer to the instructions contained in the application. Separate Rate Status Applications are due to the Department no later than 60 calendar days of publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Status Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

For exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than May 31, 2014.

	Period to be reviewed
Antidumping Duty Proceedings	
Belgium:	
Stainless Steel Plate in Coils, A–423–808	5/1/12–4/30/13
Aperam Stainless Belgium N.V. (''ASB'')	
Canada:	
Citric Acid and Citrate Salt A–122–853	5/1/12–4/30/13
Jungbunzlauer Canada Inc.	
Republic of Korea:	
Polyester Staple Fiber A–580–839	5/1/12–4/30/13
Huvis Corporation	
Woongjin Chemical Company, Ltd.	
Taiwan:	
Certain Circular Welded Carbon Steel Pipes and Tubes A–583–008	5/1/12–4/30/13
Chung Hung Steel Corp.	
Far East Machinery Co., Ltd.	
Kao Hsing Chang Iron & Steel Corp.	
Shin Yang Steel Co., Ltd.	
Tension Steel Industries Co., Ltd.	
Yieh Phui Enterprise Co., Ltd.	
Certain Stilbenic Optical Brightening Agents A–583–848	11/3/11–4/30/13
Teh Fong Min International Co., Ltd.	
Polyester Staple Fiber A–583–833	5/1/12–4/30/13
Far Eastern New Century Corporation	
Nan Ya Plastics Corporation	
The People's Republic of China	

[1] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently completed segment of the proceeding in which they participated.

[2] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

	Period to be reviewed
Aluminum Extrusions[3] A–570–967	5/1/12–4/30/13
Acro Import and Export Co.	
Activa International Inc.	
Allied Maker Limited	
Alnan Aluminium Co., Ltd.	
Bracalente Metal Products (Suzhou) Co. Ltd.	
Changshu Changshen Aluminum Products Co., Ltd.	
Changzhou Changzheng Evaporator Co., Ltd.	
Changzhou Tenglong Auto Parts Co., Ltd.	
Chiping One Stop Industrial & Trade Co., Ltd.	
Cixi Handsome Pool Appliance Co., Ltd.	
Classic & Contemporary Inc.	
Clear Sky Inc.	
Cosco (J.M.) Aluminum Co., Ltd.	
DongChuan Swimming Pool Equipments Co., Ltd.	
Dongguan Aoda Aluminum Co., Ltd.	
Dongguan Golden Tiger Hardware Industrial Co., Ltd.	
Dragonluxe Limited	
Dynabright Int'l Group (HK) Limited	
Dynamic Technologies China	
First Union Property Limited	
Foreign Trade Co. of Suzhou New & Hi-Tech Industrial Development Zone	
Foshan City Nanhai Hongjia Aluminum alloy Co.	
Foshan Guancheng Aluminum Co., Ltd.	
Foshan Jinlan Aluminum Co. Ltd.	
Foshan JMA Aluminum Company Limited	
Foshan Shanshui Fenglu Aluminum Co., Ltd.	
Foshan Shunde Aoneng Electrical Appliances Co., Ltd.	
Foshan Yong Li Jian Alu. Ltd.	
Fujian Sanchuan Aluminum Co., Ltd.	
Gangzhou Mingcan Die-Casting Hardware Products, Co. Ltd.	
Global PMX Dongguan Co., Ltd.	
Golden Dragon Precise Copper Tube Group, Inc.	
Gree Electric Appliances	
Guang Dong Xin Wei Aluminum Products Co., Ltd.	
Guang Ya Aluminum Industries Co. Ltd	
Guangdong Hao Mei Aluminum Co., Ltd.	
Guangdong Jianmei Aluminum Profile Company Limited	
Guangdong Nanhai Foodstuffs Imp. & Exp. Co., Ltd.	
Guangdong Weiye Aluminum Factory Co., Ltd.	
Guangdong Whirlpool Electrical Appliances Co., Ltd.	
Guangdong Xingfa Aluminum Co., Ltd.	
Guangdong Zhongya Aluminum Company Limited	
Guangzhou Jangho Curtain Wall System Engineering Co., Ltd. and Jangho Curtain Wall Hong Kong Ltd. (collectively, Jangho)	
Hangzhou Zingyi Metal Products Co., Ltd.	
Hanwood Enterprises Limited	
Hanyung Alcobis Co., Ltd.	
Hanyung Metal (Suzhou) Co., Ltd.	
Hao Mei Aluminum Co., Ltd.	
Hao Mei Aluminum International Co., Ltd.	
Henan New Kelong Electrical Appliances Cp., Ltd.	
Hoff Associates Mfg Reps Inc. (dba Global Point Technology, Inc.) and Global Point Technology (Far East) Limited (collectively, Global Point)	
Hong Kong Gree Electric Appliances Sales Limited	
Honsense Development Company	
Hui Mei Gao Aluminum Foshan Co., Ltd.	
Idex Dinglee Technology (Tianjin Co., Ltd.)	
Idex Health	
Innovative Aluminum (Hong Kong) Limited	
iSource Asia	
Jiangmen Qunxing Hardware Diecasting Co., Ltd.	
Jiangsu Changfa Refrigeration Co., Ltd.	
Jiangyin Trust International Inc	
Jiangyin Xinhong Doors and Windows Co., Ltd.	
Jiaxing Jackson Travel Products Co., Ltd.	
Jiaxing Taixin Metal Products Co., Ltd.	
Jiuyan Co., Ltd.	
JMA (HK) Company Limited	
Justhere Co., Ltd.	
Kam Kiu Aluminum Products Sdn Bhd	
Kanal Precision Aluminum Product Co., Ltd.	
Karlton Aluminum Company Ltd.	

	Period to be reviewed
Kong Ah International Company Limited	
Kromet International Inc.	
Kunshan Giant Light Metal Technology Co., Ltd.	
Liaoyang Zhongwang Aluminum Profiled Co. Ltd.	
Longkou Donghai Trade Co., Ltd.	
Metaltek Group Co., Ltd.	
Metaltek Metal Industry Co., Ltd.	
Midea Air Conditioning Equipment Co., Ltd.	
Midea International Trading Co., Ltd.	
Miland Luck Limited	
Nanhai Textiles Import & Export Co., Ltd. of Guangdong	
New Asia Aluminum & Stainless Steel Product Co., Ltd.	
Nidec Sankyo Singapore Pte. Ltd.	
Nidec Sankyo (Zhejiang) Corporation	
Ningbo Coaster International Co., Ltd.	
Ningbo Hi Tech Reliable Manufacturing Company	
Ningbo Splash Pool Appliance Co., Ltd.	
Ningbo Yili Import and Export Co., Ltd.	
North China Aluminum Co., Ltd.	
Northern States Metals	
PanAsia Aluminum (China) Limited	
Permasteelisa South China Factory (Permasteelisa China) and Permasteelisa Hong Kong Limited	
Pingguo Aluminum Company Limited	
Pingguo Asia Aluminum Co., Ltd.	
Popular Plastics Company Limited	
Press Metal International Ltd	
Samuel, Son & Co., Ltd.	
Sanchuan Aluminum Co., Ltd.	
Shangdong Huasheng Pesticide Machinery Co.	
Shangdong Nanshan Aluminum Co., Ltd.	
Shanghai Canghai Aluminum Tube Packaging Co., Ltd	
Shanghai Dongsheng Metal	
Shanghai Shen Hang Imp & Exp Co., Ltd.	
Shanghai Tongtai Precise Aluminum Alloy Manufacturing Co., Ltd.	
Shenyang Yuanda Aluminum Industry Engineering Co., Ltd.	
Shenzhen Hudson Technology Development Co., Ltd.	
Shenzhen Jiuyuan Co., Ltd.	
Sihui Shi Guo Yao Aluminum Co., Ltd.	
Sincere Profit Limited	
Skyline Exhibit Systems (Shanghai) Co., Ltd.	
Suzhou JRP Import & Export Co., Ltd.	
Suzhou New Hongji Precesion Part Co	
Tai-Ao Aluminum (Taishan) Co. Ltd.	
Taishan City Kam Kiu Aluminum Extrusion Co., Ltd.	
Taizhou Lifeng Manufacturing Corporation	
Taogoasei America Inc	
tenKsolar (Shanghai) Co., Ltd.	
Tianjin Ganglv Nonferrous Metal Materials Co., Ltd.	
Tianjin Jinmao Import & Export Corp., Ltd.	
Tianjin Ruxin Electric Heat Transmission Technology Co., Ltd.	
Tiazhou Lifeng Manufacturing Corporation	
Top-Wok Metal Co., Ltd.	
Traffic Brick Network, LLC	
Union Industry (Asia) Co., Ltd.	
USA Worldwide Door Components (Pinghu) Co., Ltd.	
Wenzhou Shengbo Decoration & Hardware	
Whirlpool Canada L.P.	
Whirlpool (Guangdong)	
Whirlpool Microwave Products Development Ltd.	
Xin Wei Aluminum Company Limited	
Xinya Aluminum & Stainless Steel Product Co., Ltd.	
Zhaoqing China Square Industry Limited	
Zhaoqing Asia Aluminum Factory Company Ltd	
Zhaoqing New Zhongya Aluminum Co., Ltd.	
Zhejiang Anji Xinxiang Aluminum Co., Ltd.	
Zhejiang Yongkang Listar Aluminum Industry Co., Ltd.	
Zhejiang Zhengte Group Co., Ltd.	
Zhenjiang Xinlong Group Co., Ltd.	
Zhongshan Gold Mountain Aluminum Factory Ltd.	
Zhongya Shaped Aluminum (HK) Holding Limited	
Zhuhai Runxingtai Electrical Equipment Co., Ltd.	
Certain Oil Country Tubular Goods[4] A–570–943	5/1/12–4/30/13
1st Huabei OCTG Machinery Co., Ltd.	

	Period to be reviewed
Adler Steel Limited	
Adler Steel Limited Tianjin China c/o Adler Steel Limited	
Angang New Steel Co. Ltd.	
Angang Steel Co., Ltd.	
Anhui Tianda Oil Pipe Co. Ltd. and Anhui Tianda Enterprise (Group) Co. Ltd.	
Anshan Xin Yin Hong Petroleum and Gas Tubular Co.	
Anshan Zhongyou TIPO Pipe & Tubing Co., Ltd.	
Anton Oilfield Services (Group) Ltd.	
Anton Tongao Technology Industry Co. Ltd.	
Anyang Iron & Steel Group Ltd.—Seamless	
Aofei Tele Dongying Import & Export Co., Ltd.	
Baoji Petroleum Steel Pipe and Tube Works	
Baoji-Sumitomo Metal Industries (SMI) Petroleum Steel Pipe, Co. Ltd. (BSG)	
Baolai Steel Pipe and Tianjin Baolai International Trade Co., Ltd.	
Baoshan Iron & Steel Co. Ltd. Precision Steel Tube Factory	
Baoshan Iron & Steel Co. Ltd. Shanghai Baosteel Group Corporation and Steel Tubing Plant of Baosteel Branch	
Baosteel America Inc.	
Baosteel Group Shanghai Steel Tube	
Baosteel International (Shanghai Baosteel International Economic & Trading Co., Ltd.)	
Baotou Found Petroleum Machinery Co. Ltd.	
Baotou Iron & Steel (Group) Co., Ltd.	
Bazhou Hongyuan Petroleum Equipment Materials Co., Ltd.	
Bazhou Seamless Oil Pipe Co., Ltd.	
Bazhou Zhuofa Steel Pipe Co., Ltd.	
Beijing Bell Plumbing Manufacturing Ltd.	
Beijing Changxing Kaida Composite Material Development Co., Ltd.	
Beijing Jinghua Global Trading Co., Ltd.	
Beijing Shouhang Science-Technology Development Company	
Beijing Youlu Co., Ltd.	
Beijing Zhongyou TIPO Material & Equipment Co., Ltd.	
Beiman Special Steel Co., Ltd.	
Benxi Northern Steel Pipes Co., Ltd.	
Bohai Equipment New Century Machinery Manufacturing Co., Ltd.	
Cangzhou City Baohai Petroleum Material Co., Ltd.	
Cangzhou City Shengdali Machinery Manufacture Co., Ltd.	
Cangzhou OCTG Company Limited of Huabei Oilfield	
Cangzhou Qiancheng Steel Pipe Co., Ltd.	
Cangzhou Ruitai Petroleum Machinery Co., Ltd.	
Cangzhou Xinxing Seamless Steel Pipe Co., Ltd.	
Changshu Chengfeng Machinery Manufacturing Co., Ltd.	
Changshu Lijia Import and Export Co.	
Changshu Seamless Steel Tube Co., Ltd.	
Changzhou Bao-Steel Tube Limited-Liability Co.	
Changzhou Darun Steel Tube Co., Ltd.	
Changzhou Haitong Petroleum Tube Co., Ltd.	
Changzhou Heji Engineering Machinery Co., Ltd.	
Changzhou Heyuan Steel Pipe Company	
Changzhou Hong Ping Material Supply Co., Ltd.	
Changzhou Huixiang Petroleum Machinery Co., Ltd.	
Changzhou Jianzhou Machinery Co., Ltd.	
Changzhou Shengde Seamless Pipe Co., Ltd.	
Changzhou Steel Pipe Factory	
ChangZhou TaoBang Petroleum Tube Co., Ltd.	
Changzhou Tianda Petroleum Pipe Co., Ltd.	
Changzhou Tong Xing Steel Tube Co., Ltd.	
Changzhou Tongchuang Tube Industry Co., Ltd.	
Changzhou Wujin Furong Aluminum Alloy Profile Factory	
Changzhou Yuanyang Steel Tube Co., Ltd.	
Chengde Longcheng Steel Pipe Manufacturing Co., Ltd.	
Chengdu Heyi Steel Tube Industrial Co., Ltd.	
Chengdu Wanghui Petroleum Pipe Co. Ltd.	
Chengdu Zhongyuan Zongji Petroluem Equipment Co., Ltd.	
China East Resources Import & Export Co., Ltd.	
China Hebei Xinyuantai Steel Pipe Co.	
China Oilfield Services Limited	
Chongqing Petroleum Special Pipeline Factory of CNPC Sichuan Petroleum Goods & Material Supply Corp.	
Chu Kong Steel Pipe Group Co	
Chuanna Machinery Manufacturing Plant	
Cloudstone Metal International Limited	
CNOOC Energy Technology & Services—Pipe Engineering Co.	
CNOOC Kingland Pipeline Co., Ltd.	
CNPC Chuanqing Drilling Engineering Co., Ltd./changqing Downhold Technology Operation Co.	
CNPC Chuanqing Drilling Engineering Co., Ltd./Changqing General Drilling Company	

	Period to be reviewed
CNPC GWDC Drilling Tools Company	
CORPAC Steel Products, Corp.	
Da An Heng Rui Production Enquipment Co., Ltd.	
Da Qing Jing Tai mechancial Manufacturing Co., Ltd.	
Da'an Petroleum Accessories Factory	
DADI Petroleum Machinery Co., Ltd. Of Inner Mongolia First Machinery Group Co., Ltd.	
Dagang Oilfield Group New Century Machinery Manufacturing Co., Ltd.	
Dalipal Pipe Company	
Daqing High-Tech Zone Hua Rui Ke Pipe Manufacturing Co.	
DaQing Ocean Petroleum Technology Development Co., Ltd.	
Daqing Petroleum Equipment Group	
Daqing Powerlift Petro-Equipment Group	
Daqing Seamless Oil Pipe Co., Ltd.	
Daqing Wanke Oilfield Equipment Manufacturing Co., Ltd.	
Daquing Powerlift Petro-Equipment Group	
Daye Xinye Special Steel Company Limited	
De Zhou Guang Hua Petroleum Machinery Company Limited	
De Zhou United Petroleum Machinery Company Limited	
De Zhou Zhong Xing Petroleum Machinery Co., Ltd.	
Dexin Steel Tube (China) Co., Ltd.	
Dezhou Great Wall Petroleum Machinery Co., Ltd.	
Dezhou Horizon Oil Tools Co., Ltd.	
Dezhou Longke Petroleum Equipment Co., Ltd.	
Dingbian County Huayou Trading Company Limited	
Dong Ying East Petroleum Pipe Co., Ltd.	
Dongying City Jinyilai Petroleum Machinery Co., Ltd.	
Dongying City Meiyang Petroleum Pipe & Fittings Co., Ltd.	
Dongying City Paipu Petroleum Pipe Fitting Co., Ltd.	
Dongying City YongLiJingGong Petroleum Machinery Manufacturing Co., Ltd.	
Dongying Heli Petroleum Machinery Company Limited	
Dongying Rui'ao Industrial Trading Co., Ltd.	
Dongying Tianlin Petroleum Equipment Co., Ltd.	
Dongying Tianrui Petroleum Science & Technology Co., Ltd.	
DP-Master Manufacturing Co., Ltd.	
DRK Oil Tools, Co., Ltd.	
Engineering Service Company of Great Wall Drilling Engineering Ltd. Of China Petroleum Group	
Etco (China) International Trading Co., Ltd.	
Faray Petroleum Steel Pipe Co., Ltd.	
Field Construction Bohai Equipment Services	
First Machinery Works of North China Petroleum	
Freet Petroleum Equipment Co. Ltd. of Shengli Oil Field The Thermal Recovery, Zibo Branch	
Gaoyou Huaxing Petroleum Pipe Manufacturing Co., Ltd.	
Ge Steel Resource Ltd.	
General Machinery Factory of Jilin Petroleum Group Co., Ltd.	
General Machinery Plant of Shengli Petroleum Administration (Shengli Oil Field Shengli Petroleum Equipment Co., Ltd.)	
Guangzhou Hongda Steel Tube	
Guangzhou Iron and Steel	
Guanzhou Junjia Steel Tube Manufacturer Co., Ltd.	
Guanzhou Juyi Steel Pipes Company Limited	
Guanzheng Branch of Tangshan Jidong Petroleum Machinery Company, Ltd.	
Haerbin City Weilian Mechanical Manufacturing Company Limited	
Haicheng Northern Steel Pipe Anti-Corrosion Company Limited Haicheng Northern Steel Pipe Co. and Haicheng Beigang Pipe Group	
Handan Precise Seamless Steel Pipes Co., Ltd.	
Hangzhou Cogeneration Import & Export Company Limited	
Hangzhou Zhedong Steel Tube Products Co., Ltd.	
Hao Ying Qiqihaer in Northeast Special Steel Co., Ltd.	
Hebei ChangFeng Steel Tube Manufacture Group	
Hebei Dingsheng Pipe Industry Co., Ltd.	
Hebei Hongling Seamless Steel Pipes Manufacturing Co., Ltd	
Hebei Huike Steel Pipe Co., Ltd.	
Hebei Litonglian Seamless Steel Pipe	
Hebei Machinery Import and Export Co., Ltd.	
Hebei Puyang Iron and Steel Company Limited	
Hebei Tiandixing Pipeline Co., Ltd.	
Hebei Xinlian Petroleum Machinery Company Limited	
Hebei Xinyuantai Steel Pipe Co., Ltd.	
Hebei Yaosheng Petroleum Special Pipe Co., Ltd.	
Hebei Yi Xin Petroleum Pipe Company Limited	
Hebei Zewo Steel Pipe Manufacturing Co., Ltd.	
Hebei Zhong Kuang Steel Pipe Manufacturing Co., Ltd.	
Hebei Zhongyuan Steel Pipe Manufacturing Co., Ltd. and Zhongyuan Pipeline Manufacturing Co. Ltd.	
Hefei Ziking Steel Pipe Inc.	

	Period to be reviewed
Heilongjiang Jianlong Iron and Steel Co., Ltd.	
Heilongjiang North Shuangjia Drilling Tools Co., Ltd.	
Henan Dongfanlong Machine Manufacture Co., Ltd.	
Henan Huifeng Pipe Industry Co., Ltd.	
Henan Nanyang Oilfield Machinery Manufacturing Company Limited	
Henan Province LiDa Petroleum Pipe Drilling Tools Co., Ltd.	
Henan Zyzj Petroleum Equipment Co., Ltd.	
Hengshui Jinghua Steel Pipe Co., Ltd.	
Hengshui Weijia Petroleum Equipment Manufacture Co., Ltd.	
Hengyang Hongda Special Steel Tube Co., Ltd.	
Hengyang Steel Tube (Group) Co., Ltd.	
Hengyang Valin Steel Tube Co. Ltd. and Hengyang Valin MPM Tube Co., Ltd.	
HG Tubulars Limited	
Highgrade Tubular Manufacturing (Tianjin) Co., Ltd.	
HillHead	
Hilong Tubular Goods Co., Ltd.	
HSC (Chengdu) Seamless Steel Pipe Co., Ltd.	
Hsea Steel Trading Co., Ltd.	
Huai'an Zhenda Steel Tube Manufacturing Co., Ltd.	
Hubei OCTG Machinery Co. (First)	
Hubei Xinyegang Co., Ltd.	
Hubei Xinyegang Special Tube Co., Ltd.	
Hubei Zhongshi Special Steel Tubes Co., Ltd.	
Huizhou Dingjia Trade Co., Ltd.	
Huludao City Steel Pipe Industrial Co.	
Huludao Steel Pipe Industrial Co., Ltd.	
Hunting Energy Services (Wuxi) Co., Ltd.	
Jiangsu Benqiu Pipe Products Co.	
Jiangsu Changbao Steel Tube Co., Ltd. and Jiangsu Changbao Precision Tube Co. Ltd.	
Jiangsu Chengde Steel Tube Share Co., Ltd.	
Jiangsu Dingxing Petroleum Machinery Co., Ltd.	
Jiangsu Fanli Steel Pipe Co.	
Jiangsu Huacheng Industry Group Co., Ltd.	
Jiangsu Huashun Steel Pipe Co., Ltd.	
Jiangsu Kailai Steel Tube Co., Ltd.	
Jiangsu Li'Ao Steel Tube Company Limited	
Jiangsu Rontech Petroleum Technology Incorporated Company	
Jiangsu Shined Petroleum Equipment Manufacturing Company Limited	
Jiangsu Shuguang Oil Tools Limited	
Jiangsu Sujia Group Co., Ltd.	
Jiangsu Tenglong Petrochemical Machinery Co., Ltd.	
Jiangsu Tianyuan Steel Tube Co., Ltd.	
Jiangsu Valin-Xigang Special Steel Co., Ltd.	
Jiangsu Wuxi Steel Group	
Jiangsu Yulong Steel Pipe Co., Ltd.	
Jiangsu ZhenDa Steel Tube Group Co., Ltd.	
Jiangsu Zhongye Energy Equipment Manufacture Co., Ltd.	
Jiangyin Changjiang Oil Special Pipe Manufacture Co., Ltd.	
Jiangyin Chuangxin Oil Pipe	
Jiangyin City Changjiang Steel Pipe Co., Ltd.	
Jiangyin City Seamless Steel Tube Factory	
Jiangyin Hengyang Petroleum Machinery Company Limited	
Jiangyin Jieda Shaped Tube Co., Ltd.	
Jiangyin Jieshun Metal Science & Technology Co., Ltd.	
Jiangyin Long-Bright Drill Pipe Manufacture Co., Ltd.	
Jiangyin Yashen Petroleum Pipe Co., Ltd.	
Jiangyin Yueyue Chao Steel Pipe Manufacture Co., Ltd.	
Jiangyin Yuhao Petroleum Pipe Co., Ltd.	
Jianhu Lichange Valve Co., Ltd.	
Jilin Baotong Petroleum Steel Pipe Company Limited	
Jilin Qianyuan Steel Pipe Co., Ltd.	
Jilin Sky Loong Industry Co., Ltd.	
Jinan Iron and Steel Company Jigang Group Co., Ltd.	
Jinxi Industry Group Co., Ltd.	
Jinxi Steel Pipe Co., Ltd. of Lingyuan Iron and Steel Group	
Jinxi Steel Pipe Xinjiang Co., Ltd.	
Jiuquan Iron and Steel Group (JISCO)	
Julong Steel Pipe Co., Ltd.	
Laiwu Iron and Steel Corporation	
Langfang OTSMAN Special Petroleum Pipe Manufacture Company Limited	
Liangshan Steel Pipe Company Limited	
Liaoche Thermal Recovery Machinery Branch of CNPC Bohai Equipment Manufacturing Co., Ltd.	
Liaocheng Jialong Tube Manufacture Company Limited	

	Period to be reviewed
Liaocheng Jingxin Seamless Steel Pipe Manufacturing Co., Ltd.	
Liaocheng Xinpengyuan Metal Manufacture Co., Ltd.	
Liaoning Dongyu Oil Tubular Goods Company, Ltd.	
Liaoning Foo May Oilfield Services Co., Ltd.	
Liaoning Large-scale Steel Pipe Co., Ltd.	
Liaoning Northern Steel Pipe Co., Ltd.	
Liaoning ShenYu Oil Pipe Manufacture Company Limited	
Liaoyang Seamless Oil Pipe Co., Ltd.	
Linggang Beipiao Steel Pipe Co., Ltd.	
Lingyuan Iron & Steel Company Limited	
Linyi Jinzhengyang Seamless Steel Pipe Co., Ltd.	
Linyi Sanyuan Steel Pipe Industry Company Limited	
Linyi Yinlong Steel Tube Co., Ltd.	
Linzhou Fengbao Pipe Industry Co., Ltd.	
Liuzhou Iron and Steel	
M&M Steel Pipe Co., Ltd.	
Machinery Factory of Jilin Petroleum Group Co., Ltd.	
Machinery Factory of Tuha Petroleum	
MCC Liaoning Dragon Pipe Industries Company Limited	
Mechanical Factory of CNPC Qinghai Oilfield Company	
Meihekou City Hongye Seamless Steel Pipe Co., Ltd.	
Mercadex B.V.	
MSP/Drilex, Inc.	
Nantong Hengte Tube Co., Ltd.	
Nantong Petroleum Machine Manufacturing Co., Ltd.	
Nantong Yongda Pipe Industry Incorporated Company	
Nengyang Hongling Petroleum Pipe Co., Ltd.	
NHIC Antonoil Machinery Manufacturing Co., Ltd.	
Ning Xia D.M.S. OCTG Company Limited	
Ningbo Hengfa Steel Tube Co., Ltd.	
Ningxia Daimus Petroleum Steel Pipe Co., Ltd., Tianjin Branch	
Norms-ShenZhen HaiYou Mechanical Equipment Company	
North China Petroleum Steel Pipe Co., Ltd.	
North China Petroleum Steel Pipe Co., Ltd. Yangzhou Subsidiary Company	
Oilfield Services & Supplies (Tianjin) Co., Ltd.	
Pancheng Yihong Pipe Company Limited	
Pangang Group Beihai Steel Pipe Corporation (PGBH)	
Pangang Group Chengdu Iron & Steel Co., Ltd.	
Pangang Group Chengdu Steel & Vanadium Co., Ltd.	
Panjin ChangTai Petroleum Tubular Co., Ltd.	
Panjin Liaohe Oilfield Jinhuan Company Corporation Ltd.	
Panjin Renhe Pipe Co., Ltd.	
Panjin Xinhua Drilling Machinery Manufacture Co., Ltd.	
Panshi City Great Wall Mechanical Factory	
Panyu Chu Kong Steel Pipe Co., Ltd.	
Petroleum Machinery Factory of Bohai Petroleum Manufacturing Co., Ltd.	
PetroMaterials (Cangzhou) Co., Ltd.	
Pipe and Tooling Center, Sinopec Southwest Company	
Pipe & Tools Of No.2 Drilling Technical Company Of Da Qing CN	
Precision Pipe Manufacturing Branch of Liaoning Tianyi Industry Company	
PuYang BaoLiTong Petroleum Machinery Co., Ltd.	
Puyang City Huang Jin-Driliing Parts Processing Co., Ltd.	
Puyang City Shuangfa Industry	
Puyang Heli Drilling Machinery Processing Co., Ltd.	
Puyang Xinyu Petro-chemical Machinery Co., Ltd.	
Puyang Zhongshi Group Co., Ltd.	
Qingdao Kehua Petroleum Machinery Co., Ltd.	
Qiqihaer Haoying Iron & Steel Co of Northeast Special Steel Group	
Rizhao Steel Holding Group Co., Ltd.	
RiZhao ZhongShun Steel Pipe Manufacture Company Limited	
RongSheng Machinery Manufacture Ltd.	
Seamless Tube Mill of Baotou Steel Union	
Shaanxi Jiabao Petroleum Machine Manufacture Co., Ltd.	
Shaanxi Qindong Tubular Goods Manufacturing Co., Ltd.	
Shaanxi Yanchang Petroleum Equipment Manufacturing Co., Ltd.	
Shaanxi Yangchang Petroleum Material Company	
Shandong Continental Petroleum Equipment Co., Ltd.	
Shandong Dongbao Steel Pipe Co., Ltd.	
Shandong Dongying Liyuan Pipe Industry Group Co., Ltd.	
Shandong East China Petroleum Pipes & Drilling Tools Co., Ltd.	
Shandong East Oil Petroleum Equipment Co., Ltd.	
Shandong Huabao Steel Pipe Co., Ltd.	
Shandong Huitong Steel Tube Making Co., Ltd.	

	Period to be reviewed
Shandong Jialong Petroleum Pipe Manufacture Co., Ltd.	
Shandong Liaocheng Baotong Steel Tube Manufacture Co., Ltd.	
Shandong Liaocheng Shenhao Metal Product Co., Ltd.	
Shandong Liaocheng ZGL Metal Manufacturing Co., Ltd.	
Shandong Luhai Petroleum Equipment Co., Ltd.	
Shandong Luxing Steel Pipe Co., Ltd.	
Shandong Mingzhu Petroleum Equipment Co., Ltd.	
Shandong Molong Petroleum Machinery Co., Ltd.	
Shandong Nine-Ring Petroleum Machinery Co., Ltd.	
Shandong Province Coalfield Geologic Drilling Tools Factory	
Shandong Province Jin Shun Steel Product Limited Company	
Shandong Runhe Tube Industry Co., Ltd.	
Shandong Shengdong Oilfield Machinery Co., Ltd.	
Shandong Shengli Tongxing Petroleum Pipe Manufacture Co., Ltd.	
Shandong Shengyou Oil Drilling & Production Machinery Limited Company	
Shandong Shouguang JuNeng Special Steel Co., Ltd.	
Shandong Taifeng Steel Industry Co., Ltd.	
Shandong Xinchi Steel Pipe Manufacture Co., Ltd.	
Shandong Xinji Yiming Machinery Co., Ltd.	
Shandong Zhao Yu Petroleum Pipe Manufacture Co., Ltd.	
Shandong Zhongli Steel Pipe Co., Ltd.	
Shandong Zhongye Petroleum Machinery Co., Ltd	
ShanDong ZhongZheng Steel Pipe Manufacturing Co., Ltd.	
Shanghai Baochen Oil Pipeline Materials Company Limited	
Shanghai Baodi Petroleum Pipe Development Co., Ltd.	
Shanghai Baofu Steel Pipe Co., Ltd.	
Shanghai Baoshun Steel Tube Co., Ltd.	
Shanghai Baoyan Special Steel Pipe Co., Ltd.	
Shanghai Baoyi Industrial Company	
Shanghai Fanzhenglong Steel Tube Co., Ltd.	
Shanghai Hilong Drill Pipe Co., Ltd.	
Shanghai Hongshun Tube Manufacturing Co., Ltd.	
Shanghai Kangxin Oil Pipe Manufacturing Co., Ltd.	
Shanghai Metals & Minerals Import & Export Corporation	
Shanghai Mingsheng Industrial Co., Ltd.	
Shanghai STARSE Petroleum Equipment Co., Ltd.	
Shanghai Tianhe Oil Engineering Co., Ltd.	
Shanghai W.M Threading Co., Ltd.	
Shanghai Yuanxin Tube Co., Ltd.	
Shanghai Yueyuechao Manufacture Tube Co., Ltd.	
Shanghai Yuezhou Steel Co., Ltd.	
Shanghai Zhongyou TIPO Steel Pipe Co., Ltd.	
Shanxi Dehui Seamless Steel Pipe Co., Ltd.	
Shanxi Guolian Pipe Industry Group Co., Ltd.	
Shanxi Hongli Steel Tube Share Company Limited	
Shanxi Taigang Stainless Steel Tubes & Pipes Co. Ltd.	
Shanxi Yida Petroleum Manufacture Co., Ltd.	
Shanxi Yuci Guolian Steel Pipe Co., Ltd.	
Shelfoil Petroleum Equipment & Services Co., Ltd.	
Shengil Fanland Petroleum Equipment Co., Ltd.	
Shengil Oil Field Shengli Power Machinery Group Co., Ltd.	
Shengil General Engineering (The Thermal Recovery Equipment Manufactory of Shengli General Engineering)	
Shengli Oil Field Freet Petroleum Steel Pipe Co., Ltd.	
Shengli Oil Field Highland Petroleum Equipment Co., Ltd.	
Shengli Oil Field TianFeng Science, Industry & Trade Steel Structure Co., Ltd.	
Shengli Oil Field Whuhua Industry Development Co., Ltd.	
Shengli Oilfield Shengji Petroleum Equipment Co., Ltd.	
Shengli Petroleum Administration General Machinery Plant	
Shengli Petroleum Equipment Co., Ltd.	
Shenyang Dongming Seamless Steel Tube Co., Ltd.	
Shenyang Special Type Seamless Steel Tube Co., Ltd.	
Shenzhen Renjunfeng Enterprise Co., Ltd.	
Shenzhen Weisheng I.T.S. Petroleum Tubular & Equipment Co., Ltd.	
Siano (Beijing) Steel Co., Ltd.	
Sichuan ChangCheng Steel Tube Co., Ltd.	
Sichuan ChengJiWeiYe Steel Pipe Co., Ltd.	
Sichuan Huagong Petroleum Steel Pipe Co., Ltd.	
Sichuan Jingshi Engineering Technology Co., Ltd.	
Songyuan Daduo Oilfield Accessory Industry Co., Ltd.	
Songyuan Seamless Oil Pipe Co., Ltd.	
SPAT Steel International (H.K.) Limited	
Steel Pipe Plant Of Wisco Wuhan Jiangbei Iron And Steel Co., Ltd.	
Steel Pipe Works of North China Petroleum	

	Period to be reviewed
Steelforce Far East Ltd.	
Stiletto (HK) Limited	
Suns Steel International (Group) Co., Ltd., Shanghai Suns Steel International Trading Ltd., and Shanghai Suns Steel International Ltd.	
Suzhou Baoxin Seamless Steel Tube	
Suzhou Friend Tubing and Casing Pipe Co., Ltd.	
Suzhou Rainbow Huading Chimney Manufacturing	
Suzhou Seamless Steel Tube Works and Suzhou Shuangjin Group Corporation	
Suzhou Sino Import and Export Co., Ltd.	
Tai'an Jiecheng Equipment Installation Co., Ltd.	
Taicang Xinbaoyi Steel Pipe Manufacture Co., Ltd.	
Taizhou Chengde Steel Tube Co., Ltd.	
Taizhou Elite Drilling Pipe Co., Ltd.	
Taizhou Shuangyang Precision Seamless Steel Tube Co., Ltd.	
Tangshan Jointer Petroleum Pipe Manufacture Co., Ltd.	
Tangshan Sanjin Mingsheng Industry Development Co., Ltd.	
Tangshan Wenfeng Qiyuan Pipe Industry Co., Ltd.	
The Freet Group	
The Machinery Plant, Tuha Oilfield Company	
Thermal Recovery Equipment Manufacturer of Shengli Oil Field Freet Petroleum Equipment Co., Ltd.	
Tian Jin Costrength Petrol China Machinery Co., Ltd.	
Tianhe Oil Group Hifeng Petroleum Equipment Co., Ltd.	
Tianjin Amergy (Meineng) Fittings Co., Ltd.	
Tianjin Bond Oil Steel Pipe Manufacturing Co., Ltd.	
Tianjin Boyu Steel Pipe Co., Ltd.	
Tianjin City Gang Xin Seamless Pipe Industry Company	
Tianjin City Jinghai County Baolai Industrial and Trade Co.	
Tianjin City Juncheng Seamless Tube Company Limited	
Tianjin City Mingren Metallic Products Co., Ltd.	
Tianjin City Tian Yi Seamless Steel Tube Company Limited	
Tianjin Coupling Heat Treatment Company Limited	
Tianjin Debang Petroleum Pipe Manufacturing Co., Ltd.	
Tianjin DeHua Petroleum Equipment Manufacturing Company Limited	
Tianjin Delisi Steel Tube Products Co., Ltd.	
Tianjin Denuo Petroleum tube Co., Ltd.	
Tianjin Evergrand Oil Pipes Co., Ltd.	
Tianjin Feng Yi Da General Machinery Company Limited	
Tian-Jin Holly land Pipe Co., Ltd	
Tianjin Hong Gang Yuan Oil Equipment Manufacturing Co., Ltd.	
Tianjin Hua Xin Premium Connections Pipe Co., Ltd.	
Tianjin Huilitong Steel Tube Co., Ltd.	
Tianjin Jinggong Petroleum Pipe Fittings Co., Ltd.	
Tianjin Jingtong Seamless Steel Pipe Co., Ltd.	
Tianjin Jinyingda Plastic Product Co., Ltd.	
Tianjin Jinyuan Machinery Manufacture Co., Ltd.	
Tianjin Lida Steel Pipe Group Co., Ltd.	
Tianjin Lifengyuanda Steel Group Co., Ltd.	
Tianjin Liqiang Steel Pipe Co.	
Tianjin Master Seamless Steel Pipe Co., Ltd.	
Tianjin Minghai Petroleum Tubular Co., Ltd.	
Tianjin Opka Oil Pipe Co., Ltd.	
Tianjin Pipe Group Corporation	
Tianjin Pipe Industry Development Company	
Tianjin Pipe International Economic & Trading Corp.	
Tianjin Rainbox Steel Pipe Product Corporation	
Tianjin Ring-Top Petroleum Manufacture Co., Ltd.	
Tianjin Seamless Steel Pipe Plant	
Tianjin SERI Machinery Equipment Corporation Limited	
Tianjin Shengcaiyuan Steel Trading Co., Ltd.	
Tianjin Shenzhoutong Steel Pipe Co. Ltd.	
Tianjin Shuangjie Pipe Manufacturing Co., Ltd.	
Tianjin Tiangang Special Petroleum Pipe Manufacturer Co., Ltd.	
Tianjin Tiansheng Petroleum Pipe Manufacturing Co., Ltd.	
Tianjin Tianye Seamless Steel Pipe Plant Ltd.	
Tianjin Top Connect Manufacturing Co., Ltd.	
Tianjin TPCO & TISCO Welding Pipe Corporation	
Tianjin Tubular Goods Machining Co., Ltd.	
Tianjin United Steel Pipe Co (UNISTEEL)	
Tianjin Walt Pipe Co., Ltd.	
Tianjin Xingyuda Steel Pipe Co., Ltd.	
Tianjin Zhongshun Industry Trade Co., Ltd.	
TianJin ZhongShun Petroleum Steel Pipe Co., Ltd.	
Tianjing Boyu Steel Tube Co., Ltd.	

	Period to be reviewed
Tieling Yida Petroleum Machinery Manufacture Co., Ltd.	
TLD International	
Tonghua Iron & Steel Group Panshi Seamless Steel Tube Company Limited	
TPCO Yuantong Pipe and Tube Corporation Limited	
Tuha Petroleum Machinery	
UNI Tube Ltd.	
United Offshore Construction Co. Ltd. CONHW, Zhanjiang	
Uno-steel (Jiangyin) Drilling Products Manufacturing Limited	
Weifang East Pipe Industry Technical Co., Ltd.	
Weifang Weierds Steel Pipe Co., Ltd.	
Westcan Oilfield Supply Ltd.	
WSP Holding Limited	
Wuhan Seamless Oil Steel Tube Co., Ltd.	
Wuhan Wugang Group Hanyang Steel Factory	
Wuxi Baoda Petroleum Special Pipe Manufacture Co., Ltd.	
Wuxi City DongQun Steel Tube Co.	
Wuxi City Jianhong Metal Products Co., Ltd.	
Wuxi DeRui Seamless Steel Pipe Co., Ltd.	
Wuxi Dexin Steel Pipe Co., Ltd.	
Wuxi Dingyuan Precision Cold-Drawn Steel Pipe Co.	
Wuxi Eastsun Petroleum Tubular Manufacturing Co., Ltd.	
Wuxi Endless Petro Geo-Equipment Co., Ltd.	
Wuxi Erquan Special Steel	
Wuxi Fanyong Liquid Presses Tube Company Limited	
Wuxi Fastube Dingyuan Precision Steel Pipe Co., Ltd.	
Wuxi Fastube Industry Co.	
Wuxi Free Petroleum Tubulars Manufacture Co., Ltd.	
Wuxi Gedemei Oil Machinery Equipment Manufacture Co., Ltd.	
Wuxi Horizon Petroleum Special Pipe Manufacture Company Limited	
Wuxi Huaxin Petroleum Machine Co., Ltd.	
Wuxi Huayou Special Steel Co., Ltd.	
Wuxi Huazin Petroleum Machine Company Limited	
Wuxi Hui Long Wufeng Steel Tube Limited Company	
Wuxi Jiangnan High Precision Pipe Co., Ltd.	
Wuxi Jinding Oil Pipe Fittings Co., Ltd.	
WuXi OuLong Special Steel Pipe Co., Ltd	
Wuxi Precese Special Steel Co., Ltd.	
Wuxi Ruiyuan Special Steel Pipe Company Limited	
Wuxi Runfeng Special Pipe Co., Ltd.	
Wuxi Seamless Oil Pipe Co., Ltd.	
Wuxi SP Steel Tube Manufacturing Co. Ltd.	
Wuxi Special Steel Material Co., Ltd.	
Wuxi Sunshine Textile Science and Technology Co., Ltd.	
Wuxi Xijin Petroleum Equipment Fittings Manufacturing Co. Ltd.	
Wuxi Xingya Seamless Steel Tube	
Wuxi Zhen Dong Steel Pipe Works	
Wuxi Zhenda Special Steel Tube Manufacturing Co., Ltd. and Wu Xi Zhen Da Special Steel Tube Manufacturing Co., Ltd.	
X'ian Hangwei Petrochemical Equipment Co., Ltd.	
Xi'an Changqing Tianhe Petroleum Machinery Co., Ltd.	
Xigang Seamless Steel Tube Co., Ltd.	
XiNing Special Steel Co., Ltd.	
Xinjiang Petro Adminstration Bureau Machinery Manufacture General Company	
Xinjiang Ster Petroleum Tubes and Pipes Manufacturing Co., Ltd.	
Xinjiang Younaite Petroleum Steel Tube Co., Ltd.	
Xinxiang Central Plain Petroleum and Chemical Machine Manufacturing Co., Ltd.	
Xinxing Ductile Iron Pipes Co., Ltd.	
Xinyuantai Steel Pipe Group Co., Ltd.	
Xuzhou E&R Petroleum Equipment Co., Ltd.	
Xuzhou Guanghuan Steel Tube (Group) Co., Ltd.	
Xuzhou Guanghuan Steel Tube Co., Ltd.	
Xuzhou Oilfield Equipment Co., Ltd.	
Xuzhou Taifeng Oilwell Products Co., Ltd.	
Yan'an JiaSheng Petroleum Machinery Co., Ltd.	
Yan'an Shoushan Mechanical and Production Engineering Technology Co., Ltd.	
Yancheng Steel Tube Co., Ltd.	
Yancheng Teda Special Pipe Co., Ltd.	
Yangxin Universal Electromechanical Equipment Co., Ltd.	
Yangzhou BaoRuiDe Petroleum Machinery Co., Ltd.	
Yangzhou Chengde Steel Tube Co., Ltd..	
Yangzhou Chicheng Petroleum Machinery Co., Ltd.	
Yangzhou Lontrin Steel Tube Co., Ltd.	
Yangzhou Sinopetro Superbskill Machine Co., Ltd.	

	Period to be reviewed
Yantai KIYOFO Seamless Steel Pipe Company Limited	
Yantai Steel Pipe Co., Ltd. of Laiwu Iron & Steel Group	
Yantai Yuanhua Steel Tubes Company Limited	
Yieh Corporation	
YingKou OuYang Metal Manufacturing Co., Ltd.	
Zhangjiagang HengFeng Oil Pipe & Part Co., Ltd.	
ZhangJiaGang ZhongYuan Pipe-Making Co.	
Zhangjiakou Haite Steel Pipe Co., Ltd.	
Zhangzhou Stronghold Steel Works Co., Ltd.	
Zhejiang Guobang Steel Co., Ltd.	
Zhejiang Jianli Co., Ltd.	
Zhejiang JiuLi Hi-Tech Metals Co., Ltd.	
Zhejiang Kingland Pipe Industry Co., Ltd.	
Zhejiang Minghe Steel Pipe Co., Ltd.	
Zhejiang Seamless Steel Tube Co., Ltd. and Zhejiang Gross Seamless Steel Tube Co. Ltd.	
Zhongshi Special Steel Tubes Co., Ltd.	
Zhongyuan Pipeline Manufacturing Co., Ltd.	
Zibo Hongyang Petroleum Equipment Co., Ltd.	
Zibo Pipe Manufacturing	
ZYZJ Petroleum Equipment Co., Ltd.	
Citric Acid and Citrate Salt [5] A–570–937	5/1/12–4/30/13
Laiwu Taihe Biochemistry Co., Ltd.	
RZBC Co., Ltd., RZBC Imp. & Exp. Co., Ltd., RZBC (Juxian) Co., Ltd.	
Yixing Union Biochemical Co., Ltd.	
Pure Magnesium [6] A–570–832	5/1/12–4/30/13
Tianjin Magnesium International Co., Ltd. (“TMI”)	
Tianjin Magnesium Metal Co., Ltd. (“TMM”)	
Turkey:	
Circular Welded Carbon Steel Pipes and Tubes A–489–501	5/1/12–4/30/13
Borusan Group	
Borusan Holding A.S.	
Borusan Istikbal Ticaret T.A.S.	
Borusan Lojistik Dagitim Depolama Tasimacilik ve Tic A.S	
Borusan Mannesmann Boru Sanayi ve Ticaret A.S.	
Cayirova Boru Sanayi ve Ticaret A.S.	
ERBOSAN Erciyas Boru Sanayi ve Ticaret A.S.	
Guven Steel Pipe	
Guven Celik Boru San. ve Tic. Ltd.	
Metaleks Celik Urünleri San. ve Tic. Ltd. Sti.	
Metaliks Celik Urunkeri San ve Tic. Ltd.	
Toscelik Profil ve Sac Endustisi A.S.	
Toscelik Profil ve Sac Endustrisi A.S.	
Toscelik Metal Ticaret A.S.	
Tosyali Dis Ticaret A.S.	
Umran Celik Boru Sanayii A.S.	
Umran Steel Pipe Inc.	
Yucel Boru ve Profil Endustrisi A.S	
Yucelboru Ihracat Ithalat ve Pazarlama A.S.	
Yucel Group	
Light-Walled Rectangular Pipes and Tubes A–489–815	5/1/12–4/30/13
Yucel Boru ve Profil Endustrisi A.S.	
Yucelboru Ihracat Ithalat ve Pazarlama A.S.	
United Arab Emirates:	
Certain Steel Nails A–520–804	11/3/11–4/30/13
Dubai Wire FZE	
Precision Fasteners, L.L.C.	
Countervailing Duty Proceedings	
The People’s Republic of China:	
Aluminum Extrusions C–570–968	1/1/12–12/31/12
Acro Import and Export Co.	
Activa International Inc.	
Allied Maker Limited	
Alnan Aluminum Co. Ltd.	
Bracalente Metal Products (Suzhou) Co. Ltd. (Bracalente or BMP)	
Changshu Changshen Aluminum Products Co., Ltd.	
Changzhou Changzheng Evaporator Co., Ltd.	
Changzhou Tenglong Auto Parts Co., Ltd	
China Square Industrial Ltd.	
Chiping One Stop Industrial & Trade Co., Ltd. (Chiping)	
Cixi Handsome Pool Appliance Co., Ltd.	
Classic & Contemporary Inc.	
Clear Sky Inc	
Cosco (J.M.) Aluminum Co., Ltd	

	Period to be reviewed
DongChuan Swimming Pool Equipments Co., Ltd.	
Dongguan Aoda Aluminum Co. Ltd.	
Dongguan Golden Tiger	
Dongguan Golden Tiger Hardware Industrial Co., Ltd.	
Dragonluxe Limited	
Dynabright Int'l Group (HK) Limited	
Dynamic Technologies China	
Ever Extend Ent. Ltd. (Ever Extend)	
First Union Property Limited	
Foreign Trade Co. of Suzhou New & Hi-Tech Industrial Development Zone	
Foshan City Nanhai Hongjia Aluminum Alloy Co.,	
Foshan Guancheng Aluminum Co., Ltd	
Foshan Jinlan Aluminum Co. Ltd.	
Foshan JMA Aluminum Company Limited	
Foshan Nanhai ZhaoYa Decorative Aluminum Ltd.	
Foshan Shanshui Fenglu Aluminum Co., Ltd.	
Foshan Shunde Aoneng Electrical Appliances Co., Ltd	
Foshan Yong Li Jian Alu. Ltd	
Fujian Sanchuan Aluminum Co., Ltd	
Gangzhou Mingcan Die-Casting Hardware Products, Co. Ltd.	
Global PMX Dongguan Co., Ltd.	
Golden Dragon Precise Copper Tube Group, Inc.	
Gree Electric Appliances	
Guang Dong Xin Wei Aluminum Products Co., Ltd	
Guang Ya Aluminum Industries Co. Ltd	
Guang Zhou Sang Yi Imp. & Exp. Co., Ltd. (Guang Zhou)	
Guangdong Hao Mei Aluminum Co., Ltd.	
Guangdong Jianmei Aluminum Profile Company Limited	
Guangdong Nanhai Foodstuffs Imp. & Exp. Co., Ltd	
Guangdong Weiye Aluminum Factory Co., Ltd	
Guangdong Whirlpool Electrical Appliances Co., Ltd.	
Guangdong Xingfa Aluminum Co., Ltd	
Guangdong Zhongya Aluminum Company Ltd.	
Guangzhou Jangho Curtain Wall System Engineering Co., Ltd. and Jangho Curtain Wall Hong Kong Ltd. (collectively, Jangho)	
Hangzhou Zingyi Metal Products Co., Ltd	
Hanwood Enterprises Limited	
Hanyung Alcobis Co., Ltd.	
Hanyung Metal (Suzhou) Co., Ltd.	
Hao Mei Aluminum Co., Ltd	
Hao Mei Aluminum International Co., Ltd	
Henan New Kelong Electrical Appliances Cp., Ltd	
Hoff Associates Mfg Reps Inc. (dba, Global Point Technology, Inc.) and Global Point Technology (Far East) Limited (collectively, Global Point)	
Hong Kong Gree Electric Appliances Sales Limited	
Honsense Development Company	
Hui Mei Gao Aluminum Foshan Co., Ltd.	
Idex Dinglee Technology (Tianjin Co., Ltd)	
Idex Health	
Innovative Aluminum (Hong Kong) Limited	
iSource Asia Limited (iSource)	
Jiangmen Qunxing Hardware Diecasting Co., Ltd.	
Jiangsu Changfa Refrigeration Co., Ltd.	
Jiangyin Trust International Inc	
Jiangyin Xinhong Doors and Windows Co., Ltd.	
Jiaxing Jackson Travel Products Co., Ltd.	
Jiaxing Taixin Metal Products Co., Ltd.	
Jiuyan Co., Ltd.	
JMA (HK) Company Limited	
Justhere Co., Ltd.	
Kam Kiu Aluminum Products Sdn Bhd	
Kanal Precision Aluminum Product Co., Ltd	
Karlton Aluminum Company Ltd.	
Kong Ah International Company Limited	
Kromet International Inc.	
Kunshan Giant Light Metal Technology Co., Ltd.	
Liaoyang Zhongwang Aluminum Profiled Co. Ltd.	
Longkou Donghai Trade Co., Ltd.	
Metaltek Group Co., Ltd.	
Metaltek Metal Industry Co., Ltd.	
Midea Air Conditioning Equipment Co., Ltd.	
Midea International Trading Co., Ltd.	
Miland Luck Limited	

	Period to be reviewed
Nanhai Textiles Import & Export Co., Ltd. of Guangdong (Nanhai Textiles)	
New Asia Aluminum & Stainless Steel Product Co., Ltd.	
Nidec Sankyo Singapore Pte. Ltd.	
Nidec Sankyo (Zhejiang) Corporation	
Ningbo Coaster International Co., Ltd.	
Ningbo Hi Tech Reliable Manufacturing Company	
Ningbo Splash Pool Appliance Co., Ltd	
Ningbo Yili Import and Export Co., Ltd.	
North China Aluminum Co., Ltd.	
North Fenghua Aluminum Ltd. (North Fenghua)	
Northern States Metals	
PanAsia Aluminum (China) Limited	
Permasteelisa South China Factory (Permasteelisa China) and Permasteelisa Hong Kong Limited	
Pingguo Aluminum Company Limited	
Pingguo Asia Aluminum Co., Ltd	
Polight Industrial Ltd.	
Popular Plastics Company Limited	
Press Metal International Ltd	
Pushuo Mfg Co., Ltd./dba/Huiren Mfg Co Ltd	
Samuel, Son & Co., Ltd.	
Sanchuan Aluminum Co., Ltd	
Shangdong Huasheng Pesticide Machinery Co.	
Shangdong Nanshan Aluminum Co., Ltd	
Shanghai Canghai Aluminum Tube Packaging Co., Ltd	
Shanghai Dongsheng Metal	
Shanghai Hong-hong Lumber Co. (Hong-hong Lumber)	
Shanghai Shen Hang Imp & Exp Co., Ltd.	
Shanghai Tongtai Precise Aluminum Alloy Manufacturing Co., Ltd. (Tongtai)	
Shenyang Yuanda Aluminum Industry Engineering Co., Ltd. (Shenyang Yuanda)	
Shenzhen Hudson Technology Development Co., Ltd. (Shenzhen Hudson)	
Shenzhen Jiuyuan Co., Ltd	
Sihui Shi Guo Yao Aluminum Co., Ltd. (Guo Yao)	
Sincere Profit Limited	
Skyline Exhibit Systems (Shanghai) Co. Ltd.	
Suzhou JRP Import & Export Co., Ltd.	
Suzhou New Hongji Precision Part Co	
Tai-Ao Aluminum (Taishan) Co. Ltd	
Taishan City Kam Kiu Aluminium Extrusion Co. Ltd. (Taishan Kam Kiu)	
Taizhou Lifeng Manufacturing Corporation	
Taogoasei America Inc	
tenKsolar (Shanghai) Co., Ltd. (tenKsolar Shanghai)	
Tianjin Ganglv Nonferrous Metal Materials Co., Ltd.	
Tianjin Jinmao Import & Export Corp., Ltd.	
Tianjin Ruxin Electric Heat Transmission Technology Co., Ltd	
Tiazhou Lifeng Manufacturing Corporation	
Top-Wok Metal Co., Ltd.	
Traffic Brick Network, LLC	
T-World Industries Limited	
Union Industry (Asia) Co., Ltd.	
Uniton Aluminium (HK) Ltd., Uniton Investment Ltd., ZMC Aluminum Factory Limited (collectively, the Uniton companies)	
USA Worldwide Door Components (Pinghu) Co., Ltd.	
Wenzhou Shengbo Decoration & Hardware	
Whirlpool (Guangdong)	
Whirlpool Canada L.P.	
Whirlpool Microwave Products Development Ltd.	
Xin Wei Aluminum Company Limited	
Xinya Aluminum & Stainless Steel Product Co., Ltd.	
Zhaoqing China Square Industry Limited	
Zhaoqing Asia Aluminum Factory Company Ltd	
Zhaoqing New Zhongya Aluminum Co., Ltd	
Zhejiang Anji Xinxiang Aluminum Co., Ltd.	
Zhejiang Dongfeng Refrigeration Components Co., Ltd. (Dongfeng)	
Zhejiang Yongkang Listar Aluminum Industry Co., Ltd	
Zhejiang Zhengte Group Co., Ltd.	
Zhenjiang Xinlong Group Co., Ltd.	
Zhongshan Gold Mountain Aluminum Factory Ltd.	
Zhongya Shaped Aluminum (HK) Holding Limited	
Zhuhai Runxingtai Electrical Equipment Co., Ltd	
Citric Acid and Citrate Salt C–570–938	1/1/12–12/31/12
Laiwu Taihe Biochemistry Co., Ltd.	
RZBC Co., Ltd., RZBC Imp. & Exp. Co., Ltd., RZBC (Juxian) Co., Ltd.	

Suspension Agreements

None.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia* v. *United States,* 291 F.3d 806 (Fed Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period, of the order, if such a gap period is applicable to the POR.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that the meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Revised Factual Information Requirements

On April 10, 2013, the Department published *Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule,* 78 FR 21246 (April 10, 2013), which modified two regulations related to antidumping and countervailing duty proceedings: the definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301). The final rule identifies five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). The final rule requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The final rule also modified 19 CFR 351.301 so that, rather than providing general time limits, there are specific time limits based on the type of factual information being submitted. These modifications are effective for all segments initiated on or after May 10, 2013. Please review the final rule, available at *http://ia.ita.doc.gov/frn/2013/1304frn/2013-08227.txt,* prior to submitting factual information in this segment.

Any party submitting factual information in an antidumping duty or countervailing duty proceeding must certify to the accuracy and completeness of that information. *See* section 782(b) of the Act. Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all segments of any antidumping duty or countervailing duty proceedings initiated on or after March 14, 2011. *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule,* 76 FR 7491 (February 10, 2011) (''*Interim Final Rule*''), amending 19 CFR 351.303(g)(1) and (2). The formats for the revised certifications are provided at the end of the *Interim Final Rule*. The Department intends to reject factual submissions in any proceeding segments initiated on or after March 14, 2011 if the submitting party does not comply with the revised certification requirements.

These initiations and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: June 21, 2013.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2013–15546 Filed 6–27–13; 8:45 am]

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[3] If one of the above-named companies does not qualify for a separate rate, all other exporters of Aluminum Extrusions from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[4] If one of the above-named companies does not qualify for a separate rate, all other exporters of Certain Oil Country Tubular Goods from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[5] If one of the above-named companies does not qualify for a separate rate, all other exporters of Citric Acid and Citrate Salt from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[6] If one of the above-named companies does not qualify for a separate rate, all other exporters of Pure Magnesium from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–833]

Polyester Staple Fiber From Taiwan: Final Results of Antidumping Duty Administrative Review; 2011–2012

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 22, 2013, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on polyester staple fiber (PSF) from Taiwan. The period of review is May 1, 2011, through April 30, 2012 (POR). We received no comments from interested parties. Accordingly, for the final results we continue to find that Far Eastern New Century Corporation (FENC) has not sold subject merchandise at less than normal value, and that Nan Ya Plastics Corporation (Nan Ya) had no shipments during the POR.

DATES: *Effective Date:* June 28, 2013.

FOR FURTHER INFORMATION CONTACT: Bryan Hansen or Minoo Hatten, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3683, and (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 22, 2013, the Department published the preliminary results of the administrative review of the antidumping duty order on PSF from Taiwan.[1] We invited interested parties to comment on the *Preliminary Results.* None were received.

The Department has conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The product covered by the order is PSF. PSF is defined as synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The merchandise subject to the order may be coated, usually with a silicon or other finish, or not coated. PSF is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture. Merchandise of less than 3.3 decitex (less than 3 denier) currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 5503.20.00.20 is specifically excluded from the order. Also specifically excluded from the order are PSF of 10 to 18 denier that are cut to lengths of 6 to 8 inches (fibers used in the manufacture of carpeting). In addition, low-melt PSF is excluded from the order. Low-melt PSF is defined as a bi-component fiber with an outer sheath that melts at a significantly lower temperature than its inner core.

The merchandise subject to the order is currently classifiable in the HTSUS at subheadings 5503.20.00.40, 5503.20.00.45, 5503.20.00.60, and 5503.20.00.65. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Final Determination of No Shipments

For the final results of this review, we determine that Nan Ya had no shipments during the POR.

Final Results of the Review

The Department made no changes to its calculations announced in the *Preliminary Results.* As a result of our review, we determine that a weighted-average dumping margin of 0.00 percent exists for FENC for the POR.

Assessment Rates

In accordance with the *Final Modification,*[2] the Department will instruct U.S. Customs and Border Protection (CBP) to liquidate entries for FENC without regard to antidumping duties.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003.[3] This clarification will apply to entries of subject merchandise during the POR produced by FENC 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.

Consistent with the *Assessment Policy Notice,* because we continue to find that Nan Ya had no shipments of subject merchandise to the United States, we will instruct CBP to liquidate any applicable entries of subject merchandise at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

We intend to issue instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of PSF from Taiwan entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for FENC will be 0.00 percent, the weighted average dumping margin established in the final results of this administrative review; (2) for Nan Ya and previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (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 manufacturer of the merchandise for the most recently completed segment of this proceeding; (4) the cash deposit rate for all other manufacturers or exporters will continue to be 7.31 percent, the all-others rate established in the *Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber From the Republic of Korea and Antidumping Duty Orders: Certain Polyester Staple Fiber From the Republic of Korea and Taiwan,* 65 FR 33807 (May 25, 2000). These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping 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.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

The Department is issuing and publishing these final results of administrative review in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 20, 2013.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. 2013–15448 Filed 6–27–13; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–905]

Certain Polyester Staple Fiber From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011–2012

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

[1] *See Polyester Staple Fiber From Taiwan: Preliminary Results of Antidumping Duty Administrative Review; 2011–2012,* 78 FR 17637 (March 22, 2013) (*Preliminary Results*).

[2] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101, 8102 (February 14, 2012) (*Final Modification*).

[3] For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*).

SUMMARY: On March 6, 2013, the Department of Commerce (the ''Department'') published the *Preliminary Results* of the 2011–2012 administrative review of the antidumping duty order on certain polyester staple fiber (''PSF'') from the People's Republic of China (''PRC'').[1] The period of review (''POR'') is June 1, 2011, through May 31, 2012. We received no comments from interested parties. The final dumping margin is listed in the ''Final Results of Review'' section below.

DATES: *Effective Date:* June 28, 2013.

FOR FURTHER INFORMATION CONTACT: Steven Hampton, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0116.

SUPPLEMENTARY INFORMATION:

Background

On March 6, 2013, the Department published the *Preliminary Results* of the administrative review of the antidumping duty order on certain polyester staple fiber from the PRC. We invited interested parties to comment on the *Preliminary Results*. None were received. The Department has conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (''the Act'').

Scope of the Order

The merchandise subject to the order is synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The subject merchandise may be coated, usually with a silicon or other finish, or not coated. PSF is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture.

The following products are excluded from the scope of the order: (1) PSF of less than 3.3 decitex (less than 3 denier) currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') at 5503.20.0025 and known to the industry as PSF for spinning and generally used in woven and knit applications to produce textile and apparel products; (2) PSF of 10 to 18 denier that are cut to lengths of 6 to 8 inches and that are generally used in the manufacture of carpeting; and (3) low-melt PSF defined as a bi-component fiber with an outer, non-polyester sheath that melts at a significantly lower temperature than its inner polyester core (classified at HTSUS 5503.20.0015).

Certain PSF is classifiable under the HTSUS numbers 5503.20.0045 and 5503.20.0065. Although the HTSUS numbers are provided for convenience and customs purposes, the written description of the merchandise under the order is dispositive.

PRC-Wide Entity

In the *Preliminary Results,* the Department noted that Far Eastern Industries (Shanghai) Ltd. and Far Eastern Polychem Industries (collectively ''Far Eastern'') does not have a separate rate, and, therefore, it is under review as part of the PRC-wide entity.[2] Also in the *Preliminary Results,* the Department determined that Huvis Sichuan Chemical Fiber Corp. and Huvis Sichuan Polyester Fiber Ltd. (collectively ''Huvis Sichuan'') failed to demonstrate its continued eligibility for a separate rate, and is considered to be part of the PRC-wide entity. After issuing the *Preliminary Results,* the Department received no comments from interested parties. Therefore, for these final results, in accordance with section 776(a) and (b) of the Act, and as explained in more detail in the *Preliminary Results,* the Department continues to find that Far Eastern and Huvis Sichuan are part of the PRC-wide entity.

Final Results of Review

The Department has made no changes to the *Preliminary Results.* As a result of our review, we determine that a dumping margin of 44.3 percent exists for the PRC-wide entity [3] for the POR.

Assessment

Upon issuance of the final results, the Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries covered by this review.[4] The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. The Department announced a refinement to its assessment practice in non-market economy (''NME'') cases.[5] Pursuant to this refinement in practice, for entries that were not reported in the U.S. sales databases submitted by companies individually examined during this review, the Department will instruct CBP to liquidate such entries at the NME-wide rate. In addition, if the Department determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the NME-wide rate.[6] For the PRC-wide entity, we will instruct CBP to assess antidumping duties at an *ad valorem* rate equal to the dumping margin published above.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided by sections 751(a)(2)(C) of the Act: (1) For previously investigated or reviewed PRC and non-PRC exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate published for the most recently completed segment of this proceeding in which that exporter participated; (2) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the PRC-wide entity, 44.30 percent; and (3) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notifications

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries

[1] *See Certain Polyester Staple Fiber From the People's Republic of China: Preliminary Results and Rescission in Part of the 2011–2012 Antidumping Duty Administrative Review,* 78 FR 14512 (March 6, 2013) (''*Preliminary Results*'').

[2] *See Preliminary Results,* 78 FR at 14513, and accompanying Decision Memorandum for Preliminary Results and Rescission in Part of the 2011–2012 Antidumping Duty Administrative Review: Certain Polyester Staple Fiber from the People's Republic of China at 5.

[3] The PRC-wide entity includes Far Eastern and Huvis Sichuan.

[4] *See* 19 CFR 351.212(b)(1).

[5] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

[6] *See id.*

during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to the administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

The Department is issuing and publishing these final results of administrative review in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 20, 2013.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. 2013–15459 Filed 6–27–13; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–847]

1-Hydroxyethylidene-1, 1-Diphosphonic Acid From India: Rescission of Antidumping Duty Administrative Review; 2012–2013

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

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:

Background

On April 2, 2013, the Department of Commerce (the Department) published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review'' of the antidumping duty order on 1-hydroxyethylidene-1, 1-diphosphonic acid (HEDP) from India for the period of review (POR) of April 1, 2012, through March 31, 2013.[1]

On April 29, 2013, in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b)(2), the Department received a timely request from Aquapharm Chemicals Pvt Ltd (Aquapharm), a producer and exporter of subject merchandise, to conduct an administrative review of its exports to the United States during the POR.[2] No other interested party requested an administrative review of the antidumping duty order on HEDP from India for the POR.

On June 3, 2013, the Department published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on HEDP from India.[3] On June 4, 2013, Aquapharm timely withdrew its request for a review.[4]

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of notice of initiation of the requested review. Aquapharm withdrew its request for review before the 90-day deadline, and no other party requested an administrative review of the antidumping duty order. Therefore, pursuant to 19 CFR 351.213(d)(1), we are rescinding this review in whole.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the date of publication of this notice in the **Federal Register**.

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 78 FR 19645, 19646 (April 2, 2013).

[2] *See* April 29, 2013, letter from Aquapharm to the Department.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 78 FR 33052, 33054 (June 3, 2013).

[4] *See* June 4, 2013, letter from Aquapharm to the Department.

Notification to Importers

This notice serves as the only reminder to importers of their responsibility, under 19 CFR 351.402(f)(2), to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is published in accordance with section 751 of the Act and 19 CFR 351.213(d)(4).

Dated: June 24, 2013.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2013–15547 Filed 6–27–13; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Honey From the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2011–2012

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: As discussed below, the U.S. Department of Commerce (''the Department'') preliminarily determines that none of the companies remaining under review following the partial rescission of this administrative review have demonstrated their eligibility for a separate rate.[1] As such, they remain part of the People's Republic of China (''PRC'')-wide entity. If we adopt these preliminary results in the final results of review, the Department will instruct

[1] *See* Attachment 1 to this notice.

U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on entries of subject merchandise during the period of review.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand or Katie Marksberry, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3207 or (202) 482–7906 respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The products covered by the order are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight and flavored honey.[2] The product is currently classified under the following Harmonized Tariff Schedule of the United States (''HTSUS'') item numbers: 0409.00.00, 1702.90.90, 2106.90.99, 0409.00.0010, 0409.00.0035, 0409.00.0005, 0409.00.0045, 0409.00.0056, and 0409.00.0065. Although the HTSUS numbers are provided for convenience and for customs purposes, the written product description remains dispositive.

Methodology

The Department has conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (''the Act''). For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum, dated concurrently with these results and 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 Electronic Service System (''IA ACCESS''). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum is available on the Internet at *http://www.trade.gov/ia/*. The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Partial Rescission of Review

The Department is rescinding this review with regard to Anhui Honghui Foodstuff (Group) Co., Ltd., Shanghai Taiside Trading Co., Ltd., Tianjin Eulia Honey Co., Ltd., and Wuhan Bee Healthy Co., Ltd. as parties have timely withdrawn all review requests with respect to these companies. These companies have separate rates from a prior segment of this proceeding; therefore, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(2).[3]

Preliminary Results of Review

We preliminarily determine that the following antidumping duty margin exists:

Exporter	Margin (dollars per kilogram)
PRC-wide entity (which includes the companies listed in Appendix 1)	$2.63

Briefs and Public Hearing

Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments within 30 days of the date of publication of this notice, pursuant to 19 CFR 351.309(c)(1)(ii). Rebuttal briefs, limited to issues raised in the case briefs, will be due five days later, pursuant to 19 CFR 351.309(d). We request interested parties who file case or rebuttal briefs in this proceeding to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are requested to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited, in accordance with 19 CFR 351.309(c)(2).

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, pursuant to the Department's e-filing regulations located at *https://iaaccess.trade.gov/help/IA%20ACCESS%20User%20Guide.pdf.* Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs.

The Department intends to issue the final results of this administrative review, including the results of its analysis of the 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

With regard to this partial rescission of the review, the Department will instruct CBP to assess antidumping duties on all appropriate entries. The Department intends to issue appropriate partial rescission assessment instructions directly to CBP 15 days after publication of these preliminary results. Further, upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recently completed period; (2) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of $2.63 per kilogram; and, (3) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter(s) that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

[2] *See* the ''Decision Memorandum for Preliminary Results, Partial Rescission of Antidumping Duty Administrative Review: Honey from the People's Republic of China,'' from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration (''Preliminary Decision Memorandum''), dated concurrently with these results, for a complete description of the Scope of the Order.

[3] *See* Preliminary Decision Memorandum.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These preliminary results and partial rescission are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, 19 CFR 351.221(b)(4) and 19 CFR 351.213(d)(4).

Dated: June 20, 2013.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Appendix 1

In addition to the companies determined to be not eligible for separate rate status (*i.e.,* Dongtai Peak, Haoyikuai I&E, Qinshi Tangyi, and Haoyikuai Food),[4] the following companies (named as in the *Initiation* notice) are also not eligible for separate rate status in this administrative review and are preliminarily considered part of the PRC-wide Entity:

1 Ahcof Industrial Development Corp., Ltd.
2 Alfred L. Wolff (Beijing) Co., Ltd.
3 Anhui Changhao Import & Export Trading
4 Anhui Honghui Import & Export Trade Co., Ltd.
5 Anhui Cereals Oils and Foodstuffs I/E (Group) Corporation
6 Anhui Hundred Health Foods Co., Ltd.
7 Anhui Native Produce Imp & Exp Corp.
8 Anhui Time Tech Co., Ltd.
9 APM Global Logistics (Shanghai) Co.
10 Baiste Trading Co., Ltd.
11 Cheng Du Wai Yuan Bee Products Co., Ltd.
12 Chengdu Stone Dynasty Art Stone
13 Damco China Limited Qingdao Branch
14 Eurasia Bee's Products Co., Ltd.
15 Feidong Foreign Trade Co., Ltd.
16 Fresh Honey Co., Ltd. (formerly Mgl. Yun Shen)
17 Golden Tadco Int'l
18 Hangzhou Golden Harvest Health Industry Co., Ltd.
19 Hangzhou Tienchu Miyuan Health Food Co., Ltd.
20 Haoliluck Co., Ltd.
21 Hengjide Healthy Products Co. Ltd.
22 Hubei Yusun Co., Ltd.
23 Inner Mongolia Altin Bee-Keeping
24 Inner Mongolia Youth Trade Development Co., Ltd.
25 Jiangsu Cereals, Oils Foodstuffs Import Export (Group) Corp.
26 Jiangsu Kanghong Natural Healthfoods Co., Ltd.
27 Jiangsu Light Industry Products Imp & Exp (Group) Corp.
28 Jilin Province Juhui Import
29 Maersk Logistics (China) Company Ltd.
30 Nefelon Limited Company
31 Ningbo Shengye Electric Appliance
32 Ningbo Shunkang Health Food Co., Ltd.
33 Ningxia Yuehai Trading Co., Ltd.
34 Product Source Marketing Ltd.
35 Qingdao Aolan Trade Co., Ltd.
36 QHD Sanhai Honey Co., Ltd.
37 Qinhuangdao Municipal Dafeng Industrial Co., Ltd.
38 Renaissance India Mannite
39 Shaanxi Youthsun Co., Ltd.
40 Shanghai Bloom International Trading Co., Ltd.
41 Shanghai Foreign Trade Co., Ltd.
42 Shanghai Hui Ai Mal Tose Co., Ltd.
43 Shanghai Luyuan Import & Export
44 Shine Bal Co., Ltd.
45 Sichuan-Dujiangyan Dubao Bee Industrial Co., Ltd.
46 Sichuan Hasten Imp Exp. Trading Co., Ltd.
47 Silverstream International Co., Ltd.
48 Sunnice Honey
49 Suzhou Aiyi IE Trading Co., Ltd.
50 Suzhou Shanding Honey Product Co. Ltd.
51 Tianjin Weigeda Trading Co., Ltd.
52 Wanxi Haohua Food Co., Ltd.
53 Wuhan Shino-Food Trade Co., Ltd.
54 Wuhu Anjie Food Co., Ltd.
55 Wuhu Deli Foods Co. Ltd.
56 Wuhu Fenglian Co., Ltd.
57 Wuhu Haoyikuai I & E Co.
58 Wuhu Qinshi Tangye Co., Ltd.
59 Wuhu Xinrui Bee-Product Co., Ltd.
60 Xinjiang Jinhui Food Co., Ltd.
61 Youngster International Trading Co., Ltd.
62 Zhejiang Willing Foreign Trading Co.

[4] *See* Preliminary Decision Memorandum.

Appendix 2

List of Topics Discussed in the Preliminary Decision Memorandum

1. Scope of the Order
4. Separate Rates
5. Partial Rescission of Review
6. PRC-Wide Entity

[FR Doc. 2013–15613 Filed 6–27–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Initiation of Antidumping Duty Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has received information sufficient to warrant initiation of a changed circumstances review of the antidumping duty order of tapered roller bearings and parts thereof, finished and unfinished (TRBs), from the People's Republic of China (PRC). Specifically, Shanghai General Bearing Company, Ltd. (SGBC) notified the Department that it became part of the SKF Group in 2012. As a result, SGBC has requested that the Department determine that it is the successor-in-interest to the pre-merger entity (also known as SGBC), a company which the Department revoked from the order on TRBs from the PRC in 1997. In response to this request, the Department is initiating this changed circumstances review.

DATES: *Effective Date:* June 28, 2013.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood or Stephen Banea, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3874 or (202) 482–0656, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 15, 1987, the Department published in the **Federal Register** the antidumping duty order on TRBs from the PRC.[1] On February 11, 1997, the Department revoked the order on TRBs from the PRC with respect to merchandise produced and exported by the pre-merger SGBC.[2]

Effective August 1, 2012, the majority shareholder of SGBC merged with a subsidiary of the SKF Group and, as a result of the merger, both SGBC and its majority shareholder became part of the SKF Group. On February 13, 2013, SGBC requested that the Department conduct a changed circumstances review pursuant to 19 CFR 351.221(c)(3)(ii) to determine that it is the successor-in-interest to SGBC as it existed prior to the merger.

On March 22, 2013, the Department requested that SGBC supplement its request for a changed circumstances review by providing additional information regarding the merger and other supporting documentation. On

[1] *See Antidumping Duty Order; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People's Republic of China,* 52 FR 22667 (June 15, 1987).

[2] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Revocation in Part of Antidumping Duty Order,* 62 FR 6189 (Feb. 11, 1997).

May 9, 2013, SGBC responded to the Department's request.[3]

Scope of the Order

Imports covered by the order are shipments of tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China; flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. These products are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 8482.20.00, 8482.91.00.50, 8482.99.15, 8482.99.45, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.70.60.60, 8708.99.23.00, 8708.99.48.50, 8708.99.68.90, 8708.99.81.15, and 8708.99.81.80. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Initiation of Changed Circumstances Review

Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party for a review of, an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. In accordance with 19 CFR 351.216(d), the Department finds there is sufficient information to warrant initiating a changed circumstances review because SGBC has provided evidence that it is now part of the SKF Group as a result of a merger in 2012. Therefore, pursuant to section 751(b)(1) of the Act and 19 CFR 351.216(d), we are initiating a changed circumstances review to determine whether SGBC is the successor-in-interest to SGBC as it existed prior to the merger.

The Department will publish in the **Federal Register** a notice of preliminary results of the changed circumstances review in accordance with 19 CFR 351.221(b)(4) and 351.221(c)(3)(i), which will set forth the Department's preliminary factual and legal conclusions. Pursuant to 19 CFR 351.221(b)(4)(ii), interested parties will have an opportunity to comment on the preliminary results. The Department will issue its final results of review in accordance with the time limits set forth in 19 CFR 351.216(e).

[3] *See* SGBC's May 9, 2013, submission.

This notice is in accordance with section 751(b)(1) of the Act.

Dated: June 21, 2013.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2013–15458 Filed 6–27–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–835]

Lemon Juice From Mexico: Final Results of Full Sunset Review of the Suspended Antidumping Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* June 28, 2013.

SUMMARY: On August 1, 2012, the Department of Commerce (''Department'') published in the **Federal Register** the notice of initiation of the sunset review of the suspended antidumping duty investigation on lemon juice from Mexico. The Department finds that termination of the suspended antidumping duty investigation would be likely to lead to continuation or recurrence of dumping at the margins indicated in the ''Final Results of Review'' section of this notice.

FOR FURTHER INFORMATION CONTACT: Maureen Price or Sally C. Gannon, Bilateral Agreements Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4271 or (202) 482–0162, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2012, the Department initiated a sunset review of the suspended antidumping duty investigation on lemon juice from Mexico, pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act'').[1] The Department received a notice of intent to participate from the domestic interested party, Ventura Coastal, LLC (''Ventura''), a joint venture between Ventura Coastal and Sunkist Growers, Inc., the petitioner in the underlying investigation, within the deadline specified in 19 CFR 351.218(d)(1)(i). Ventura claimed interested party status under section 771(9)(C) of the Act as a U.S. producer of the subject merchandise. On August 31, 2012, the Department received complete substantive responses from the domestic interested party and the respondent interested parties, The Coca-Cola Company and its subsidiary, The Coca-Cola Export Corporation, Mexico Branch (collectively, ''TCCC'') and Procimart Citrus (''Procimart''), within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). On September 7, 2012, the Department received timely filed rebuttals to the substantive responses from Ventura and Procimart. As a result, pursuant to 19 CFR 351.218(e)(2), the Department conducted a full sunset review.[2] On December 26, 2012, the Department preliminarily determined that termination of the suspended antidumping duty investigation on lemon juice from Mexico would likely lead to continuation or recurrence of dumping.[3] Procimart filed a request for a hearing on January 25, 2013, which it later withdrew.[4] On February 14, 2013, the respondent interested parties submitted comments on the Preliminary Results[5] and, on February 19, 2013, Ventura submitted rebuttal comments.[6] On March 18, 2013, the Department extended the deadline for the final results of full sunset review of the Agreement and the suspended antidumping duty investigation to July 1, 2013.

Scope of the Suspended Investigation

The merchandise covered by the suspended investigation includes certain lemon juice for further manufacture, with or without addition of preservatives, sugar, or other sweeteners, regardless of the GPL (grams per liter of citric acid) level of concentration, brix level, brix/acid ratio, pulp content, clarity, grade, horticulture method (e.g., organic or not), processed form (e.g., frozen or not-from-

[1] Initiation of Five-Year (''Sunset'') Review and Correction, 77 FR 45589 (August 1, 2012).

[2] Memorandum to Sally C. Gannon, Director for Bilateral Agreements, Office of Policy, Sunset Review of the Agreement Suspending the Antidumping Investigation of Lemon Juice from Mexico: Adequacy Determination, September 19, 2012.

[3] Lemon Juice from Mexico: Preliminary Results of Full Sunset Review of the Suspended Antidumping Duty Investigation, 77 FR 75998 (December 26, 2012) (''Preliminary Results'').

[4] Lemon Juice from Mexico; Request to Participate at Hearing on behalf of Procimart Citrus, January 25, 2013; Lemon Juice from Mexico; Withdraw of Hearing Request Sunset Review on behalf of Procimart Citrus, February 15, 2013.

[5] Lemon Juice from Mexico (A–201–835) Sunset Review; TCCC Case Brief, February 14, 2013; Procimart SA de CV and the Citrus Team Company Brief, February 14, 2013.

[6] Lemon Juice from Mexico—Rebuttal Brief on behalf of Ventura Coastal, LLC (Rebuttal Brief), February 19, 2013.

concentrate), FDA standard of identity, the size of the container in which packed, or the method of packing.

Excluded from the scope are: (1) Lemon juice at any level of concentration packed in retail-sized containers ready for sale to consumers, typically at a level of concentration of 48 GPL; and (2) beverage products such as lemonade that typically contain 20% or less lemon juice as an ingredient.

Lemon juice is classifiable under subheadings 2009.39.6020, 2009.31.6020, 2009.31.4000, 2009.31.6040, and 2009.39.6040 of the Harmonized Tariff Schedule of the United States (HTSUS). While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this Agreement is dispositive.

Analysis of Comments Received

All issues raised in this review are addressed in the Issues and Decision Memorandum (''Decision Memorandum'') from Lynn Fischer Fox, Deputy Assistant Secretary for Policy & Negotiations, to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration, dated concurrently with this notice, which is hereby adopted by this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of dumping, the magnitude of the margin of dumping likely to prevail if the suspended investigation were terminated, and whether to disregard Ventura's response. Parties can find a complete discussion of all issues raised in this sunset review and the corresponding recommendations in this public memorandum, which is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). Access to 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 Decision Memorandum can be accessed directly on the Internet at *http://ia.ita.doc.gov/frn.* The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

Pursuant to sections 751(c)(1) and (3) of the Act, the Department determines that termination of the suspended antidumping duty investigation on lemon juice from Mexico would likely lead to continuation or recurrence of dumping and that the magnitude of the margin of dumping likely to prevail if the suspended investigation were terminated is 146.10 percent for The Coca-Cola Export Corporation, Mexico Branch, 205.37 percent for Citrotam Internacional S.P.R. de R.L. (Citrotam)/ Productos Naturales de Citricos (Pronacit) and 146.10 percent for all other exporters.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

The Department is issuing and publishing the results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: June 20, 2013.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. 2013–15446 Filed 6–27–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Hawaii at Manoa, et al.; Notice of Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 3720, U.S. Department of Commerce, 14th and Constitution Ave NW., Washington, DC.

Comments: None received. Decision: Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, that was being manufactured in the United States at the time of its order.

Docket Number: 13–008. Applicant: University of Hawaii at Manoa, Honolulu, HI 96822. Instrument: Telescope. Manufacturer: Advanced Mechanical and Optical Systems, Belgium. Intended Use: See notice at 78 FR 27186, May 9, 2013. Comments: None received. Decision: Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of order. Reasons: The instrument will be used in conjunction with the Panoramic Survey Telescope & Rapid Response System (Pan-STARRS), to discover and characterize Earth-approaching objects, both asteroids and comets that might pose a danger to the Earth, as well as a wide range of other research areas of astronomy. Critical performance characteristics include the ability to detect objects much fainter than has hitherto been possible with sufficient resolution to measure both the position and brightness level to the required precision, that the instrument be sufficiently robust and reliable that it can carry out continuous observations without direct human supervision under both benign and harsh meteorological observing conditions, and servicing and maintenance that can be performed as quickly as possible to minimize system down time. The heat released by the electrical/electronic components cannot have an impact on the system point spread function that exceeds a combined total of 0.1 arcseconds. Other key features that were not proposed by domestic vendors include the use of 36 actuators to control the shape of the telescope's primary mirror, active cooling of the mechanical structure containing the primary mirror, design and performance analysis of the structures holding the telescope secondary mirror in position, the mechanical design and performance analysis of the telescope ''truss'', active cooling of the motors that move the telescope, additional performance margin of the telescope motors to provide additional power and torque in the presence of high motor loads, and the serviceability of several key telescope components that traditionally are both prone to failure and hard to get at, as well as allowing the removal of extremely difficult components.

Docket Number: 13–009. Applicant: Max Planck Florida Institute for Neuroscience, Jupiter, FL 33458. Instrument: Serial Block face microtome. Manufacturer: Gatan, United Kingdom. Intended Use: See notice at 78 FR 27186, May 9, 2013. Comments: None received. Decision: Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such

purposes as this is intended to be used, that was being manufactured in the United States at the time of order. Reasons: The instrument will be used to analyze neural circuits employing principally bioimaging, electrophysiology and genetic approaches to understand visual perception and the organization of the visual cortex, synapse physiology and mechanisms of synaptic signaling and computation, the molecular mechanisms of synaptic function, the cellular organization of cortical circuit function, and the digital anatomy of the brain. To precisely identify synaptic contacts between neurons and distinguish between overlapping processes or actual synaptic contacts requires high resolution imaging with an Electron Microscope (EM) including 3D reconstruction of each process and its surroundings. Furthermore, relatively large volumes of brain should be imaged to cover the entire region and profile even for a single neuron. The instrument allows automatic imaging of multiple regions of interest on the sample and stage montaging for large fields of view, and a cutting thickness down to 15 nm.

Docket Number: 13–012. Applicant: New Mexico Institute of Mining and Technology. Instrument: Delay-Line (DL) Trolley. Manufacturer: University of Cambridge/Cavendish Laboratory. Intended Use: See notice at 78 FR 27186, May 9, 2013. Comments: None received. Decision: Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of order. Reasons: The instrument will be used to make extremely high-resolution images of a diverse range of astronomical objects. The images made using the instrument will allow a variety of astrophysical processes in the target objects to be investigated, such as protostellar accretion, disk clearing as evidence for planet formation, jest, outflows and magnetically channeled accretion, and the detection of sub-stellar companions. In order to obtain interference fringes the path lengths traveled by the light from celestial objects via the telescopes to the point where interference takes place must be equalized to a few microns. The extra path (delay) that must be inserted varies continuously as the Earth rotates, and depends on the location of the target in the sky. The instrument is used within the Magdalena Ridge Observatory Interferometer to equalize these path lengths—one trolley for each telescope—by acting as a continuously movable retro-reflector. For most of the sky to be accessible, a delay range approximately equal to the longest inter-telescope separation must be available, requiring an unprecedented monolithic delay line length of almost 200 m. The need to accommodate 350 m baselines places a unique combination of requirements on the delay lines and hence the Delay Line Trolleys that run within them.

Docket Number: 13–014. Applicant: Max Planck Florida Institute for Neuroscience, Jupiter, FL 33458. Instrument: Two-Photon Laser Scanning Microscope. Manufacturer: Femtonics Ltd., Hungary. Intended Use: See notice at 78 FR 27186–27187, May 9, 2013. Comments: None received. Decision: Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of order. Reasons: The instrument will be used to examine the connectivity and functional computations performed by individual neurons in the primary visual cortex of tree shrews, as well as to study the population mechanisms responsible for rapid development of direction selectivity in the ferret primary visual cortex. Experiments will include *in vivo* two-photon microscopy experiments that examine the response properties of neurons, two-photon imaging in the dendritic tree of single neurons to monitor dendritic inputs and integration as evoked by visual stimuli, and two-photon imaging in the visual cortex to monitor how large populations of cells develop into a coherent circuit that capably detects directional movement in a visual space. The instrument is unique in that it allows for fast, random-access two-photon imaging in three dimensions. The experiments depend on this fast 3D scanning to capture sufficient data from the dendrites of a single neuron or large numbers of cells in a neuronal population. The instrument's capabilities are achieved through the use of acousto-optical deflectors in x-, y-, and z-axes and are unmatched by galvanometric scanning systems that are bounded by inertial constraints.

Docket Number: 13–015. Applicant: IUP Research Institute, Indiana, PA 15701. Instrument: IMIC Digital Microscope. Manufacturer: TILL Photonic Gmbh, Germany. Intended Use: See notice at 78 FR 27186–27187, May 9, 2013. Comments: None received. Decision: Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of order. Reasons: The instrument will be used to resolve whether changes in intracellular ion activity are circadian in nature, identify the underlying mechanisms for stem cell regeneration in damaged tissue, and examine the regulatory mechanisms for metabolic activity in yeast. The microscopic imaging will be used to investigate cellular properties of mice, zebrafish, planaria, yeast, and paramecium, as well as to analyze the absorption and fluorescence of ceramic optical material. Intracellular ion movement requires fluorescent confocal and FRET imaging. The fate-mapping of the stem cells requires fast fluorescent scanning provided by the instrument.

Dated: June 20, 2013.

Gregory W. Campbell,

Director, Subsidies Enforcement Office, Import Administration.

[FR Doc. 2013–15456 Filed 6–27–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Conference on Weights and Measures 98th Annual Meeting

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The 98th Annual Meeting of the National Conference on Weights and Measures (NCWM) will be held in Louisville, Kentucky, from July 14 to 18, 2013. This notice contains information about significant items on the NCWM Committee agendas, but does not include all agenda items. As a result, the items are not consecutively numbered.

DATES: The meeting will be held July 14 to 18, 2013.

ADDRESSES: The meeting will be held at the Seelbach Hilton Louisville, 500 Fourth Avenue, Louisville, Kentucky 40202.

FOR FURTHER INFORMATION CONTACT: Ms. Carol Hockert, Chief, NIST, Office of Weights and Measures, 100 Bureau Drive, Stop 2600, Gaithersburg, MD 20899–2600. You may also contact Ms. Hockert at (301) 975–5507 or by email at *carol.hockert@nist.gov.* The meetings are open to the public, but a paid registration is required. Please see NCWM Publication 16 ''Annual Meeting Agenda'' (*www.ncwm.net*) to view the

meeting agendas, registration forms and hotel reservation information.

SUPPLEMENTARY INFORMATION: Publication of this notice on the NCWM's behalf is undertaken as a public service; NIST does not endorse, approve, or recommend any of the proposals or other information contained in this notice or in the publications of the NCWM.

The NCWM is an organization of weights and measures officials of the states, counties, and cities of the United States, federal agencies, and representatives from the private sector. These meetings bring together government officials and representatives of business, industry, trade associations, and consumer organizations on subjects related to the field of weights and measures technology, administration, and enforcement. NIST participates to encourage cooperation between federal agencies and the states in the development of legal metrology requirements. NIST also promotes uniformity in state laws and regulations as well as test methods and equipment that are used in the regulatory control of commercial weighing and measuring devices, packaged goods, and other trade and business practices.

The following are brief descriptions of some of the significant agenda items that will be considered at the NCWM Annual Meeting. Comments will be taken on these and other issues during several public comment sessions. At this stage, the items are proposals. This meeting also includes work sessions in which the Committees may also accept comments, and where they will finalize recommendations for possible adoption at this meeting. The Committees may also withdraw or carryover items that need additional development. Some of the items listed below provide notice of projects under development by groups working to develop specifications, tolerances, and other requirements for devices used in retail sales of electricity for recharging vehicles and in sub-metering applications, and the use of Global Positioning System (GPS) devices for fare determinations in the vehicle-for-hire industry (e.g., taxis and limousines). Also included is a notice about efforts to establish a method of sale for pressurized containers including those that use bag-on-valve technology to dispense product. These notices are intended to make interested parties aware of these development projects and to make them aware that reports on the status of the project will be given at the Annual Meeting. The notices are also presented to invite the participation of manufacturers, experts, consumers, users and others who may be interested in these efforts.

The Specifications and Tolerances Committee (S&T Committee) will consider proposed amendments to NIST Handbook 44, ''Specifications, Tolerances, and other Technical Requirements for Weighing and Measuring Devices.'' Those items address weighing and measuring devices used in commercial applications, that is, devices that are used to buy from or sell to the public or used for determining the quantity of product sold among businesses. Issues on the agenda of the NCWM Laws and Regulations Committee (L&R Committee) relate to proposals to amend NIST Handbook 130, ''Uniform Laws and Regulations in the area of Legal Metrology and Engine Fuel Quality'' and NIST Handbook 133 ''Checking the Net Contents of Packaged Goods.''

NCWM Specifications and Tolerances Committee

The following items are proposals to amend NIST Handbook 44:

Scales

Item 320–1 S.6.4. Railway Track Scales and Appendix D—Definitions—Voting Item

Railway track scales are used throughout the country for the determination of freight charges and for commercial transactions for a wide variety of commodities (e.g., coal, grains, and chemicals) totaling billions of dollars each year. The purpose of this proposal is to amend NIST Handbook 44 to recognize changes to the definition of how nominal capacity is determined for railway track scales. The proposed definition was developed by Committee 34—Scales, of the American Railway Engineering and Maintenance-of-Way Association and approved for inclusion in the American Association of Railroads (AAR) Scale Handbook. Adoption of the proposed revision will ensure that NIST Handbook 44 is consistent with the AAR Scale Handbook.

Vehicle Tank Meters

Item 331–2 T.4. Product Depletion Test—Voting Item

The vehicle tank meters mounted on multi-compartment tank trucks are used to deliver a wide variety of fuels and other products to businesses and consumers (e.g., diesel fuel and home heating fuel). A product depletion test is conducted to ensure that the performance accuracy of a meter remains within tolerance when air is accidentally introduced into the metering system when, for example, one compartment in the tank truck empties of product and product delivery continues uninterrupted from another compartment. This proposal would amend NIST Handbook 44 to base the product depletion test tolerances on the meter's maximum flow rate (a marking required on all meters), rather than the marked meter size (this marking is required for meters manufactured in 2009 or later). The purpose of this proposal is to ensure consistent application of the tolerances to product depletion tests whether conducted on older or newer meters. It will also eliminate an unintentional gap that allows an unreasonably large tolerance to be applied to small meters.

Mass Flow Meters

Item 337–1 Appendix D—Definitions: Diesel Liter and Diesel Gallon Equivalents of Natural Gas—Information Item

In 1994 both liter and gallon ''equivalents'' for gasoline were established by the NCWM to provide a means for consumers to make value and fuel economy comparisons between compressed natural gas (CNG) and gasoline, and to promote broader acceptance and use of CNG as a vehicle fuel. These ''equivalents'' are based on a specific weight (mass) per volume, called the gasoline liter equivalent (GLE) and gasoline gallon equivalent (GGE), and are calculated using an estimate of the ''average'' equivalent energy content—a number provided by industry. The current proposal would establish a ''diesel liter equivalent (DLE)'' and a ''diesel gallon equivalent (DGE)'' and equivalent weight (mass) values for these units when they are used in retail vehicle refueling applications. The purpose of these units is to inform consumers (e.g., truck operators) that a DLE or DGE of ''compressed'' or ''liquefied'' natural gas contains approximately the same amount of energy they would receive if they purchased a liter or gallon of diesel fuel. Comments received from weights and measures officials, consumers, and industry representatives question the usefulness of expanding the use of artificially defined ''energy equivalent units'' primarily on the basis that they are not traceable to national measurement standards. Another concern frequently expressed over the use of an artificial unit, even by users of the GGE originally developed in the 1990s, is that they do not accurately represent the energy content in any fuel because it varies based on factors such as the source of the CNG. Commenters

also noted that consumers consider many factors, including relative fuel efficiencies and cost, prior to deciding to purchase a vehicle powered by fuel such as CNG or LPG or to convert an existing vehicle to use an alternative fuel. Given the significant capital investment involved in this decision, the need to routinely make ongoing comparisons at the dispenser is questionable. Additionally, it was suggested that, with the introduction of other alternative fuels such as electricity and hydrogen into the marketplace, consumers who do wish to make ongoing comparisons will not be served by establishing an ''equivalent unit'' for only one fuel. Consumers might be better served by consulting with comparison information on U.S. Department of Energy and industry Web sites; such Web sites can provide ''equivalent'' values that are updated to reflect current product supplies for multiple different alternative fuel types as well as other educational information on fuel economies. See also Item 337–2, S.1.2. Compressed Natural Gas Dispensers, S.1.3.1.1. Compressed Natural Gas Used as an Engine Fuel, and S.5.2. Marking of Gasoline Volume Equivalent Conversion Factor, and Item 232–1, Section 2.27.

Retail Sales of Natural Gas Sold as a Vehicle Fuel in the Laws and Regulations Committee Agenda

Item 360–5 National Working Group on Taximeters—Taximeter Code Revisions and Global Positioning System-Based Systems for Time and Distance Measurement—Information Item

This item is presented to raise public awareness of the work that is underway in a NIST led working group to amend Section 5.54. ''Taximeters'' to incorporate specifications, tolerances, user and other technical requirements for devices with measuring technologies and systems that utilize Global Positioning Satellite (GPS) systems and associated software to compute fares or fees based upon distance and/or time measurements. The working group will also consider GPS systems and applications (e.g., smart phone applications) designed to compute fares based upon distance and/or time measurements that are being introduced into the vehicle for-hire industry (e.g., taxicabs, limousines) across the country. Appropriate technical and accuracy requirements for these devices must be developed for manufacturers and users of these devices, and for weights and measures officials. These requirements assure consumers of accurate fares associated with the transportation services and enable consumers to make value comparisons between competing services.

NCWM Laws and Regulations Committee (L & R Committee)

The following items are proposals to amend NIST Handbook 130 or NIST Handbook 133:

NIST Handbook 130—Uniform Regulation for the Method of Sale of Commodities

Item 231–2 Section 10.3. Aerosols and Similar Pressurized Containers—Information Item

This item would establish a method of sale (i.e., the product must be offered for sale by either weight or fluid volume but not both) for packages utilizing Bag on Valve (BOV) technology. A BOV container is a pressurized package where a propellant is not expelled with the product when the valve is activated. BOV packaging has been in the marketplace for several decades and is used to sell the same types of products that are offered for sale in aerosol containers (e.g., sunscreen, wound washes, shaving cream, and car products). Some BOV packages have their net contents declared in terms of fluid volume while others are labeled by net weight. Section 10.3. Aerosols and Similar Pressurized Containers of the Uniform Regulation for the Method of Sale of Commodities require aerosols and similar pressurized containers to disclose their net quantity in terms of weight. BOV containers (net contents in fluid volume) are being used to sell the same type of products dispensed from aerosol containers (net contents in weight) and consumers are unable to make value comparisons. This proposal being considered to replace the current wording in Section 10.3., and it would require packages using BOV technology to have the net quantity of contents declared in terms of weight.

10.3. Aerosols and Similar Pressurized Containers.—The declaration of quantity on an aerosol package, including Bag on Valve (BOV) technology, and other similar pressurized packages shall disclose the net quantity of the commodity (including propellant), in terms of weight, that will be expelled when the instructions for use as shown on the container are followed.

Item 232–4 Packaged Printer Ink and Toner Cartridges—Voting Item

The L&R Committee is recommending adoption of a proposal to establish a method of sale for printer ink and toner cartridges to ensure that consumers are informed about the net quantity of contents of packages to enable value comparisons. The intent of this proposal is to require manufacturers (and aftermarket refillers) to declare net quantities to facilitate both value comparison and verification by weights and measures officials, and to ensure equity between buyer and seller and fair competition between sellers, manufacturers and refillers. The following proposal to amend the Uniform Method of Sale of Commodities Regulation is under consideration:

2.XX. Printer Ink and Toner Cartridges Labeling.

2.XX.1. Definitions.

2.XX.1.1. Printer ink cartridges.—Any cartridge or module that contains ink or a similar substance in liquid form employed in the printing and/or copying of documents, papers, pictures, etc., that is used in a printing device and designed to be replaced when no longer able to supply its contents in printing and/or copying.

2.XX.1.2. Toner cartridges.—Any cartridge or module that contains toner, powder, or similar non-liquid substance employed in the copying or printing of documents, papers, pictures, etc. that is used in a printing and/or copying device and designed to be replaced when no longer able to supply its contents in printing and/or copying.

2.XX.2. Method of Sale and Labeling.

2.XX.2.1. Method of sale, Printer Ink Cartridges.—All printer ink cartridges kept, offered, or exposed for sale or sold shall be sold in terms of the count.

2.XX.2.2. Method of Sale, Toner Cartridges.—All toner cartridges kept, offered, or exposed for sale or sold shall be sold in terms of the count.

Item 232–5 Retail Sales of Electricity for Vehicle Recharging—Uniform Regulation on the Method of Sale of Commodities—Voting Item

A national working group led by NIST is developing requirements for the retail sales of electricity for vehicle recharging. The working group is comprised of device manufacturers, users, regulators, and others involved in vehicle recharging. This item contains a proposed method of sale for retail sales of electricity for vehicle recharging. Among the issues the proposal addresses, in addition to method of sale requirements, are information posting requirements (e.g., information on service fees, charging rates and how to contact the party responsible for the device). Because this item provides critical guidance to an emerging transportation industry, the complete text of the proposal is presented in this

notice. The following method of sale will be considered for adoption at this meeting.

2.XX. Retail Sales of Electricity Sold as a Vehicle Fuel.

2.XX.1. Definitions.

2.XX.1.1. Electricity Sold as Vehicle Fuel.—Electrical energy transferred to and/or stored onboard an electric vehicle primarily for the purpose of propulsion.

2.XX.1.2. Electric Vehicle Supply Equipment (EVSE).—The conductors, including the ungrounded, grounded, and equipment grounding conductors; the electric vehicle connectors; attachment plugs; and all other fittings, devices, power outlets, or apparatuses installed specifically for the purpose of measuring, delivering, and computing the price of electrical energy delivered to the electric vehicle.

2.XX.1.3. Fixed Service.—Service that continuously provides the nominal power that is possible with the equipment as it is installed.

2.XX.1.4. Variable Service.—Service that may be controlled resulting in periods of reduced, and/or interrupted transfer of electrical energy.

2.XX.1.5. Nominal Power.—Refers to the ''intended'' or ''named'' or ''stated'' as opposed to ''actual'' rate of transfer of electrical energy (i.e., power).

2.XX.2. Method of Retail Sale.—All electrical energy kept, offered, or exposed for sale and sold at retail as a vehicle fuel shall be in units in terms of the megajoule (MJ) or kilowatt-hour (kWh). In addition to the fee assessed for the quantity of electrical energy sold, fees may be assessed for other services; such fees may be based on time measurement and/or a fixed fee.

2.XX.3. Retail Electric Vehicle Supply Equipment (EVSE) Labeling.

(a) A computing EVSE shall display the unit price in whole cents (e.g., $0.12) or tenths of one cent (e.g., $0.119) on the basis of price per megajoule (MJ) or kilowatt-hour (kWh). In cases where the electrical energy is unlimited or free of charge, this fact shall be clearly indicated in place of the unit price.

(b) For fixed service applications, the following information shall be conspicuously displayed or posted on the face of the device:

(1) the level of EV Service expressed as the nominal power transfer (i.e., nominal rate of electrical energy transfer), and

(2) the type of electrical energy transfer (e.g., AC, DC, wireless, etc.).

(c) For variable service applications, the following information shall be conspicuously displayed or posted on the face of the device:

(1) the type of service (i.e., ''Variable'');

(2) the minimum and maximum power transfer that can occur during a transaction, including whether service can be reduced to zero;

(3) the conditions under which variations in electrical energy transfer will occur; and

(4) the type of electrical energy transfer (e.g., AC, DC, wireless, etc.).

(d) Where fees will be assessed for other services in direct connection with the fueling of the vehicle, such as fees based on time measurement and/or a fixed fee, the additional fees shall be displayed.

(e) The EVSE shall be labeled in accordance with 16 CFR, PART 309—FTC Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles.

(f) The EVSE shall be listed and labeled in accordance with the National Electric Code® (NEC) NFPA 70, Article 625 Electric Vehicle Charging Systems (*www.nfpa.org*).

2.XX.4. Street Sign Prices and Other Advertisements.

Where electrical energy unit price information is presented on street signs or in advertising other than on the EVSE:

(a) The electrical energy unit price shall be in terms of price per megajoule (MJ) or kilowatt-hour (kWh) in whole cents (e.g., $0.12) or tenths of one cent (e.g., $0.119). In cases where the electrical energy is unlimited or free of charge, this fact shall be clearly indicated in place of the unit price.

(b) In cases where more than one electrical energy unit price may apply over the duration of a single transaction to sales to the general public, the terms and conditions that will determine each unit price and when each unit price will apply shall be clearly displayed.

(c) For fixed service applications, the following information shall be conspicuously displayed or posted:

(1) The level of EV Service expressed as the nominal power transfer (i.e., nominal rate of electrical energy transfer), and

(2) the type of electrical energy transfer (e.g., AC, DC, wireless, etc.).

(d) For variable service applications, the following information shall be conspicuously displayed or posted:

(1) The type of delivery (i.e., ''Variable'');

(2) the minimum and maximum power transfer that can occur during a transaction, including whether service can be reduced to zero;

(3) the conditions under which variations in electrical energy transfer will occur; and

(4) the type of electrical energy transfer (e.g., AC, DC, wireless, etc.).

Where fees will be assessed for other services in direct connection with the fueling of the vehicle, such as fees based on time measurement and/or a fixed fee, the additional fees shall be included on all street signs or other advertising.

All stakeholders, including vehicle and device manufacturers, consumers, public utility commissions, weights and measures officials, smart grid experts, and all others interested in the development of a method of sale and other requirements for devices used to recharge electric vehicles are invited to participate in the workgroup.

Dated: June 24, 2013.

Willie E. May,

Associate Director for Laboratory Programs.

[FR Doc. 2013–15544 Filed 6–27–13; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket Number: 130417383–3383–01]

Computer Security Incident Coordination (CSIC): Providing Timely Cyber Incident Response

AGENCY: National Institute of Standards and Technology, U.S. Department of Commerce.

ACTION: Notice; Request for Information (RFI).

SUMMARY: The National Institute of Standards and Technology (NIST) is seeking information relating to Computer Security Incident Coordination (CSIC). NIST is seeking this information as part of the research needed to write a NIST Special Publication (SP) to help Computer Security Incident Response Teams (CSIRTs) to coordinate effectively when responding to computer security incidents. The NIST SP will identify technical standards, methodologies, procedures, and processes that facilitate prompt and effective response.

This RFI requests information regarding technical best practices, current practices, impediments to information sharing and response, risks of collaborative incident response, the role of technology and standards in incident coordination, specific technical standards and technologies that have been found helpful (or ineffective), opportunities for improvement, viewpoints on incident coordination objectives, and suggestions for guidance. In developing the SP, NIST will consult

with the Department of Homeland Security, the National Security Agency, other interested federal agencies, the Office of Management and Budget, and individually with other parties who respond to this RFI to discuss their comments and seek further information. The SP will be developed through an open public review and comment process that may include workshops as needed.

DATES: Comments must be received by 5:00 p.m. Eastern time on July 29, 2013.

ADDRESSES: Written comments may be submitted by mail to Diane Honeycutt, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899. Submissions may be in any of the following formats: HTML, ASCII, Word, RTF, or PDF. Online submissions in electronic form may be sent to *incidentcoordination@nist.gov.* Please submit comments only and include your name, company name (if any), and cite ''Computer Security Incident Coordination'' in all correspondence. All comments received by the deadline will be posted at *http://csrc.nist.gov* without change or redaction, so commenters should not include information they do not wish to be posted (e.g., personal or confidential business information).

FOR FURTHER INFORMATION CONTACT: For questions about this RFI, contact: Lee Badger, National Institute of Standards and Technology, 100 Bureau Drive, Gaithersburg, MD 20899–8930, telephone (301) 975–3176, email *lee.badger@nist.gov.* Please direct media inquiries to NIST's Office of Public Affairs at (301) 975–NIST.

SUPPLEMENTARY INFORMATION: The nation is increasingly reliant on secure and reliable operation of computing systems throughout Federal Government, key industrial sectors, and civil society. Unfortunately, modern computing systems frequently are exposed to various forms of cyber attack. In some cases, attacks can be thwarted through the use of defensive technologies, such as anti-virus scanning, cryptographically-protected communications, access control, or authentication mechanisms. Despite careful use of defensive technologies, however, some systems will be successfully attacked. When a successful attack occurs, the job of a Computer Security Incident Response Team (CSIRT) is to detect that an attack occurred, prevent ongoing damage, repair the damage to the extent possible, reconstitute the affected system functions, and report as appropriate to the United States Computer Emergency Readiness Team (US–CERT) and to other affected parties according to governing regulation and law. Maintaining a security response capability is a complex and challenging undertaking, and in order to assist those in charge of security efforts, NIST has published guidance, such as NIST SP 800–61 Revision 2 ''Computer Security Incident Handling Guide.'' [1]

NIST SP 800–61 provides guidance on how to establish and operate an incident response capability. The guide provides information on developing procedures for performing incident handling and reporting, for structuring a team, staffing, and training. The guide defines an incident response life cycle encompassing four phases: Preparation, detection and analysis, containment eradication and recovery, and post-incident activity. Although the NIST incident handling guide focuses primarily on how to handle incidents within a single organization, it also provides high-level guidance on how a CSIRT may interact with outside parties, such as coordinating centers, Internet Service Providers, owners of attacking systems, victims, other CSIRTs, and vendors. This guidance focuses primarily on understanding team-to-team relationships, sharing agreements, and the role that automation techniques may play in the coordination of incident response.

This RFI seeks information for a substantial expansion of NIST guidance in how multiple CSIRTs may work together to coordinate their handling of computer security incidents and how CSIRTs might work together with other organizations within a broader information sharing community. This information will serve as input to a new NIST SP, 800–150, ''Computer Security Incident Coordination.'' The goal of this planned document is to provide guidance for cross-organizational incident response, particularly focusing on improving the overall response during cross-cutting and widespread incidents, inspiring effective information sharing practices, and fostering interoperability between teams with varying capabilities. The new SP 800–150 will supplement the existing NIST incident handling guide, SP 800–61, by significantly expanding the guidance on coordination and information sharing (section 4 of SP 800–61). Although work on SP 800–150 may produce guidance that eventually contributes to a revision of SP 800–61, the focus of SP 800–150 will be on the coordination aspects of incident response.

For the purposes of this RFI, the term ''incident coordination'' is defined as communication and collaboration with external entities during an incident response such that:

- Two or more organizations are involved.
- There is an exchange of information between organizations pertaining to incidents or indicators of incidents.
- The organizations work together to achieve common goals (i.e., fast, effective incident response).
- The organizations limit exposures of sensitive information.

NIST seeks information regarding technical best practices, current practices, impediments to information sharing and response, risks of collaborative incident response, the role of technology and standards in incident coordination, specific technical standards and technologies that have been found helpful (or ineffective), opportunities for improvement, viewpoints on incident coordination objectives, and suggestions for guidance.

Request for Information

The following questions cover the major areas about which NIST seeks information. The questions are not intended to limit the topics that may be addressed. Responses may include any topic believed to have implications for effective incident coordination regardless of whether the topic is included in this document.

Comments containing references, studies, research, and other empirical data that are not widely published should include copies of the referenced materials. Do not include in comments or otherwise submit proprietary or confidential information, as all comments received by the deadline will be made available publically at *http://csrc.nist.gov/.*

General Incident Coordination Considerations

1. What does your organization see as the greatest challenge in information sharing throughout the incident response lifecycle?

2. Describe your organization's policies and procedures governing information sharing throughout the incident lifecycle. Also describe to what degree senior management is involved in defining these policies and procedures.

3. What role does senior management have in the execution of your policies and procedures?

4. To what extent is information sharing incorporated into your

[1] *http://csrc.nist.gov/publications/nistpubs/800-61rev2/SP800-61rev2.pdf*

organization's overarching policies and processes?

5. How much of your incident handling effort is spent on the different phases of the incident handling lifecycle (from NIST SP 800–61): (1) Preparation, (2) detection-and-analysis, (3) containment-eradication-and-recovery, (4) post-incident-activity.

6. What are the relevant international, sector-specific or de facto standards used or referenced by your organization to support incident handling and related information sharing activities?

7. How do you determine that an incident is in progress (or has happened)?

8. How do you determine that an incident has been handled and requires no further action?

9. How do you determine when to coordinate and/or share information with other organizations regarding an incident?

10. Do you have documented case studies or lessons learned to share (good or bad examples)? If so, please provide URLs or attachments with your response.

Organizational Capabilities and Considerations for Effective Incident Coordination

Incident handling teams and coordinating centers often collaborate at varying stages of the incident management lifecycle described by NIST SP 800–61. Within this context, individual organizations may offer specific capabilities and may have specific considerations related to effective incident coordination.

1. Do you maintain a list of key contacts for use during an incident? If so, are these contacts identified as individual people, or as positions?

2. What is the size of your organization (e.g. staff, contractors, members)? How many individuals are involved in incident coordination activities carried out by your organization?

3. Relative to the incident response lifecycle defined by NIST SP 800–61, what aspects of incident coordination occur within your organization?

4. What services and assistance (e.g. monitoring, analysis, information) does your organization provide to others both inside and outside your organization relating to incident coordination?

5. Does your organization have any method for understanding and describing the quality or sensitivity of different types of information shared by a third party? For each type of information, can you describe the method?

6. Approximately how many employees (please indicate full time or part time as appropriate) do you devote to incident response?

7. If possible, list examples of highly effective computer security incident response teams and comment on what made them successful.

8. Based on your personal or your organization's experience, what are the most and least effective communication mechanisms used (e.g., phone, email, etc.) when coordinating an incident, and why? In what order do you typically use specific communication mechanisms?

9. Do you have examples of alternate communication mechanisms used because an incident has degraded communications?

10. Do you hold regular incident review meetings? Between organizations? How frequently? If your team does not hold incident review meetings regularly, why not?

11. What skillsets (e.g., network sniffing, system administration, firewall configuration, reverse engineering, etc.) does your organization need most when an incident is in progress?

12. Are there incident handling and response skillsets that are specific to your industry or sector?

13. How do those skills relate to information sharing and communication before, during and after an incident?

Coordinated Handling of an Incident

1. Do you report incidents or indicators to US–CERT?

2. Do you coordinate incident response with organizations other than US–CERT?

3. Do you participate in an incident coordination community such as the Defense Industrial Base (DIB), the Defense Security Information Exchange (DSIE), or an Information Sharing and Analysis Center (ISAC)? What are the benefits? Are there any pain points?

4. How is information about threats and/or incidents shared among coordination community members?

5. How do you prioritize incidents?

6. How do regulatory requirements affect your organization's ability or willingness to share information or collaborate during an incident?

7. What regulatory bodies are you required to report information to regarding incidents? For each regulatory body, what kind of information does your organization report and what has been your organization's reporting experience?

Data Handling Considerations

1. What, if any, types of information would create risk or disadvantage if shared by your organization?

2. What kinds of information would you never share with a peer during incident handling?

3. What types of protections, redactions, or restrictions would aid your organization in sharing information?

4. Do you use specialized formats to communicate incident information?

5. What do you see as the pros and cons of specialized formats for representing and communicating incident information?

6. What incentives exist for your organization to share information with other organizations during an incident?

7. What disincentives exist that might prevent your organization from sharing information with other organizations during an incident?

8. If available, please provide an example when sharing with other organizations proved to have negative implications for your organization's incident response.

Specific Industry Practices

In addition to the approaches above, NIST is interested in identifying core practices that are broadly applicable across sectors and throughout industry.

Dated: June 24, 2013.

Willie E. May,

Associate Director for Laboratory Programs.

[FR Doc. 2013–15542 Filed 6–27–13; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC735

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold a meeting of the Council to establish the 2013 red snapper quotas and supplemental recreational red snapper season. The Council will also hold a formal public comment session.

DATES: The Council meeting will be held from 7 a.m. until 5 p.m. on Wednesday, July 17, 2013.

ADDRESSES: *Meeting address:* The meeting will be held at the Hilton New Orleans Riverside Hotel, Two Poydras Street, New Orleans, LA 70130; telephone: (504) 561–0500.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL, 33607.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas Gregory, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630; fax: (813) 348–1711; email: *doug.gregory@gulfcouncil.org.*

SUPPLEMENTARY INFORMATION: The items of discussion are as follows:

Council Agenda, Wednesday, July 17, 2013, 7 a.m. until 5 p.m.

7 a.m.–7:15 a.m.—Call to Order and Introductions, review the agenda and approve the minutes.

7:15 a.m.–9:30 a.m.—The Council will review an analysis of the yield stream projections for red snapper at constant catch levels. The Council will receive a summary and discuss the proposed actions in the Red Snapper Framework Action. The Council will hear a summary of the written comments received.

9:30 a.m.–12 p.m.—The Council will receive public testimony on the Final Draft of the Framework Action to establish 2013 red snapper quotas and establish the structure of the recreational red snapper season. People wishing to speak before the Council should complete a public comment card prior to the comment period.

1 p.m.–4 p.m.—The Council will select and take final action on the Red Snapper Framework Action to both establish the 2013 red snapper quotas and select the supplemental recreational fishing season structure.

4 p.m.–5 p.m.—The Council will discuss any other business.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Council Office (see **ADDRESSES**), at least 5 working days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: June 25, 2013.

Tracey L. Thompson,

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

[FR Doc. 2013–15508 Filed 6–27–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC518

Endangered Species; File No. 17506

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Karen G. Holloway-Adkins, East Coast Biologists, Inc. P.O. Box 33715, Indialantic, FL 32903 has been issued a permit to take green (*Chelonia mydas*), loggerhead (*Caretta caretta*), hawksbill (*Eretmochelys imbricata*), Kemp's ridley (*Lepidochelys kempii*), and leatherback (*Dermochelys coriaceae*) sea turtles for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

Southeast Region, NMFS, 263 13th Ave South, St. Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Colette Cairns, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On February 28, 2013, notice was published in the **Federal Register** (78 FR 13642) that a request for a scientific research permit to take green, loggerhead, hawksbill, Kemp's ridley, and leatherback sea turtles had been submitted by the above-named individual. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Ms. Holloway-Adkins has been issued a 5-year research permit to continue to characterize the population of sea turtles that utilize the nearshore hard bottom reefs in Brevard County, FL. Green and loggerhead sea turtles would be captured, flipper and passive integrated transponder tagged, measured, weighed, tissue and blood sampled and photographed before release. A subset of green sea turtles may be stomach lavaged or have an acoustic transmitter attached to the carapace for tracking movements. Researchers are also authorized to count all sea turtle species during vessel surveys in the nearshore waters of Florida and Georgia.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) Was applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: June 25, 2013.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–15503 Filed 6–27–13; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions to and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions from the Procurement List.

SUMMARY: The Committee is proposing to add products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes services previously furnished by such agencies.

Comments Must Be Received On Or Before: 7/29/2013.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 10800, Arlington, Virginia, 22202–4149.

For Further Information Or To Submit Comments Contact: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons

an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following products and services are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Products

NSN: 7510–00–NIB–9832—Portable Desktop Clipboard, 10″ W × 2–3/5″ D × 16″ H, Black.

NSN: 7510–00–NIB–9833—Portable Desktop Clipboard, 10″ W × 2–3/5″ D × 16″ H, Blue.

NSN: 7510–00–NIB–9851—Portable Desktop Clipboard with Calculator, 10″ W × 2–3/5″ D × 16″ H, Black.

NSN: 7510–00–NIB–9852—Portable Desktop Clipboard with Calculator, 10″ W × 2–3/5″ D × 16″ H, Blue.

Coverage: A-List for the Total Government Requirement as aggregated by the General Services Administration.

NSN: 7510–00–NIB–9834—Portable Desktop Clipboard, 10″ W × 2–3/5″ D × 16″ H, Army Green.

NSN: 7510–00–NIB–9853—Portable Desktop Clipboard with Calculator, 10″ W × 2–3/5″ D × 16″ H, Army Green.

Coverage: B-List for the Broad Government Requirement as aggregated by the General Services Administration.

NPA: L.C. Industries for the Blind, Inc., Durham, NC.

Contracting Activity: GENERAL SERVICES ADMINISTRATION, NEW YORK, NY.

Services:

Service Type/Location: Courier Service, Michael E. DeBakey VA Medical Center, 2002 Holcombe Boulevard, Houston, TX.

NPA: Southeast Vocational Alliance, Inc., Houston, TX.

Contracting Activity: DEPARTMENT OF VETERANS AFFAIRS, 580–HOUSTON, HOUSTON, TX.

Service Type/Location: Custodial Service, National Counterdrug Training Center Campus, Building 8–47, Annville, PA.

NPA: Opportunity Center, Incorporated, Wilmington, DE.

Contracting Activity: DEPT OF THE ARMY, W7NX USPFO ACTIVITY PA ARNG, ANNVILLE, PA.

Service Type/Location: Integrated Prime Vendor Supply Chain Management Service, U.S. Army, Product Manager Force Sustainment Systems, Natick, MA.

NPA: ReadyOne Industries, Inc., El Paso, TX.

Contracting Activity: APG–NATICK CONTRACTING DIVISION, MILFORD, MA.

Service Type/Location: Integrated Prime Vendor Supply Chain Management Service, U.S. Navy, Naval Surface Warfare Center, Crane, IN.

NPA: Knox Country Association for Retarded Citizens, Inc., Vincennes, IN.

Contracting Activity: U.S. NAVAL SYSTEMS COMMAND, NSWC, CRANE, IN.

Service Type/Location: Custodial Service, GSA, PBS, Tornillo-Guadalupe Land Port of Entry, Tornillo, TX.

NPA: Training, Rehabilitation, and Development Institute, Inc., San Antonio, TX.

Contracting Activity: GENERAL SERVICES ADMINISTRATION, GREATER SOUTHWEST REGION, FORT WORTH, TX.

Service Type/Location: Janitorial and Landscape Service, Terminal Island Immigration and Customs Enforcement Facility, 2001 S. Seaside Ave., San Pedro, CA.

NPA: Los Angeles Habilitation House, Long Beach, CA.

Contracting Activity: DEPT OF HOMELAND SECURITY, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, MISSION SUPPORT DALLAS, DALLAS, TX.

Deletions

The following services are proposed for deletion from the Procurement List:

Services:

Service Type/Location: Janitorial/Custodial Service, U.S. Army Reserve Center, 3315 9th Street, Wichita Falls, TX.

NPA: North Texas State Hospital, Wichita Falls, TX.

Contracting Activity: DEPT OF THE ARMY, W6QM MICC–FT HUNTER (RC–W), MONTEREY, CA.

Service Type/Location: Grounds Maintenance Service, U.S. Army Reserve Center, 3315 9th Street, Wichita Falls, TX.

NPA: Work Services Corporation, Wichita Falls, TX.

Contracting Activity: DEPT OF THE ARMY, W6QM MICC–FT HUNTER (RC–W), MONTEREY, CA.

Service Type/Location: Janitorial/Custodial Service, U.S. Federal Building, Courthouse and Post Office, Third and Sharkey Street, Clarksdale, MS.

NPA: UNKNOWN.

Contracting Activity: GENERAL SERVICES ADMINISTRATION, FPDS AGENCY COORDINATOR, WASHINGTON, DC.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2013–15514 Filed 6–27–13; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* 7/29/2013.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 10800, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION:

Additions

On 4/19/2013 (78 FR 23542–23543); 4/26/2013 (78 FR 24732–24733); 5/3/2013 (78 FR 25970–25971); and 5/10/2013 (78 FR 27368–27369), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

NSN: 7520–00–NSH–0189—Hole Punch, Paper, Light Duty, 3-Hole, Adjustable, 10 sheet capacity, Black.
NSN: 7520–00–NSH–0191—Hole Punch, Paper, Light Duty, 3-Hole, Adjustable, 8 sheet capacity, Black.
NSN: 7520–00–NSH–0193—Hole Punch, Paper, High-capacity, 2-Hole, Adjustable, 30 sheet capacity, Black Base, Black Grip.
NSN: 7520–00–NSH–0194—Hole Punch, Paper, High-capacity, 3-Hole, Adjustable, 32 sheet capacity, Black Base, Metallic Handle.
NSN: 7520–00–NSH–0196—Hole Punch, Paper, Light Duty, 3-Hole, Adjustable, 11 sheet capacity, Black Base, Metallic Handle.
NSN: 7520–00–NSH–0197—Hole Punch, Paper, Desktop, 3-Hole, Adjustable, 11 sheet capacity, Metallic Base, Black Grip.
Coverage: A-List for the Total Government Requirement as aggregated by the General Services Administration, New York, NY.
NSN: 7520–00–NSH–0188—Hole Punch, Paper, High-capacity, 3-Hole, Adjustable, 28 sheet capacity, Black Base, Black Grip.
NSN: 7520–00–NSH–0195—Hole Punch, Paper, Light Duty, 3-Hole, Adjustable, 10 sheet capacity, Metallic Base, Black Handle.
NSN: 7520–00–NSH–0199—Hole Punch, Paper, High-capacity, 2-Hole, Adjustable, 30 sheet capacity, Black Base, Metallic Handle.
Coverage: B-List for the Broad Government requirement as aggregated by the General Services Administration, New York, NY.
NPA: FVO Solutions Inc., Pasadena, CA.
Contracting Activity: GENERAL SERVICES ADMINISTRATION, NEW YORK, NY
NSN: 6230–00–NIB–0033—Kit, Safety Flare, Programmable Flicker Pattern, Red LED, 8 in Diameter, AA Battery Operated.
NSN: 6230–00–NIB–0034—Kit, Safety Flare, Programmable Flicker Pattern, Red LED, 8 in Diameter, Rechargeable Power Unit.
Coverage: B-List for the Broad Government Requirement as aggregated by the Defense Logistics Agency Troop Support, Philadelphia, PA.
NPA: Tarrant County Association for the Blind, Fort Worth, TX.
Contracting Activity: DEFENSE LOGISTICS AGENCY TROOP SUPPORT, PHILADELPHIA, PA.
NSN: 7920–00–NIB–0548—Scrubber, Grout, Non-Scratch, Light Blue.
NSN: 7920–00–NIB–0549—Scrubber, Kitchen/Bath, Non-scratch, Dark Blue.
NSN: 7920–00–NIB–0550—Scrubber, Tub/Shower, Non-scratch, Light Blue.
Coverage: B-List for the Broad Government requirement as aggregated by the General Services Administration, Fort Worth, TX.
NPA: Industries for the Blind, Inc., West Allis, WI.
Contracting Activity: GENERAL SERVICES ADMINISTRATION, FORT WORTH, TX.
NSN: 8970–00–NSH–0026—Meal Kit, Turkey, Detainees, DHS ICE.
NSN: 8970–00–NSH–0027—Meal Kit, Roast Beef, Detainees, DHS ICE.
Coverage: C-List for 100% of the requirement of the U.S. Immigration and Customs Enforcement, York, PA detainment facility, as aggregated by Compliance and Removals, U.S. Immigration and Customs Enforcement, Washington, DC.
NPA: The Arc of Cumberland and Perry Counties, Carlisle, PA.
Contracting Activity: DEPT OF HOMELAND SECURITY, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, COMPLIANCE AND REMOVALS, WASHINGTON, DC.

Services

Service Type/Location: Linen Rental Service, Court Services and Offender Supervision Agency, 633 Indiana Ave, Room 892, NW., Washington, DC.
NPA: Rappahannock Goodwill Industries, Inc., Fredericksburg, VA.
Contracting Activity: COURT SERVICES AND OFFENDER SUPERVISION AGENCY, WASHINGTON, DC.
Service Type/Location: Grounds Maintenance Service, USDA APHIS Veterinary Services, 6300 NW, 36th Street, Miami, FL.
NPA: Goodwill Industries of South Florida, Inc., Miami, FL.
Contracting Activity: DEPT OF AGRICULTURE, ANIMAL AND PLANT HEALTH INSPECTION SERVICE, MINNEAPOLIS, MN.
Service Type/Location: Janitorial Service, Dubois Ranger District Office, Caribou-Targhee National Forest, 98 North Oakley, Dubois, ID.
NPA: Development Workshop, Inc., Idaho Falls, ID.
Contracting Activity: Forest Service, Caribou-Targhee National Forest, Idaho Falls, ID.
Service Type/Location: Custodial Service, Air National Guard Air Force Reserve Command Test Center, 1600 E. Super Sabre Drive, Bldg. 10, Tucson, AZ.
NPA: Beacon Group SW., Inc., Tucson, AZ.
Contracting Activity: DEPT OF THE ARMY, W7MV USPFO ACTIVITY AZ ARNG, PHOENIX, AZ.

Barry S. Lineback,
Director, Business Operations.

[FR Doc. 2013–15513 Filed 6–27–13; 8:45 am]
BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Amended Order Designating the Provider of Legal Entity Identifiers to Be Used in Recordkeeping and Swap Data Reporting Pursuant to the Commission's Regulations

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission (CFTC) has issued an Amended Order expanding, through mutual acceptance by international regulators, the list of Legal Entity Identifiers (LEIs) that can be used by registered entities and swap counterparties in complying with CFTC's swap data reporting regulations once the conditions provided in the Amended Order are fulfilled. The Amended Order revises CFTC's order of July 23, 2012, which directed all registered entities and swap counterparties required by CFTC rules to use LEIs in swap recordkeeping and swap data reporting to use LEIs provided by DTCC–SWIFT, the utility designated by the CFTC as the provider of LEIs until establishment of the global LEI system.

FOR FURTHER INFORMATION CONTACT: David Taylor, Associate Director, Division of Market Oversight, 202–418–5488, *dtaylor@cftc.gov;* or Srini Bangarbale, Chief Data Officer, Office of Data and Technology, 202–418–5315, *sbangarbale@cftc.gov;* Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION: On July 23, 2012, the Commodity Futures Trading Commission (''Commission'') issued an order (''Order'') [1] pursuant to section 21(b) of the Commodity Exchange Act (''CEA'' or ''the Act'') and to part 45 of the Commission's regulations, designating DTCC–SWIFT

[1] *See* 77 FR 53870 (Sept. 4, 2012).

as the provider of Legal Entity Identifiers (''LEIs''), to be known as CFTC Interim Compliant Identifiers (''CICIs'') until establishment of the global LEI system or further action by the Commission, to be used in recordkeeping and swap data reporting pursuant to parts 45 and 46 of the Commission's regulations. The Order directed registered entities and swap counterparties subject to the Commission's jurisdiction to use CICIs provided by DTCC–SWIFT to comply with the LEI requirements of parts 45 and 46 of the Commission's regulations.

As stated in the preamble to the Commission's Adopting Release for part 45:

> The Commission recognizes that optimum effectiveness of LEIs as a tool for achieving the systemic risk mitigation, transparency, and market protection goals of the Dodd-Frank Act—goals shared by financial regulators world-wide—would come from creation of a global LEI, on an international basis, that is capable of becoming the single international standard for unique identification of legal entities across the world financial sector.[2]

As recognized in the Order and in part 45 of the Commission's regulations, the Commission is participating in an international process to establish a global LEI system. Since the Order was issued, the international process has moved forward significantly, and establishment of the global LEI system has begun. These developments are summarized below.

- Regulatory oversight for the global LEI system is now provided by an international Regulatory Oversight Committee (''ROC''), established in January 2013. The Commission is a charter member of the ROC and of its Executive Committee.
- The ROC has determined that the global LEI system will be federated in nature, and will include a private sector Central Operating Unit (''COU'') and multiple Local Operating Units (''LOUs''). Under the auspices of the ROC, a foundation is being established in Switzerland to provide the COU. The COU will coordinate the system's multiple LOUs, which will issue LEIs.
- As part of the establishment of the global LEI system under the auspices of the ROC, seven identifier-issuing utilities or pre-LOUs, including the CICI Utility operated by DTCC–SWIFT and designated in the Order, have each been sponsored to the ROC by a ROC member authority that exercises oversight of the LOU, and have been given an identifier prefix for use in ensuring the uniqueness of all identifiers issued by any LOU or pre-LOU. A pre-LOU located in Germany, operated by WM Datenservice and sponsored to the ROC by Bafin, Germany's Federal Financial Supervisory Authority, has now begun issuing identifiers known as General Entity Identifiers (''GEIs''), which the Commission anticipates will become LEIs in the global LEI system. The Commission anticipates that, in the next few months, other pre-LOUs sponsored to the ROC by a ROC member with oversight authority may also start issuing identifiers that will become LEIs in the global system.
- As stated in the Order, the Commission anticipates that the CICI Utility operated by DTCC–SWIFT and designated in the Order will become one of the LOUs in the global system, and that CICIs will become LEIs in the global system.

The Commission understands that OTC derivatives data reporting in the European Union is scheduled to begin in September 2013, pursuant to reporting requirements under the European Market Infrastructure Regulation (''EMIR'') issued by the European Securities and Markets Authority (''ESMA'').

Once swap data reporting is required under both CFTC rules and the rules of another jurisdiction or jurisdictions, as will be the case when ESMA's rules take effect, cooperation by the authorities in question with respect to the LEIs used in such reporting will be required to preserve the essential Principle of Uniqueness for LEIs, already adopted by the ROC and mandated by section 45.6(b)(1) of the Commission's regulations. Since the identifiers issued by pre-LOUs recognized by the ROC, including WM Datenservice, the CICI Utility, and eventually others, will become LEIs in the global LEI system, mutual acceptance, by each ROC member that mandates use of LEIs in data reporting, of the identifiers issued by each ROC-certified pre-LOU, is the only way to avoid violation of the Uniqueness Principle resulting from issuance of multiple LEIs to a single entity.

One example of this problem would be the case of a German hedge fund that obtains an identifier from WM Datenservice, and later becomes a counterparty to a swap with a U.S. swap dealer that must be reported to a swap data repository under CFTC rules. If the CFTC does not permit the WM Datenservice identifier of the hedge fund to be reported as part of the primary economic terms data reported for that swap, but requires that a CICI be reported for the hedge fund, it would be necessary for the hedge fund to obtain a CICI in addition to its WM Datenservice identifier.

To address this issue, and facilitate the ongoing establishment of the global LEI system, the Chair and Vice Chairs of the ROC have asked the Commission and ESMA to each move as promptly as possible to take whatever action is necessary to provide for mutual acceptance, for use in data reporting required by CFTC rules or ESMA rules, of the pre-LEIs issued by either the CICI Utility or WM Datenservice. The request notes that the ROC previously has publicly identified, as minimum requirements for global acceptance of pre-LEIs issued by a pre-LOU, both issuance by the pre-LOU of pre-LEIs that comply with ISO Standard 17442 *Legal Entity Identifier,* and compliance by the pre-LOU with the existing principles for the global LEI system and the existing standards for pre-LOUs adopted by the ROC. The Chair and Vice Chairs also informed the Commission that, at the ROC's June 2013 meeting in Mexico City, the ROC anticipates finalizing a framework for global acceptance of pre-LEIs assigned by a pre-LOU that is sponsored by a ROC member who assures the ROC that the pre-LOU meets specified principles regarding compliance with the LEI standard, technical capacity, and agreement to adhere to ROC high level principles for the system. The Commission understands that upon such action by the ROC, such globally accepted pre-LEIs will henceforth be known as LEIs.

Bafin has notified the Commission, and Commission staff have verified, on the basis of a live demonstration provided by WM Datenservice to Commission staff and to other ROC members including Bafin, and of a Memorandum of Understanding adopted by DTCC–SWIFT and WM Datenservice to provide for cooperation and coordination between them with respect to adherence to the principles adopted by the ROC for the global LEI system, that: (1) The GEIs issued by WM Datenservice comply with ISO Standard 17442 *Legal Entity Identifier;* and (2) WM Datenservice complies with the existing principles for the global LEI system and the existing standards for pre-LOUs adopted by the ROC.

The Commission anticipates, on the basis of discussions between members of the ROC including representatives of ESMA and of the Commission, that ESMA will, on a timely basis, take the action necessary to provide for mutual acceptance by ESMA and the CFTC of both the pre-LEIs (now known as CICIs) issued by DTCC–SWIFT and the pre-LEIs (now known as GEIs) issued by WM Datenservice, for data reporting

[2] *See* 77 FR 2136 (Jan. 13, 2012) at 2163.

required under either Commission regulations or ESMA's EMIR regulations.

In light of the foregoing, *it is ordered,* pursuant to section 21(b) of the Commodity Exchange Act and section 45.6 of the Commission's regulations, that paragraph 2 of the Order is amended by striking the existing paragraph 2 and inserting the following:

''2. To comply with the legal entity identifier requirements of parts 45 and 46 of the Commission's regulations:

a. Effective immediately upon (1) issuance of this Amended Order, and (2) publication on the Commission's Web site by the Commission's Chief Information Officer of a notice that ESMA has informed the Commission that LEIs issued by DTCC–SWIFT are accepted for data reporting under ESMA's EMIR regulations, registered entities and swap counterparties subject to the Commission's jurisdiction shall use either LEIs (currently known as CFTC Interim Compliant Identifiers or CICIs) provided by DTCC–SWIFT, or LEIs (currently known as General Entity Identifiers or GEIs) provided by WM Datenservice. Registered entities and swap counterparties may contact DTCC–SWIFT at *https://www.ciciutility.org,* and may contact WM Datenservice at *https://www.geiportal.org.*

b. Prior to adoption by the ROC of standards for approval of pre-LOUs and the LEIs issued by approved pre-LOUs as globally acceptable, registered entities and swap counterparties subject to the Commission's jurisdiction may use LEIs provided by another pre-LOU that has been issued an identifier prefix by the ROC and is sponsored as a pre-LOU by a member of the ROC, in lieu of using LEIs provided by DTCC–SWIFT or WM Datenservice, but may do so only after the Commission's Chief Information Officer publishes on the Commission's Web site a notice that: (1) Commission staff have verified, on the basis of a demonstration provided to Commission staff by the pre-LOU, and the ROC member sponsoring the pre-LOU has notified the Commission, that the pre-LOU issues LEIs that are compliant with ISO Standard 17442 *Legal Entity Identifier,* and that the pre-LOU complies with the existing principles for the global LEI system and the existing standards for pre-LOUs adopted by the ROC; and that (2) LEIs issued by DTCC–SWIFT are accepted for data reporting under the law of any jurisdiction that accepts the LEIs issued by the pre-LOU for data reporting.

c. After the ROC has adopted standards for approval of pre-LOUs and the LEIs issued by them as globally acceptable, and has also approved DTCC–SWIFT as a globally acceptable pre-LOU and the LEIs issued by DTCC–SWIFT as globally acceptable LEIs, registered entities and swap counterparties subject to the Commission's jurisdiction may use LEIs provided by DTCC–SWIFT, WM Datenservice, or any other pre-LOU approved by the ROC as globally acceptable and as issuing globally acceptable LEIs. Pursuant to this paragraph, use of LEIs from pre-LOUs other than DTCC–SWIFT or WM Datenservice may commence only after the Commission's Chief Information Officer publishes on the Commission's Web site a notice that such LEIs and such LOUs have been approved by the ROC as globally acceptable.

d. Effective immediately upon ROC approval of the LEIs (currently known as CICIs) issued by DTCC–SWIFT as globally acceptable, the LEIs issued by DTCC–SWIFT shall be known as LEIs and not as CICIs. For this purpose, CICIs previously issued by DTCC–SWIFT shall be named and referred to as LEIs, but shall not be reissued.

e. As provided in section 45.6(b)(1) of the Commission's regulations, registered entities and swap counterparties subject to the Commission's jurisdiction shall be identified in all swap recordkeeping and swap data reporting by a single LEI.

Authority: 7 U.S.C. 24a(b).

Issued in Washington, DC, on June 7, 2013, by the Commission.

Melissa D. Jurgens,

Secretary of the Commission.

Appendix to Amended Order Designating the Provider of Legal Entity Identifiers To Be Used in Recordkeeping and Swap Data Reporting Pursuant to the Commission's Regulations—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Sommers, Chilton, O'Malia, and Wetjen voted in the affirmative. No Commissioner voted in the negative.

[FR Doc. 2013–15477 Filed 6–27–13; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Army Education Advisory Subcommittee; Meeting Notice

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended) and 41 CFR 102–3.150, the Department of Defense announces that the following Federal advisory committee meeting will take place:

Name of Committee: Board of Visitors (BoV), Defense Language Institute Foreign Language Center Subcommittee.

Date: July 31, 2013 and August 1, 2013.

Time of Meeting: Approximately 7:45 a.m. through 4:30 p.m. Please allow extra time for gate security for both days.

Location: Defense Language Institute Foreign Language Center and Presidio of Monterey (DLIFLC & POM), Building 614, Conference Room, Monterey, CA 93944.

Purpose of the Meeting: The purpose of the meeting is to provide an overview of DLIFLC's Foreign Language Program to the BoV. In addition, the meeting will involve administrative matters.

Proposed Agenda: Summary—July 31—Board administrative details and orientation to DLIFLC class size and DLIFLC foreign language potential. August 1—The Board will be briefed on items of interest to DLIFLC and BoV, if applicable, and will have time to compile observations pertaining to agenda items on July 31 and August 1. Deliberations leading to provisional findings will be referred to the Army Education Advisory Committee for deliberation by the Committee under the open-meeting rules.

FOR FURTHER INFORMATION CONTACT: For information contact Dr. Robert Savukinas, Sub-Committee's Alternate Designated Federal Officer: ATFL–APO, Monterey, CA, 93944, *Robert.Savukinas@us.army.mil,* (831) 242–5828.

SUPPLEMENTARY INFORMATION: Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, this meeting is open to the public however, any member of the public wishing to attend this meeting should contact the Subcommittee's Alternate Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**) at least ten calendar days prior to the meeting for information on base entry. Individuals without a DoD Government Common Access Card require an escort at the meeting location. Seating is on a first-come basis.

Filing Written Statement: Pursuant to 41 CFR 102.3.140(d), the Subcommittee is not obligated to allow the public to speak, however, any member of the public, including interested organizations, wishing to provide input to the Subcommittee concerning the

subcommittee's mission and functions, should submit a written statement in accordance with 41 CFR 102–3.105(j) and 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act and the procedures described in this paragraph. Written statements can be submitted to the Subcommittee Alternate Designated Federal Officer at the address listed (see **FOR FURTHER INFORMATION CONTACT**). Statements being submitted in response to the stated agenda mentioned in this notice must be received at least ten calendar days prior to the meeting which is the subject of this notice. Written statements received after this date may not be provided to or considered by the Advisory Committee until its next meeting. The Subcommittee Alternate Designated Federal Officer will review all timely submissions with the Subcommittee Chairperson and ensure they are provided to members of the Subcommittee before the meeting that is the subject of this notice. No member of the public attending open meetings will be allowed to present questions from the floor or speak to any issue under consideration by the Board.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2013–15447 Filed 6–27–13; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2013–ICCD–0087]

Agency Information Collection Activities; Comment Request; Trends in International Mathematics and Science Study (TIMSS): 2015 Recruitment and Field Test

AGENCY: National Center for Education Statistics, Institute of Education Sciences, Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a reinstatement of a previously approved information collection.

DATES: Interested persons are invited to submit comments on or before August 27, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0087 or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E105, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov*. Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Trends in International Mathematics and Science Study (TIMSS): 2015 Recruitment and Field Test.

OMB Control Number: 1850–0695.

Type of Review: a reinstatement of a previously approved information collection.

Respondents/Affected Public: Individuals or households.

Total Estimated Number of Annual Responses: 14,537.

Total Estimated Number of Annual Burden Hours: 34,021.

Abstract: The Trends in Mathematics and Science Study (TIMSS) is an international assessment of fourth and eighth grade students' achievement in mathematics and science. Since its inception in 1995, TIMSS has continued to assess students every 4 years (1995, 1999, 2003, 2007, 2011). Participation in this study provides data on current and past education policies and a comparison of U.S. education policies with its international counterparts. Periodically, TIMSS has also conducted an assessment of advanced mathematics and physics of students at the end of secondary school (1995 and 2008). The United States participated in TIMSS Advanced in 1995, but not in 2008. Because of the current strong policy interest in preparedness for college and for careers in science, technology, engineering, and mathematics (STEM) fields, the U.S. plans to participate in TIMSS Advanced in 2015. This submission describes the overarching plan for all phases of the data collection, including the field test that will take place in March-April, 2014, and the main study that will take place in April-May, 2015. The purpose of the TIMSS field test is to evaluate new assessment items and background questions (including the new parent questionnaire), to ensure practices that promote low exclusion rates, and to ensure that classroom and student sampling procedures proposed for the main study are successful. This submission requests approval for recruitment for the 2014 field test and the 2015 main study; the 2014 field test data collection for TIMSS at grades 4 and 8 and TIMSS Advanced in grade 12; and a description of the overarching plan for all of the phases of the data collection, including data collection in the 2015 main study.

Dated: June 24, 2013.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–15490 Filed 6–27–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2013–ICCD–0085]

Agency Information Collection Activities; Comment Request; Race to the Top—Early Learning Challenge Annual Performance Report

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44

U.S.C. chapter 3501 *et seq.*), ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before August 27, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0085 or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E105, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov*. Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Race to the Top—Early Learning Challenge Annual Performance Report.

OMB Control Number: 1810–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 21.

Total Estimated Number of Annual Burden Hours: 2,520.

Abstract: The Race to the Top—Early Learning Challenge program is authorized by Sections 14005 and 14006, Division A, of the American Recovery and Reinvestment Act of 2009, as amended by section 1832(b) of Division B of Public Law 112–10, the Department of Defense and Full-Year Continuing Appropriations Act, 2011, and the Department of Education Appropriations Act, 2012 (Title III of Division F of Public Law 112–74, the Consolidated Appropriations Act, 2012). This program is jointly managed by the U.S. Department of Education and the U.S. Department of Health and Human Services.

The purpose of the Race to the Top—Early Learning Challenge program is to focus on improving early learning and development programs for young children by supporting States' efforts to: (1) Increase the number and percentage of low-income and disadvantaged children in each age group of infants, toddlers, and preschoolers who are enrolled in high-quality early learning programs; (2) design and implement an integrated system of high-quality early learning programs and services; and (3) ensure that any use of assessments conforms with the recommendations of the National Research Council's reports on early childhood. Five key program reform areas representing the foundation of an effective early learning and development reform agenda focused on school readiness and ongoing educational success. These five key reform areas are: (A) Successful State Systems; (B) High-Quality, Accountable Programs; (C) Promoting Early Learning and Development Outcomes for Children; (D) A Great Early Childhood Education Workforce; and (E) Measuring Outcomes and Progress. The first two reform areas, (A) and (B) are ''Core Areas of Focus'' for this program and all applicants addressed selection criteria based on these core areas. Reform areas (C), (D), and (E) are ''Focused Investment Areas'' where State's choose which specific areas to target based on their State's early childhood reform areas and policies. Research demonstrates that high-quality early learning and development programs and services can improve young children's health, social-emotional, and cognitive outcomes; enhance school readiness; and help close the school readiness gap that exists between children with High Needs and their more abled peers at the time they enter kindergarten.

The Annual Performance Report for this program will collect data on the performance measures and the selection criteria described in the application (note OMB approval in 2011). Program staff have reviewed this report carefully to minimize burden. The APR will be collected electronically which will enable program staff to pre-populate information on baseline data, approved performance targets, and approved annual budgets. This report will be used to provide necessary information to program staff and to the public on the implementation of these grants.

Dated: June 24, 2013.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–15489 Filed 6–27–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; National Institute on Disability and Rehabilitation Research—Rehabilitation Research and Training Centers

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

ACTION: Notice.

Overview Information

National Institute on Disability and Rehabilitation Research (NIDRR)—Projects and Centers Program—Rehabilitation Research and Training Centers (RRTCs)—Disability in Rural Areas.

Notice inviting applications for new awards for fiscal year (FY) 2013.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133B–8.

DATES:

Applications Available: June 28, 2013.

Date of Pre-Application Meeting: July 19, 2013.

Deadline for Transmittal of Applications: August 19, 2013.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including

international activities, to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Rehabilitation Research and Training Centers (RRTCs)

The purpose of the RRTCs, which are funded through the Disability and Rehabilitation Research Projects and Centers Program, is to achieve the goals of, and improve the effectiveness of, services authorized under the Rehabilitation Act through advanced research, training, technical assistance, and dissemination activities in general problem areas, as specified by NIDRR. These activities are designed to benefit rehabilitation service providers, individuals with disabilities, and the family members or other authorized representatives of individuals with disabilities. Additional information on the RRTC program can be found at: *www.ed.gov/rschstat/research/pubs/res-program.html#RRTC.*

Priorities: There are two absolute priorities for this competition. One absolute priority is from the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**. The second absolute priority—the General RRTC Requirements priority—is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers Program, published in the **Federal Register** on February 1, 2008 (73 FR 6132), and it applies to all RRTC competitions.

Absolute Priorities: For FY 2013 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet these priorities.

These priorities are:

Priority 1— Disability in Rural Areas

Note: The full text of this priority is included in the notice of final priority published elsewhere in this issue of the **Federal Register** and in the application package for this competition.

Priority 2—General RRTC Requirements

Note: The full text of this priority is included in the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers Program, published in the **Federal Register** on February 1, 2008 (73 FR 6132), and in the application package for this competition.

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 86, and 97. (b) The Education Department suspension and debarment regulations in 2 CFR part 3485. (c) The regulations for this program in 34 CFR part 350. (d) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers Program published in the **Federal Register** on February 1, 2008 (73 FR 6132). (e) The notice of final priority for this program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $875,000.

Maximum Award: We will reject any application that proposes a budget exceeding $875,000 for a single budget period of 12 months. The Assistant Secretary for the Office of Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 1

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *www.ed.gov/fund/grant/apply/grantapps/index.html.* To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.133B–8.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 100 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative section (Part III).

An applicant should consult NIDRR's Long-Range Plan for Fiscal Years 2013–2017 (78 CFR 20299) (Plan) when preparing its application. The Plan is organized around the following research domains: (1) Community Living and Participation; (2) Health and Function; and (3) Employment.

3. *Submission Dates and Times:*

Applications Available: June 28, 2013.

Date of Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting and to receive information and technical assistance through individual consultation with NIDRR staff. The pre-application meeting will be held on July 19, 2013. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1:00 p.m. and 3:00 p.m., Washington, DC time. NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m., Washington, DC time, on the same day, by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate in the meeting via conference call or to arrange for an individual consultation, contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Deadline for Transmittal of Applications: August 19, 2013.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (*Grants.gov*). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

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, 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 System for Award Management (SAM) (formerly the Central Contractor Registry (CCR)), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active 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 SAM registration process may take seven or more business days to complete. If you are currently registered with the SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days to complete. Information about SAM is available at *SAM.gov*.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/applicants/get_registered.jsp.*

7. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications

Applications for grants under the Disability in Rural Areas RRTC program, CFDA number 84.133B–8, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Disability in Rural Areas RRTC program at *www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.133, not 84.133B).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through

Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *www.G5.gov.*

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material. Additional, detailed information on how to attach files is in the application instructions.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (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: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., Room 5133, PCP, Washington, DC 20202–2700. FAX: (202) 245–7323.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133B–8), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline

date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133B–9), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the 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 350.54 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through a review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine:

- The number of products (e.g., new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new NIDRR grants that assess the effectiveness of interventions, programs, and devices using rigorous methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports for these reviews.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site: *www.ed.gov/about/offices/list/opepd/sas/index.html.*

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

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

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

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or a TTY, call the FRS, toll-free, at 1–800–877–8339.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the

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

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

Dated: June 25, 2013.

Michael K. Yudin,

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

[FR Doc. 2013–15598 Filed 6–27–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records

AGENCY: Federal Student Aid, U.S. Department of Education.

ACTION: Notice of an altered system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), 5 U.S.C. 552a, the Chief Operating Officer for Federal Student Aid (FSA) of the Department of Education (Department) publishes this notice proposing to revise the system of records entitled ''National Student Loan Data System (NSLDS)'' (18–11–06), originally published on December 27, 1999 (64 FR 72395–72397), altered on September 7, 2010 (75 FR 54331–54336), and most recently altered on June 24, 2011 (76 FR 37095–37100).

The Department proposes to revise the NSLDS to make necessary updates resulting from the Moving Ahead for Progress in the 21st Century Act (MAP–21), Public Law 112–141, which amended the Higher Education Act of 1965, as amended (HEA), to limit students' eligibility for Direct Subsidized Loans to no more than 150 percent of the published length of the educational program in which the student is enrolled.

We are also expanding the system's categories of records, purposes, authority, and its routine uses to reflect programmatic disclosures needed to better evaluate the effectiveness of institutions and their title IV-eligible educational programs, and to make that information available to the general public on the Department's ''College Scorecard'' and the Department's ''Financial Aid Shopping Sheet.'' Finally, we are revising and streamlining programmatic routine use 1(c).

DATES: Submit your comments on the proposed altered system of records notice on or before July 29, 2013.

The Department filed a report describing the altered system of records covered by this notice with the Chair of the Senate Committee on Homeland Security and Governmental Affairs, the Chair of the House Committee on Oversight and Government Reform, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), on June 14, 2013. This altered system of records will become effective at the later date of: (1) The expiration of the 40-day period for OMB review on July 25, 2013, unless OMB waives 10 days of the 40-day review period for compelling reasons shown by the Department; or (2) July 29, 2013, unless the system of records needs to be changed as a result of public comment or OMB review.

ADDRESSES: Address all comments to: Director, NSLDS Systems, Operations and Aid Delivery Management Services, FSA, U.S. Department of Education, Union Center Plaza (UCP), 830 First Street NE., Room 44F1, Washington, DC 20202–5454. Telephone: 202–377–3547. If you prefer to send comments by email, use the following address: *comments@ed.gov.*

You must include the term ''NSLDS comments'' in the subject line of your email.

During or after the comment period, you may inspect all public comments about this notice in room 44D2, UCP, 4th floor, 830 First Street NE., Washington, DC 20202–5454 between the hours of 8:00 a.m. and 4:30 p.m., Eastern Time, Monday through Friday of each week except Federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Director, NSLDS Systems, Operations and Aid Delivery Management Services, FSA, U.S. Department of Education, UCP, 830 First Street NE., Room 41F1, Washington, DC 20202–5454. Telephone: 202–377–3547.

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

SUPPLEMENTARY INFORMATION:

Introduction

The Privacy Act of 1974 (5 U.S.C. 552a(e)(4) and (11)) requires the Department to publish this notice of an altered system of records in the **Federal Register**. The Department's regulations implementing the Privacy Act are in the Code of Federal Regulations (CFR), in 34 CFR part 5b.

The Privacy Act applies to information about an individual that is maintained in a system of records from which information is retrieved by a unique identifier associated with each individual, such as a name or Social Security number (SSN). The information about each individual is called a ''record,'' and the system, whether manual or computer-based, is called a ''system of records.''

The Privacy Act requires each federal agency to publish a notice of a new or altered system of records in the **Federal Register** and to prepare, whenever the agency publishes a new system of records or makes a significant change to an established system of records, a report to the Chair of the Committee on Oversight and Government Reform of the House of Representatives, the Chair of the Committee on Homeland Security and Governmental Affairs of the Senate, and the Administrator of the Office of Information and Regulatory Affairs, OMB. A significant change must be reported whenever an agency expands the types or categories of information maintained, significantly expands the numbers, types, or categories of individuals about whom records are maintained, changes the purposes for which the information is used, changes equipment configuration in a way that creates substantially greater access to the records, or adds a routine use disclosure to the system.

This system of records was first published in the **Federal Register** on December 27, 1999 (64 FR 72395–97), altered on September 7, 2010 (75 FR 54331–54336), and most recently altered on June 24, 2011 (76 FR 37095–37100). A number of changes are needed to update and accurately describe the current NSLDS system of records.

We revise the NSLDS to make necessary updates resulting from the MAP–21, Public Law 112–141, which amended the HEA, to limit students' eligibility for Direct Subsidized Loans to no more than 150 percent of the published length of the educational program in which the student is enrolled as specified in programmatic routine use (1)(o).

In certain circumstances, under the changes made by MAP–21, students who are enrolled after reaching the 150 percent limit are responsible for accruing interest on outstanding Direct Subsidized Loans. As a result of these statutory changes, we are expanding the categories of records maintained in the system, the system's purposes, and the routine uses to reflect needed programmatic disclosures.

Specifically, as described in the notice, the types of records maintained in the system need to be expanded. Additional information will be collected from institutions regarding the credential level (e.g., certificate, associate's degree, bachelor's degree), Classification of Instructional Program (CIP) code, and published length for the educational program in which a student who receives aid from the federal student aid programs authorized under title IV of the HEA (title IV programs) is enrolled. This information will be used both to implement new statutory changes that limit borrower eligibility for Direct Subsidized Loans to no more than 150 percent of the published length of the educational program in which the student is enrolled and to determine the periods for which a borrower who enrolls after reaching the 150 percent limit will be responsible for the accruing interest on outstanding Direct Subsidized Loans.

We are also expanding the authority for the NSLDS System to include Section 431 of the General Education Provisions Act (GEPA), which directs the Secretary ''to collect data and information on applicable programs for the purpose of obtaining objective measurements of the effectiveness of such programs in achieving the intended purposes of such programs'' and ''to inform the public regarding federally supported education programs.'' 20 U.S.C. 1231a(2)–(3). In addition, we are adding as authority for the system Section 132(i) of the HEA, which directs the Secretary to post to the College Navigator Web site ''consumer information'' for each institution that participates in the HEA title IV programs, which includes a list of 26 specific items or groups of data specific to the institution. Notably, this list includes direction for the Department to post ''a link to the appropriate section of the Bureau of Labor Statistics Web site that provides information on regional data on starting salaries in all major occupations.'' 20 U.S.C. 1015a(i)(1)(W).

We are also adding a purpose for the information maintained in the NSLDS relating to title IV eligible and participating institutions obtaining data and reporting the level of study, CIP code—(a code published by the Department's National Center for Education Statistics to support the accurate tracking, assessment, and reporting of fields of study and program completions activity), and published length of an educational program in which a student receiving title IV, HEA Federal student aid is enrolled to ensure his or her eligibility for Direct Subsidized Loans is limited to no more than 150 percent of the published length of the educational program, and to determine the periods for which a borrower who enrolls after reaching the 150 percent limit will be responsible for the accruing interest on outstanding Direct Subsidized Loans.

Two additional purposes for the information maintained in the NSLDS system relating to the Department's evaluation of the educational programs offered by institutions participating in title IV of the HEA, are to calculate and distribute performance metrics related to student aid recipients and to provide data for program oversight and strategic decision-making in the administration of the title IV programs, as provided in programmatic routine use (1)(p).

This altered system of records better reflects the programmatic routine use disclosures needed by the Department to establish student eligibility, as required under the HEA, by determining the length of students' eligibility for Direct Subsidized Loans such that it does not exceed 150 percent of the published length of the educational program in which a student is enrolled, and by determining the periods for which a borrower who enrolls after reaching the 150 percent limit will be responsible for the interest incurring on outstanding Direct Subsidized Loans. In addition, it reflects routine use disclosures needed by the Department to better evaluate the effectiveness of an institution's educational programs and to provide this information to assist the public in making choices about postsecondary education options.

Finally, we have revised and streamlined programmatic routine use 1(c), to read as follows: ''To determine if educational programs lead to gainful employment in a recognized occupation, the Department may disclose records to educational institutions.''

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

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

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

Dated: June 25, 2013.

James W. Runcie,

Chief Operating Officer, Federal Student Aid.

For the reasons discussed in the preamble, the Chief Operating Officer, Federal Student Aid, of the U.S. Department of Education (Department), publishes a notice of an altered system of records to read as follows:

System Number:

18–11–06

SYSTEM NAME:

National Student Loan Data System (NSLDS)

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Dell Perot Systems, 2300 West Plano Parkway, Plano, TX 75075–8247. (This is the computer center for the NSLDS Application Virtual Data Center.)

Iron Mountain, PO Box 294317, Lewisville, Texas 75029–4317. (This is the location where back-up tapes for NSLDS are maintained.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on persons who were recipients of aid under the title IV, Higher Education Act of 1965, as amended (HEA) programs. This system contains records on

borrowers who received loans under the William D. Ford Federal Direct Loan (Direct Loan) Program, the Federal Family Education Loan (FFEL) Program, the Federal Insured Student Loan (FISL) Program, and the Federal Perkins Loan Program (including National Defense Student Loans, National Direct Student Loans, and Perkins Expanded Lending and Income Contingent Loans) (Perkins Loans). The system also contains records on recipients of Federal Pell Grants, Academic Competitiveness Grants (ACG), National Science and Mathematics Access to Retain Talent (National SMART) Grants, Teacher Education Assistance for College and Higher Education (TEACH) Grants, and Iraq and Afghanistan Service Grants, as well as on persons who owe an overpayment on a Federal Pell Grant, an ACG Grant, a National SMART Grant, a Federal Supplemental Educational Opportunity Grant (FSEOG), an Iraq and Afghanistan Service Grant, and a Federal Perkins Loan.

NSLDS further contains student enrollment information for persons who have received title IV, HEA student assistance as well as Master Conduit Loan Program Data, Master Loan Participation Program (LPP) Data, and loan-level detail on FFEL Subsidized, Unsubsidized, and PLUS loans funded through those programs.

The system also contains records on students (both title IV, HEA recipients and students who do not receive title IV aid, but receive private educational loans and/or institutional financing for education) who, during an award year, begin attendance in a program that is at least one-academic-year training program that leads to a certificate, or other non-degree recognized credential and that prepares students for gainful employment in a recognized occupation, or who begin an eligible program provided by a proprietary institution of higher education or a postsecondary vocational institution.

The system also contains records on the level of study, CIP code, and published length of an educational program in which a student receiving title IV, HEA Federal student aid is enrolled to limit his or her eligibility for Direct Subsidized Loans to no more than 150 percent of the published length of the educational program in which the student is enrolled, and to determine the periods for which a borrower who enrolls after reaching the 150 percent limit will be responsible for the accruing interest on outstanding Direct Subsidized Loans.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in NSLDS include, but are not limited to: (1) Borrower identifier information including Social Security number (SSN), name, date of birth, address, phone number, email address, and driver's license information; (2) information on the borrower's loan(s) covering the period from the origination of the loan through final payment, cancellation, consolidation, discharge, or other final disposition including details such as loan amount, disbursements, balances, loan status, repayment plan and related information, collections, claims, deferments, forbearances, refunds, and cancellations; (3) for students who began a program of study that prepares them for gainful employment in a recognized occupation pursuant to sections 1001 and 1002 of the HEA (''gainful employment program''), student identifiers including the student's SSN, date of birth, and name, student enrollment information including the Office of Postsecondary Education identification number (OPEID number) of the institution, the CIP code for the gainful employment program in which the student enrolled, and, if the student completed the program, the completion date and the CIP code of the completed program, the level of study, the amount of the student's private educational loan debt, the amount of institutionally provided financing owed by the student, and whether the student matriculated to a higher credentialed program at the same institution or another institution; (4) aggregated income information on graduates and non-completers of particular gainful employment programs, and the median loan debt incurred by students enrolled in the gainful employment program, regardless of whether they completed the program; (5) student demographic information such as dependency status, citizenship, veteran status, marital status, gender, income and asset information (including income and asset information on the student's spouse, if married), expected family contribution, and address; (6) information on the parent(s) of a dependent recipient, including, but not limited to: Name, date of birth, SSN, marital status, email address, highest level of schooling completed, and income and asset information; (7) information related to a borrower's application for an income-driven repayment plan, including information such as current income, family size, repayment plan selection, and, if married, information about the borrower's spouse; (8) Federal Pell Grant, ACG Grant, National SMART Grant, TEACH Grant, and Iraq and Afghanistan Service Grant amounts and dates of disbursement; (9) Federal Pell Grant, ACG Grant, National SMART Grant, Iraq and Afghanistan Service Grant, FSEOG, and Federal Perkins Loan Program overpayment amounts; (10) demographic and contact information on the guaranty agency that guarantees the borrower's FFEL loan and the lender(s), holder(s), and servicer(s) of the borrower's loan(s); (11) NSLDS user profiles that include name, SSN, date of birth, employer, and NSLDS user name; (12) information concerning the date of any default on loans and the aggregated loan data to support cohort default rate calculations for educational institutions, financial institutions, and guaranty agencies; (13) pre- and post-screening results used to determine a student or parent's aid eligibility; (14) information on financial institutions participating in the loan participation and sale programs established by the Department under the Ensured Continued Access to Student Loan Act of 2008 (ECASLA), including the collection of: ECASLA loan-level funding amounts, dates of ECASLA participation for financial institutions, dates and amounts of loans sold to the Department under ECASLA, and the amount of loans funded by the Department's programs but repurchased by the lender; and (15) information on the student's educational institution, level of study, the CIP code, and published length for the program in which the student enrolled for an institution or programs of studies at the institution.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The authority under which the system is maintained includes sections 101, 102, 132(i), 485, and 485B of the HEA (20 U.S.C. 1001, 1002, 1015a(i), 1092, and 1092b) and section 431 of the General Education Provisions Act (20 U.S.C. 1231a(2)–(3)). The collection of SSNs of borrowers who are covered by this system is authorized by 31 U.S.C. 7701 and Executive Order 9397 (November 22, 1943), as amended by Executive Order 13478 (November 18, 2008).

PURPOSE(S):

The information contained in this system is maintained for the following purposes relating to students and borrowers: (1) To determine student/borrower eligibility for title IV, HEA programs by NSLDS pre- and post-screening processes; (2) to report changes in student/borrower enrollment status and enrollment in gainful employment programs; (3) to track loan

borrowers and students who owe grant overpayment amounts (debtors); (4) to provide an Exit Counseling tool for Teach Grants, FFEL loan programs, and Direct Loan programs that provides various calculators, requires students to complete a quiz to ensure understanding of their repayment obligations, and collects information to assist in the activity of skip-tracing for loan holders; (5) to provide Web-based access for borrowers/students to their loan, grant, and enrollment data; (6) to maintain information on the status of student loans; (7) to maintain information on the Federal Pell Grant program, the ACG Grant program, the National SMART Grant program, the TEACH Grant program, the Federal Supplemental Educational Opportunity Grant (FSEOG) program, and the Iraq and Afghanistan Service Grant program awards to students; (8) to provide borrowers and NSLDS users with loan refund/cancellation details; (9) to track the level of study and CIP code of students' programs to limit eligibility for Direct Subsidized Loans to no more than 150 percent of the published length of the educational program in which the student is enrolled, and to determine the periods for which a borrower who enrolls after reaching the 150 percent limit will be responsible for the accruing interest on outstanding Direct Subsidized Loans; and (10) to provide consumer tools to prospective students about costs, financial aid, aggregate earnings of title IV aid recipients who were enrolled at that postsecondary institution participating in title IV, HEA programs so that these prospective students can make informed decisions about which postsecondary institution to attend.

The information in NSLDS is also maintained for the following purposes relating to institutions participating in and administering the title IV, HEA programs: (1) To permit Department staff, Department contractors, guaranty agencies, eligible lenders, and eligible institutions of higher education to verify the eligibility of a student, potential student, or parent for loans or Pell grants; (2) to provide student aggregate loan calculations to educational institutions; (3) to track loan transfers from one entity to another; (4) to determine default rates for educational institutions, guaranty agencies, and lenders; (5) to prepare electronic financial aid histories on students or borrowers for educational institutions, guaranty agencies, Department staff, and Department contractors; (6) to alert educational institutions of changes in financial aid eligibility of students via the Transfer Student Monitoring process; (7) to assist Department staff, Department contractors and agents, guaranty agencies, educational institutions, lenders, and servicers in collecting debts arising from receipt of title IV, HEA funds; (8) to assess title IV, HEA program administration of guaranty agencies, educational institutions, lenders, and servicers; (9) to display organizational contact information provided by educational institutions, guaranty agencies, lenders, and servicers; (10) to provide reporting capabilities for educational institutions, guaranty agencies, lenders, and servicers for use in title IV, HEA administrative functions and for the Department for use in oversight and compliance; (11) to provide financial institutions, servicers, Department staff, and Department contractors with contact information on loan holders for use in the collection of loans; (12) to provide schools and servicers with information to resolve overpayments of Pell, ACG, National SMART, TEACH, Iraq and Afghanistan Service Grants, and FSEOG grants; (13) to assist Department staff, contractors, guaranty agencies, and the Department of Justice in the collection of debts owed to the Department under title IV of the HEA; (14) to obtain data on and to report on students in a gainful employment program for the purposes of establishing whether a particular gainful employment program is successfully preparing students to be gainfully employed and making this information available to the institution; (15) to obtain data and report the level of study, CIP code, and published length of an educational program in which a student receiving title IV, HEA Federal student aid is enrolled to ensure his or her eligibility for Direct Subsidized Loans is limited to no more than 150 percent of the published length of the educational program, and to determine the periods for which a borrower who enrolls after reaching the 150 percent limit will be responsible for the accruing interest on outstanding Direct Subsidized Loans; and (16) to provide consumer tools that are designed to simplify information that prospective students receive about costs, financial aid, and aggregate earnings of title IV aid recipients who were enrolled at postsecondary institutions participating in title IV, HEA programs so that these prospective students can make informed decisions about which postsecondary institution to attend.

The information maintained in this system is also maintained for the following purposes relating to the Department's oversight and administration of the title IV, HEA programs: (1) To assist audit and program review planning; (2) to support research studies and policy development; (3) to conduct budget analysis and program review planning; (4) to provide information that supports the Department's compliance with the Federal Credit Reform Act of 1990, as amended (CRA); (5) to ensure only authorized users access the database and to maintain a history of the student/borrower information reviewed; (6) to track the Department's interest in loans funded through ECASLA; (7) to track TEACH grants that have been converted to loans; (8) to track eligibility for and participation in Public Service Loan Forgiveness; (9) to capture data to support compliance and to calculate and distribute performance metrics related to gainful employment programs; (10) to provide data for program oversight and strategic decision-making in the administration of higher education programs; (11) to track eligibility for Direct Subsidized Loans and interest subsidy based upon the level of study, CIP code, and published length of the educational program in which a student is enrolled; and (12) to evaluate the effectiveness of an institution's education programs, and help provide information to the public at the institutional and programmatic level on this effectiveness.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department may disclose information contained in a record in this system of records under the routine uses listed in this system of records notice without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act of 1974, as amended, under a computer matching agreement.

(1) *Program Disclosures.*

The Department may disclose records to the specified users for the following program purposes:

(a) To verify the identity of the applicant involved, the accuracy of the record, or to assist with the determination of program eligibility and benefits, as well as institutional program eligibility, the Department may disclose records to the applicant, guaranty agencies, educational institutions, financial institutions and servicers, and to Federal and State agencies;

(b) To support default rate calculations and/or provide information on borrowers' current loan status, the Department may disclose records to guaranty agencies, educational institutions, financial institutions, servicers, and State agencies;

(c) To determine if educational programs lead to gainful employment in a recognized occupation, the Department may disclose records to educational institutions;

(d) To provide financial aid history information to aid in their administration of title IV, HEA programs, the Department may disclose records to educational institutions, guaranty agencies, loan holders, or servicers;

(e) To support auditors and program reviewers in planning and carrying out their assessments of title IV, HEA program compliance, the Department may disclose records to guaranty agencies, educational institutions, financial institutions and servicers, and to Federal, State, and local agencies;

(f) To support governmental researchers and policy analysts, the Department may disclose records to Federal, State, and local agencies using safeguards for system integrity and ensuring compliance with the Privacy Act;

(g) To support Federal budget analysts in the development of budget needs and forecasts, the Department may disclose records to Federal and State agencies;

(h) To assist in locating holders of loan(s), the Department may disclose records to students/borrowers, guaranty agencies, educational institutions, financial institutions and servicers, and Federal agencies;

(i) To assist analysts in assessing title IV, HEA program administration by guaranty agencies, educational institutions, and financial institutions and servicers, the Department may disclose records to Federal and State agencies;

(j) To assist loan holders in locating borrowers, the Department may disclose records to guaranty agencies, educational institutions, financial institutions that hold an interest in the loan and their servicers, and to Federal agencies;

(k) To assist with meeting requirements under the CRA, the Department may disclose records to Federal agencies;

(l) To assist program administrators with tracking refunds and cancellations of title IV, HEA loans, the Department may disclose records to guaranty agencies, educational institutions, financial institutions and servicers, and to Federal and State agencies;

(m) To enforce the terms of a loan, assist in the collection of a loan, or assist in the collection of an aid overpayment, the Department may disclose records to guaranty agencies, loan servicers, educational institutions and financial institutions, to the Department of Justice and private counsel retained by the Department of Justice, and to other Federal, State, or local agencies;

(n) To assist the Department in tracking loans funded under ECASLA, the Department may disclose records to Federal agencies;

(o) To assist the Department in complying with requirements that limit eligibility for Direct Subsidized Loans to no more than 150 percent of the published length of the educational program in which the student is enrolled, and to determine the periods for which a borrower who enrolls after reaching the 150 percent limit will be responsible for the interest accruing on outstanding Direct Subsidized Loans thereafter, the Department may disclose records to the applicant, guaranty agencies, educational institutions, financial institutions and servicers, and to Federal and State agencies; and

(p) To obtain data needed to assist the Department in evaluating the effectiveness of an institution's education programs and to provide the public with greater transparency about the level of economic return of an educational institution and their programs that are paid for with title IV, HEA program assistance, the Department may disclose records to educational institutions and to Federal and State agencies, including the Social Security Administration.

(2) *Disclosure for Use by Other Law Enforcement Agencies.* The Department may disclose information to any Federal, State, or local or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutorial responsibility within the receiving entity's jurisdiction.

(3) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, Executive Order, rule, regulation, or order issued pursuant thereto.

(4) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the following parties is involved in judicial or administrative litigation or ADR, or has an interest in such litigation or ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c), and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department or any of its components; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity where the Department of Justice (DOJ) agrees to or has been requested to provide or arrange for representation of the employee; or

(iv) Any Department employee in his or her individual capacity where the Department has agreed to represent the employee; or

(v) The United States, where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to the judicial or administrative litigation or ADR, and is compatible with the purpose for which the records were collected, the Department may disclose those records as a routine use to the DOJ.

(c) *Adjudicative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear or to an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to judicial or administrative litigation or ADR, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Disclosure to Parties, Counsel, Representatives, and Witnesses.* If the Department determines that disclosure of certain records is relevant and necessary to judicial or administrative litigation or ADR, the Department may disclose those records as a routine use to the party, counsel, representative, or witness.

(5) *Freedom of Information Act (FOIA) or Privacy Act Advice Disclosure.* The Department may disclose records to the DOJ or the Office of Management and Budget (OMB) if the Department seeks advice regarding whether records maintained in this

system of records are required to be disclosed under the FOIA or the Privacy Act.

(6) *Contract Disclosure.* If the Department contracts with an entity to perform any function that requires disclosing records to the contractor's employees, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to establish and maintain the safeguards required under the Privacy Act (5 U.S.C. 552a(m)) with respect to the records in the system.

(7) *Congressional Member Disclosure.* The Department may disclose records to a Member of Congress in response to an inquiry from the Member made at the written request of the individual whose records are being disclosed. The Member's right to the information is no greater than the right of the individual who requested it.

(8) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose a record to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to a Departmental decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies and Professional Organizations.* The Department may disclose a record to a Federal, State, local, or other public authority or professional organization, in connection with the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(9) *Employee Grievance, Complaint, or Conduct Disclosure.* The Department may disclose a record in this system of records to another agency of the Federal Government if the record is relevant to one of the following proceedings regarding a present or former employee of the Department: Complaint, grievance, or disciplinary or competency determination proceedings. The disclosure may only be made during the course of the proceeding.

(10) *Labor Organization Disclosure.* The Department may disclose records from this system of records to an arbitrator to resolve disputes under a negotiated grievance procedure or to officials of labor organizations recognized under 5 U.S.C. 71 when relevant and necessary to their duties of exclusive representation.

(11) *Disclosure to the DOJ.* The Department may disclose records to the DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

(12) *Disclosure to the OMB for CRA Support.* The Department may disclose records to OMB as necessary to fulfill CRA requirements. These requirements currently include transfer of data on lender interest benefits and special allowance payments, defaulted loan balances, and supplemental pre-claims assistance payments information.

(13) *Disclosure in the Course of Responding to Breach of Data.* The Department may disclose records from this system to appropriate agencies, entities, and persons when: (a) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): The Department may disclose the following information to a consumer reporting agency regarding a valid overdue claim of the Department: (1) The name, address, taxpayer identification number, and other information necessary to establish the identity of the individual responsible for the claim; (2) the amount, status, and history of the claim; and (3) the program under which the claim arose. The Department may disclose the information specified in this paragraph under 5 U.S.C. 552a(b)(12) and the procedures contained in subsection 31 U.S.C. 3711(e). A consumer reporting agency to which these disclosures may be made is defined in 15 U.S.C. 1681a(f) and 31 U.S.C. 3701(a)(3).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained electronically.

RETRIEVABILITY:

In order for users to retrieve student/borrower information they must supply the student/borrower SSN, name, and date of birth.

SAFEGUARDS:

Physical access to this system housed within the Virtual Data Center is controlled by a computerized badge reading system, and the entire complex is patrolled by security personnel during non-business hours. The computer system employed by the Department offers a high degree of resistance to tampering and circumvention. Multiple levels of security are maintained within the computer system control program. This security system limits data access to Department and contract staff on a ''need-to-know'' basis, and controls individual users' ability to access and alter records within the system. All users of this system of records are given a unique user ID with personal identifiers. All interactions by individual users with the system are recorded.

RETENTION AND DISPOSAL:

Records are retained for 15 years after an account is paid in full, and then destroyed in accordance with the Department's records retention and disposition schedule 051.

SYSTEM MANAGER(S) AND ADDRESS:

Director, National Student Loan Data System, FSA, U.S. Department of Education, UCP, 830 First Street NE., 4th Floor, Washington, DC 20202–5454.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in this system of records, contact the system manager and provide your name, date of birth, SSN, and the name of the school or lender from which the loan or grant was obtained. Requests for notification about whether the system of records contains information about an individual must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURES:

If you wish to gain access to a record in this system, contact the system

manager and provide information as described in the notification procedure. Requests by an individual for access to a record must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of a record in the system of records, you must contact the system manager with the information described in the notification procedures, identify the specific item(s) to be changed, and provide a justification for the change, including any supporting documentation. Requests to amend a record must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

Information is obtained from guaranty agencies, educational institutions, and financial institutions and servicers, and the Free Application for Federal Student Aid completed by students and parents. Information is also obtained from other Department systems such as the Direct Loan Servicing System (covered by the system of records entitled ''Common Services for Borrowers''); Debt Management Collection System (covered by the system of records entitled ''Common Servicers for Borrowers''); Common Origination and Disbursement System; Financial Management System; Student Aid Internet Gateway, Participant Management System (covered by the system of records entitled ''Student Aid Internet Gateway Enrollment''); Postsecondary Education Participants System (covered by the system of records entitled ''Postsecondary Education Participants System''); and Central Processing System (covered by the system of records entitled ''Federal Student Aid Application File'').

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2013–15574 Filed 6–27–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: U.S. Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995, intends to extend, for three years, an information collection request with the Office of Management and Budget (OMB). Comments are invited on: (a) Whether the extended collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, 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 respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before August 27, 2013. If you anticipate difficulty in submitting comments within that period or if you want access to the collection of information, without charge, contact the person listed below as soon as possible.

ADDRESSES: Written comments should be sent to the following: Richard Bonnell, U.S. Department of Energy, Office of Acquisition and Project Management, 1000 Independence Avenue SW., Washington, DC 20585–0121 or by email at *richard.bonnell@hq.doe.gov*. Please put ''2013 DOE Agency Information Collection Extension'' in the subject line when sending an email.

FOR FURTHER INFORMATION CONTACT: Richard Bonnell by email at *richard.bonnell@hq.doe.gov*. Please put ''2013 DOE Agency Information Collection Extension'' in the subject line when sending an email.

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) OMB No. 1910–0400 (Renewal); (2) Information Collection Request Title: DOE Financial Assistance Information Clearance; (3) Type of Review: Renewal; (4) Purpose: This information collection package covers mandatory collections of information necessary to annually plan, solicit, negotiate, award and administer grants and cooperative agreements under the Department's financial assistance programs. The information is used by Departmental management to exercise management oversight with respect to implementation of applicable statutory and regulatory requirements and obligations. The collection of this information is critical to ensure that the government has sufficient information to judge the degree to which awardees meet the terms of their agreements; that public funds are spent in the manner intended; and that fraud, waste, and abuse are immediately detected and eliminated; (5) Annual Estimated Number of Respondents: 41,340; and (6) Annual Estimated Number of Total Responses; (7) Estimated Number of Burden Hours: 573,732; (8) Annual Estimated Reporting and Recordkeeping Cost Burden: $0.

Statutory Authorities: Federal Grant and Cooperative Agreement Act, 31 U.S.C. 6301–6308.

Issued in Washington, DC on June 20, 2013.

Paul Bosco,

Director, Office of Acquisition and Project Management.

[FR Doc. 2013–15533 Filed 6–27–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, July 18, 2013, 6:00 p.m.

ADDRESSES: Barkley Centre, 111 Memorial Drive, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: Rachel Blumenfeld, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6806.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

- Call to Order, Introductions, Review of Agenda.
- Administrative Issues.
- Public Comments (15 minutes).
- Adjourn.

Breaks taken as appropriate.

Public Participation: The EM SSAB, Paducah, welcomes the attendance of the public at its advisory committee meetings and will make every effort to

accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Rachel Blumenfeld as soon as possible in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Rachel Blumenfeld at the telephone number listed above. Requests must be received as soon as possible prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments. The EM SSAB, Paducah, will hear public comments pertaining to its scope (clean-up standards and environmental restoration; waste management and disposition; stabilization and disposition of non-stockpile nuclear materials; excess facilities; future land use and long-term stewardship; risk assessment and management; and clean-up science and technology activities). Comments outside of the scope may be submitted via written statement as directed above.

Minutes: Minutes will be available by writing or calling Rachel Blumenfeld at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.pgdpcab.energy.gov/2013Meetings.html*.

Issued at Washington, DC on June 25, 2013.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2013–15528 Filed 6–27–13; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2012–0741; FRL–9828–3]

California State Nonroad Engine Pollution Control Standards; Within-the-Scope Determination for Amendments to California's ''Airborne Toxic Control Measure for In-Use Diesel-Fueled Transport Refrigeration Units (TRU) and TRU Generator Sets and Facilities Where TRUs Operate''; Notice of Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of decision.

SUMMARY: EPA confirms that amendments promulgated by the California Air Resources Board (''CARB'') are within the scope of an existing authorization issued by EPA for California's in-use diesel-fueled TRU regulations.

DATES: Petitions for review must be filed by August 27, 2013.

ADDRESSES: EPA has established a docket for this action under Docket ID EPA–HQ–OAR–2012–0741. All documents relied upon in making this decision, including those submitted to EPA by CARB, and public comments, are contained in the public docket. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air and Radiation Docket in the EPA Headquarters Library, EPA West Building, Room 3334, located at 1301 Constitution Avenue NW., Washington, DC. The Public Reading Room is open to the public on all federal government working days from 8:30 a.m. to 4:30 p.m.; generally, it is open Monday through Friday, excluding holidays. The telephone number for the Reading Room is (202) 566–1744. The Air and Radiation Docket and Information Center's Web site is *http://www.epa.gov/oar/docket.html.* The electronic mail (email) address for the Air and Radiation Docket is: *a-and-r-Docket@epa.gov,* the telephone number is (202) 566–1742, and the fax number is (202) 566–9744. An electronic version of the public docket is available through the federal government's electronic public docket and comment system. You may access EPA dockets at *http://www.regulations.gov.* After opening the *www.regulations.gov* Web site, enter EPA HQ–OAR–2012–0741 in the ''Enter Keyword or ID'' fill-in box to view documents in the record of CARB's TRU amendments within-the-scope authorization request. Although a part of the official docket, the public docket does not include Confidential Business Information (''CBI'') or other information whose disclosure is restricted by statute.

EPA's Office of Transportation and Air Quality (''OTAQ'') maintains a Web page that contains general information on its review of California waiver requests. Included on that page are links to prior waiver **Federal Register** notices, some of which are cited in today's notice; the page can be accessed at *http://www.epa.gov/otaq/cafr.htm.*

FOR FURTHER INFORMATION CONTACT: Brenton M. Williams, Attorney-Advisor, Compliance Division, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105. Telephone: (734) 214–4341. Fax: (734) 214–4053. Email: *williams.brent@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Chronology

EPA granted an authorization for California's initial set of TRU regulations on January 9, 2009.[1] By letter dated May 13, 2011, CARB submitted to EPA its request pursuant to section 209(e) of the Clean Air Act (''CAA'' or ''the Act''), regarding amendments to its ''Airborne Toxic Control Measure for In-Use Diesel-Fueled Transport Refrigeration Units (TRU) and TRU Generator Sets and Facilities Where TRUs Operate'' (hereinafter CARB's ''ATCM'' or ''TRU amendments'').[2] CARB asked that EPA confirm that the amendments either fall within the scope of the authorization EPA granted on January 9, 2009, pursuant to section 209(e) of the Clean Air Act, or are not subject to CAA preemption.

B. CARB's TRU Amendments

Since EPA's grant of an authorization for California's TRU regulations in 2009, CARB has promulgated several amendments, which are at issue here. CARB's Board adopted the TRU amendments on November 18, 2010, in Resolution 10–39. CARB's TRU amendments accomplish three main objectives: (1) Relax the TRU in-use compliance requirements for all 2003 and some 2004 model year TRUs and TRU generator sets (collectively referred to as ''TRUs''); (2) clarify the operational useful life of TRU flexibility engines[3]; and (3) establish new reporting and recordkeeping requirements for TRU original equipment manufacturers (OEMs). CARB formally adopted the TRU amendments on February 4, 2011,[4] and they became operative under California law on March 7, 2011. The

[1] 74 FR 3030 (January 16, 2009).

[2] California Air Resources Board (''CARB''), ''Request for Authorization,'' May 13, 2011.

[3] Flexibility engines are engines that meet less stringent emission standards than otherwise required for new off-road engines. CARB, ''Request that Amendments to California's Airborne Toxic Control Measure for In-Use Diesel-Fueled Transport Refrigeration Units (TRU) and TRU Generator Sets and Facilities Where TRUs Operate Be Found Within the Scope of the Existing Authorization Granted Pursuant To Section 209(e) Of The Clean Air Act'', EPA–HQ–OAR–2012–0741–0002, (May 13, 2011), at page 3.

[4] CARB, ''Resolution 10–39,'' November 18, 2010; CARB, ''Executive Order R–11–001,'' February 2, 2011.

TRU amendments are codified at title 13, California Code of Regulations, section 2477.[5]

1. Relaxation of Standards for 2003 and 2004 Model Year TRUs

These amendments allow owners of model year 2003 TRUs in the 25 horsepower (hp) and greater category the option of complying with the ATCM's in-use standards by meeting the low emission TRU (''LETRU'') standard, which achieves a 50 percent particulate matter (PM) emission reduction. Prior to amendment, the ATCM had required that owners comply with the more stringent ultra-low emission TRU (''ULETRU'') in-use standard, which achieves an 85 percent PM reduction. This change, according to CARB, provides owners with more compliance flexibility and is needed because ULETRU compliance options presently are limited and relatively costly compared to LETRU compliance costs. The compliance date for meeting one of these standards would remain December 31, 2010, seven years after the 2003 engine model year, which is the end of the TRU's operational life.[6] Seven years later (i.e., by December 31, 2017), owners choosing to comply by meeting the LETRU standard would be required to meet the ULETRU standard.[7]

The amendments similarly provide owners of 2003 and 2004 model year TRU engines in the less than 25 hp category with the option of complying with the in-use standards by meeting the LETRU in-use standard in lieu of being required to meet the ULETRU standard by December 31, 2010, for model year 2003 engines and December 31, 2011, for model year 2004 engines. As with the larger horsepower engines, those owners electing to comply by meeting the LETRU standard would need to upgrade their model year 2003 and 2004 engines to the ULETRU standard seven years after initial compliance in either 2010 or 2011 (i.e., by December 31, 2017 or 2018, respectively).[8]

2. Clarification in Calculation of Operational Life for TRU Flexibility Engines in Future

When the TRU ATCM was first adopted, CARB assumed that TRU engines manufactured in a specific year would meet the emission standards applicable for that year and that these engines would be upgraded to more stringent emission standards seven years after initial certification. CARB subsequently discovered that TRU OEMs were using significantly more flexibility engines in California than originally anticipated, with the consequence that the ATCM is achieving fewer emission reductions than forecasted. To address this problem, CARB amended the regulation to clarify that for flexibility engines installed in new TRUs after March 7, 2011 (the date that the amendments became operative under California law), the seven-year operational life of a TRU engine must be based on the effective model year of the engine. The effective model year is defined as the last year that the lower emission tier of the flexibility engine was in effect for new engines. The amendments clarify that owners of TRU flexibility engines installed before the operative date of the amendments would be provided a full seven years of operational life from the year of the engine's manufacture before having to meet the more stringent ULETRU in-use performance standard. Flexibility engines installed after that date will have a reduced operational life given that compliance would be based on the last year that the flexibility engine's tier standard was in effect. CARB maintains that owners will not be adversely affected as TRU OEMs are required under the amendments to provide notice at the point of sale to the end-user that the TRUs are equipped with flexibility engines and have a shorter operational life. They must also provide the end-user with the date that the engine must meet the ULETRU standard.[9]

3. New Reporting and Recordkeeping Requirements for TRU OEMs

CARB amended the TRU ATCM to require that TRU OEMs report production information, including information on flexibility engines installed in TRUs. The reporting, according to CARB, will ensure that manufacturers provide the data necessary to ensure that owners properly register TRUs in CARB's equipment registration system (ARBER) and more accurately estimate emissions inventories, as well as allow CARB and TRU owners to properly track flexibility engines. TRU OEMs would be required to periodically report data on each TRU and installed engine produced in future model years and submit reports on TRU sales from previous years.[10]

C. EPA's Review of California's TRU Within-the-Scope Request

By letter dated May 13, 2011, CARB submitted a request to EPA seeking confirmation that these amendments are within the scope of the authorization issued by EPA under section 209(e) of the Clean Air Act on January 9, 2009. EPA announced its receipt of California's within-the-scope confirmation request in a **Federal Register** notice on January 4, 2013.[11] In that notice, EPA offered an opportunity for public hearing and comment on CARB's request.

Although CARB's request regarding its TRU amendments was submitted as a within-the-scope request, EPA invited comment on several issues. Within the context of a within-the-scope analysis, EPA invited comment on whether California's standards: (1) Undermine California's previous determination that its standards, in the aggregate, are at least as protective of public health and welfare as comparable Federal standards; (2) affect the consistency of California's requirements with section 202(a) of the Act; and (3) raise any other new issues affecting EPA's previous waiver or authorization determinations. EPA also requested comment on issues relevant to a full authorization analysis, in the event that EPA determined that California's standards should not be evaluated under the within-the-scope criteria noted above, and should instead be subjected to a full authorization analysis. Specifically, EPA sought comment on: (a) Whether CARB's determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable Federal standards is arbitrary and capricious; (b) whether California needs

[5] CARB, ''Final Regulation Order for title 13, California Code of Regulations, section 2477.''

[6] Operational life is the life of the engine or unit as allowed under the regulation before an in-use standard must be met. Operational life should be distinguished from useful life, as defined under new engine standards and used for survivability (engine mortality over time) in engine population inventory reports. CARB, ''Request that Amendments to California's Airborne Toxic Control Measure for In-Use Diesel-Fueled Transport Refrigeration Units (TRU) and TRU Generator Sets and Facilities Where TRUs Operate Be Found Within the Scope of the Existing Authorization Granted Pursuant To Section 209(e) Of The Clean Air Act'', EPA–HQ–OAR–2012–0741–0002, (May 13, 2011), at page 2.

[7] CARB, ''Request that Amendments to California's Airborne Toxic Control Measure for In-Use Diesel-Fueled Transport Refrigeration Units (TRU) and TRU Generator Sets and Facilities Where TRUs Operate Be Found Within the Scope of the Existing Authorization Granted Pursuant To Section 209(e) Of The Clean Air Act,'' EPA–HQ–OAR–2012–0741–0002 (May 13, 2011) at page 2.

[8] *Id.*

[9] CARB, ''Request that Amendments to California's Airborne Toxic Control Measure for In-Use Diesel-Fueled Transport Refrigeration Units (TRU) and TRU Generator Sets and Facilities Where TRUs Operate Be Found Within the Scope of the Existing Authorization Granted Pursuant To Section 209(e) Of The Clean Air Act'', EPA–HQ–OAR–2012–0741–0002, (May 13, 2011), at page 3–4.

[10] *Id.* at 4.

[11] 78 FR 721 (January 4, 2013).

separate standards to meet compelling and extraordinary conditions; and (c) whether California's standards and accompanying enforcement procedures are consistent with section 202(a) of the Act.

No party requested an opportunity for a hearing to present oral testimony, and EPA received only one written comment. The comment supports CARB's amendments, and encourages EPA to confirm that the amendments are within the scope of CARB's TRU authorization. The written comment is from the Manufacturers of Emission Controls Association (''MECA'').[12]

D. Clean Air Act Nonroad Engine and Vehicle Authorizations

Section 209(e)(1) of the Act permanently preempts any State, or political subdivision thereof, from adopting or attempting to enforce any standard or other requirement relating to the control of emissions for certain new nonroad engines or vehicles.[13] For all other nonroad engines (including ''non-new'' engines), states are preempted from adopting and enforcing standards and other requirements relating to the control of emissions, except that section 209(e)(2) of the Act requires EPA, after notice and opportunity for public hearing, to authorize California to adopt and enforce such regulations unless EPA makes one of three specifically enumerated findings. In addition, other states with attainment plans may adopt and enforce such regulations if the standards, and implementation and enforcement procedures, are identical to California's standards. On July 20, 1994, EPA promulgated a rule that sets forth, among other things, regulations providing the criteria, as found in section 209(e)(2), which EPA must consider before granting any California authorization request for new nonroad engine or vehicle emission standards.[14] EPA later revised these regulations in 1997.[15] As stated in the preamble to the 1994 rule, EPA has historically interpreted the section 209(e)(2)(iii) ''consistency'' inquiry to require, at minimum, that California standards and enforcement procedures be consistent with section 209(a), section 209(e)(1), and section 209(b)(1)(C) (as EPA has interpreted that subsection in the context of section 209(b) motor vehicle waivers).[16]

In order to be consistent with section 209(a), California's nonroad standards and enforcement procedures must not apply to new motor vehicles or new motor vehicle engines. To be consistent with section 209(e)(1), California's nonroad standards and enforcement procedures must not regulate engine categories that are permanently preempted from state regulation. To determine consistency with section 209(b)(1)(C), EPA typically reviews nonroad authorization requests under the same ''consistency'' criteria that are applied to motor vehicle waiver requests. Pursuant to section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if the Administrator finds that California ''standards and accompanying enforcement procedures are not consistent with section 202(a)'' of the Act. Previous decisions granting waivers and authorizations have noted that state standards and enforcement procedures are inconsistent with section 202(a) if: (1) there is inadequate lead time to permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time, or (2) the federal and state testing procedures impose inconsistent certification requirements.

E. Within-the-Scope Determinations

If California amends regulations that were previously granted an authorization, EPA can confirm that the amended regulations are within the scope of the previously granted authorization. Such within-the-scope determinations are permissible without a full authorization review if three conditions are met. First, the amended regulations must not undermine California's determination that its standards, in the aggregate, are as protective of public health and welfare as applicable federal standards. Second, the amended regulations must not affect consistency with section 202(a) of the Act. Third, the amended regulations must not raise any ''new issues'' affecting EPA's prior authorizations.

F. Deference to California

In previous waiver decisions, EPA has recognized that the intent of Congress in creating a limited review based on the section 209(b)(1) criteria was to ensure that the federal government did not second-guess state policy choices. This has led EPA to state:

> It is worth noting . . . I would feel constrained to approve a California approach to the problem which I might also feel unable to adopt at the federal level in my own capacity as a regulator. The whole approach of the Clean Air Act is to force the development of new types of emission control technology where that is needed by compelling the industry to ''catch up'' to some degree with newly promulgated standards. Such an approach . . . may be attended with costs, in the shaped of reduced product offering, or price or fuel economy penalties, and by risks that a wider number of vehicle classes may not be able to complete their development work in time. Since a balancing of these risks and costs against the potential benefits from reduced emissions is a central policy decision for any regulatory agency under the statutory scheme outlined above, I believe I am required to give very substantial deference to California's judgments on this score.[17]

EPA has stated that the text, structure, and history of the California waiver provision clearly indicate both a congressional intent and appropriate EPA practice of leaving the decision on ''ambiguous and controversial matters of public policy'' to California's judgment.[18]

The House Committee Report explained as part of the 1977 amendments to the Clean Air Act, where Congress had the opportunity to restrict the waiver provision, it elected instead to explain California's flexibility to adopt a complete program of motor vehicle emission controls. The amendment is intended to ratify and strengthen the California waiver provision and to affirm the underlying

[12] Comments of the Manufacturers of Emission Controls Association (''MECA''), EPA–HQ–OAR–2012–0741–0003 (March 1, 2013).

[13] States are expressly preempted from adopting or attempting to enforce any standard or other requirement relating to the control of emissions from new nonroad engines which are used in construction equipment or vehicles or used in farm equipment or vehicles and which are smaller than 175 horsepower. Such express preemption under section 209(e)(1) of the Act also applies to new locomotives or new engines used in locomotives.

[14] 59 FR 36969 (July 20, 1994).

[15] 62 FR 67733 (December 30, 1997). The applicable regulations, now in 40 CFR part 1074, subpart B, § 1074.105, provide:

(a) The Administrator will grant the authorization if California determines that its standards will be, in the aggregate, at least as protective of public health and welfare as otherwise applicable federal standards.

(b) The authorization will not be granted if the Administrator finds that any of the following are true:

(1) California's determination is arbitrary and capricious.

(2) California does not need such standards to meet compelling and extraordinary conditions.

(3) The California standards and accompanying enforcement procedures are not consistent with section 209 of the Act.

(c) In considering any request from California to authorize the state to adopt or enforce standards or other requirements relating to the control of emissions from new nonroad spark-ignition engines smaller than 50 horsepower, the Administrator will give appropriate consideration to safety factors (including the potential increased risk of burn or fire) associated with compliance with the California standard.

[16] 59 FR 36969 (July 20, 1994).

[17] 40 FR 23103–23104 (May 28, 1975); *see also* LEV I Decision Document at 64 (58 FR 4166 (January 13, 1993)).

[18] 40 FR 23104; 58 FR 4166.

intent of that provision, i.e., to afford California the broadest possible discretion in selecting the best means to protect the health of its citizens and the public welfare.[19]

G. Burden of Proof

In *Motor and Equip. Mfrs Assoc.* v. *EPA,* 627 F.2d 1095 (D.C. Cir. 1979) (''*MEMA I*''), the U.S. Court of Appeals stated that the Administrator's role in a section 209 proceeding is to:

> consider all evidence that passes the threshold test of materiality and . . . thereafter assess such material evidence against a standard of proof to determine whether the parties favoring a denial of the waiver have shown that the factual circumstances exist in which Congress intended a denial of the waiver.[20]

The court in *MEMA I* considered the standards of proof under section 209 for the two findings related to granting a waiver for an ''accompanying enforcement procedure'' (as opposed to the standards themselves): (1) protectiveness in the aggregate and (2) consistency with section 202(a) findings. The court instructed that ''the standard of proof must take account of the nature of the risk of error involved in any given decision, and it therefore varies with the finding involved. We need not decide how this standard operates in every waiver decision.''[21]

The court upheld the Administrator's position that, to deny a waiver, there must be ''clear and compelling evidence'' to show that proposed procedures undermine the protectiveness of California's standards.[22] The court noted that this standard of proof also accords with the congressional intent to provide California with the broadest possible discretion in setting regulations it finds protective of the public health and welfare.[23]

With respect to the consistency finding, the court did not articulate a standard of proof applicable to all proceedings, but found that the opponents of the waiver were unable to meet their burden of proof even if the standard were a mere preponderance of the evidence. Although *MEMA I* did not explicitly consider the standards of proof under section 209 concerning a waiver request for ''standards,'' as compared to accompanying enforcement procedures, there is nothing in the opinion to suggest that the court's analysis would not apply with equal force to such determinations. EPA's past waiver decisions have consistently made clear that: ''[E]ven in the two areas concededly reserved for Federal judgment by this legislation—the existence of 'compelling and extraordinary' conditions and whether the standards are technologically feasible—Congress intended that the standards of EPA review of the State decision to be a narrow one.''[24]

Opponents of the waiver bear the burden of showing that the criteria for a denial of California's waiver request have been met. As found in *MEMA I,* this obligation rests firmly with opponents of the waiver in a section 209 proceeding:

> [t]he language of the statute and its legislative history indicate that California's regulations, and California's determinations that they must comply with the statute, when presented to the Administrator are presumed to satisfy the waiver requirements and that the burden of proving otherwise is on whoever attacks them. California must present its regulations and findings at the hearing and thereafter the parties opposing the waiver request bear the burden of persuading the Administrator that the waiver request should be denied.[25]

The Administrator's burden, on the other hand, is to make a reasonable evaluation of the information in the record in coming to the waiver decision. As the court in *MEMA I* stated: ''here, too, if the Administrator ignores evidence demonstrating that the waiver should not be granted, or if he seeks to overcome that evidence with unsupported assumptions of his own, he runs the risk of having his waiver decision set aside as 'arbitrary and capricious.''' [26] Therefore, the Administrator's burden is to act ''reasonably.'' [27]

II. Discussion

A. Within-the-Scope Analysis

We initially evaluate California's TRU amendments by application of our traditional within-the-scope analysis, as CARB requested. If we determine that CARB's request does not meet the requirements for a within-the-scope determination, we then evaluate the request based on a full authorization analysis. EPA sought comment on a range of issues, including those applicable to a within-the-scope analysis as well as those applicable to a full authorization analysis. No party submitted a comment that California's TRU amendments require a full authorization analysis. Given the lack of comments on this issue, and the nature of the amendments, EPA will evaluate California's TRU amendments by application of our traditional within-the-scope analysis, as CARB requested.

EPA can confirm that amended regulations are within the scope of a previously granted waiver of preemption if three conditions are met. First, the amended regulations must not undermine California's determination that its standards, in the aggregate, are as protective of public health and welfare as applicable federal standards. Second, the amended regulations must not affect consistency with section 202(a) of the Act. Third, the amended regulations must not raise any ''new issues'' affecting EPA's prior authorizations.

1. California's Protectiveness Determination

In its May 13, 2011 letter requesting a within-the scope determination, CARB points out that in approving the amendments relaxing the standards for 2003 and 2004 model year TRUs, it found, in Resolution 10–39,[28] that the TRU ATCM, as amended, in the aggregate, continues to be at least as protective of public health and welfare as applicable federal standards. CARB noted that EPA could not find that CARB's determination is arbitrary and capricious, even though the amended regulation includes short-term relaxation of in-use compliance requirements in the 2003 and 2004 model years, for the reason that EPA does not have comparable federal emission standards that regulate in-use TRUs and TRU engines. This same reasoning applies to the TRU amendments clarifying the operational useful life of TRU flexibility engines, and the TRU amendments establishing new reporting and recordkeeping requirements for TRU original equipment manufacturers (OEMs).

After evaluating the materials submitted by CARB, and since EPA has not adopted any standards or requirements for in-use TRU systems or engines, and based on no comments submitted to the record, EPA cannot find that California's TRU amendments undermine California's previous determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable federal standards.

[19] *MEMA I,* 627 F.2d at 1110 (*citing* H.R.Rep. No. 294, 95 Cong., 1st Sess. 301–02 (1977).

[20] *MEMA I,* 627 F.2d at 1122.

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *See, e.g.,* 40 FR 21102–103 (May 28, 1975).

[25] *MEMA I,* 627 F.2d at 1121.

[26] *Id.* at 1126.

[27] *Id.* at 1126.

[28] CARB, ''Resolution 10–39,'' November 18, 2010.

2. Consistency With Section 202(a) of the Clean Air Act

EPA has stated in the past that California standards and accompanying test procedures would be inconsistent with section 202(a) of the Clean Air Act if: (1) There is inadequate lead time to permit the development of technology necessary to meet those requirements, giving appropriate consideration to cost of compliance within the lead time provided, or (2) the federal and California test procedures impose inconsistent certification requirements.[29]

The first prong of EPA's inquiry into consistency with section 202(a) of the Act depends upon technological feasibility. This requires EPA to evaluate whether adequate technology already exists; or if it does not, whether there is adequate time to develop and apply the technology before the standards go into effect. In its May 13, 2011 letter, CARB states the amendments raise no new issue that disturb EPA's earlier finding that the TRU in-use performance requirements are technologically feasible within the lead time provided for compliance. The amendments relax the initially adopted performance requirements, providing additional lead time for owners of all 2003 model year TRU engines, regardless of horsepower, and for 2004 model year TRUs with horsepower ratings less than 25 hp, to comply with ULETRU in-use standard. The amendments at issue have been adopted to provide owners with more compliance flexibility, and are needed because ULETRU compliance options presently are limited and relatively costly compared to LETRU compliance costs. The relaxation will provide sufficient time for market restrictions to abate and provide the full range of compliance options that CARB envisioned when the TRU ATCM was first adopted. In regard to the TRU amendments clarifying the operational useful life of TRU flexibility engines, CARB stated in its May 13, 2011 letter that ''no issue of technological feasibility exists in that manufacturers, in having used the flexibility provisions of federal and state law, have never contended that use of such provisions was necessitated for reasons of technical feasibility—i.e., because engines certified to the most stringent emission tier could not be used with newly manufactured TRU systems. Moreover, the clarifying amendments ensure that existing owners' TRU-flexibility engines will not be penalized.''[30] Additionally, the TRU amendments establishing new reporting and recordkeeping requirements for TRU OEMs do not impose any new concerns regarding the technical feasibility of engine or equipment manufacturers in meeting the in-use performance requirements of the TRU ATCM and do not affect the bases for which the authorization was initially granted.[31]

EPA received no comments indicating that CARB's TRU amendments present lead-time or technology issues with respect to consistency under section 202(a) and knows of no other evidence to that effect. Consequently, EPA cannot find that CARB's amendments affect our prior determination regarding consistency with section 202(a), based on lead-time or technological feasibility issues.

The second prong of EPA's inquiry into consistency with section 202(a) of the Act depends on the compatibility of the federal and California test procedures. California's standards and accompanying enforcement procedures would be inconsistent with section 202(a) if the California test procedures were to impose certification requirements inconsistent with the federal certification requirements. Such inconsistency means that manufacturers would be unable to meet both the California and federal testing requirements using the same test vehicle or engine.[32] As discussed above in section II.1, there are no comparable federal emission standards that regulate in-use TRUs and TRU engines. Therefore, this prong does not warrant further discussion.

For the reasons set forth above, EPA confirms that California's TRU amendments do not undermine our prior determination concerning consistency with section 202(a) of the Clean Air Act.

3. New Issues

EPA has stated in the past that if California promulgates amendments that raise new issues affecting previously granted waivers or authorizations, we would not confirm that those amendments are within the scope of previous authorizations.[33]

EPA does not believe that California's TRU amendments relaxing the TRU in-use compliance requirements for all 2003 and some 2004 model year TRUs and TRU generator sets, clarifying the operational useful life of TRU flexibility engines, and establishing new reporting and recordkeeping requirements for TRU OEMs raise any new issues with respect to our prior granting of the authorization. A relaxation of compliance requirements and a clarification of operational useful life of TRU flexibility engines are not new issues that substantively affect the previously granted authorization, and are consistent with the purpose and intent of the TRU ATCM and its previously granted authorization. Additionally, although there are ''new'' reporting and recordkeeping requirements for TRU OEMs, as stated above, they do not impose any new concerns regarding the technical feasibility of meeting the in-use performance requirements of the TRU ATCM and do not affect the bases for which the authorization was initially granted. Moreover, EPA did not receive any comments that CARB's TRU amendments raised new issues affecting the previously granted authorization. Therefore, EPA cannot find that CARB's TRU amendments raise new issues and consequently, cannot deny CARB's request based on this criterion.

For these reasons, EPA confirms that California's TRU amendments raise no new issues with respect to the previously granted authorization.

4. Within-the-Scope Confirmation

For all the reasons set forth above, EPA can confirm that California's amendments to its TRU ATCM are within the scope of the existing authorization.

III. Decision

The Administrator has delegated the authority to grant California a section 209(e) authorization to the Assistant Administrator for Air and Radiation. This includes the authority to determine whether amendments to its regulations are within the scope of a prior authorization. CARB's May 13, 2011 letter seeks confirmation from EPA that CARB's amendments to its TRU ATCM regulations are within the scope of its existing authorization. After evaluating CARB's amendments, CARB's submissions, and the public comments, EPA confirms that California's regulatory amendments meet the three criteria that EPA uses to determine whether amendments by California are within the scope of previous authorizations. First, EPA agrees with

[29] *See, e.g.,* 75 FR 8056 (February 23, 2010) and 70 FR 22034 (April 28, 2005).

[30] CARB, ''Request that Amendments to California's Airborne Toxic Control Measure for In-Use Diesel-Fueled Transport Refrigeration Units (TRU) and TRU Generator Sets and Facilities Where TRUs Operate Be Found Within the Scope of the Existing Authorization Granted Pursuant to Section 209(e) of the Clean Air Act'' EPA–HQ–OAR–2012–0741–0002 (May 13, 2011) at page 7.

[31] *Id.* at 8.

[32] *See, e.g.,* 43 FR 32182 (July 25, 1978).

[33] *See, e.g.,* 75 FR 8056 (February 23, 2010) and 70 FR 22034 (April 28, 2005).

CARB that the TRU amendments do not undermine California's protectiveness determination from its previous authorization request. Second, EPA agrees with CARB that California's TRU amendments do not undermine EPA's prior determination regarding consistency with section 202(a) of the Act. Third, EPA agrees with CARB that California's TRU amendments do not present any new issues which would affect the previous authorization for California's TRU ATCM regulations. Therefore, I confirm that CARB's TRU amendments are within the scope of EPA's authorization for California's TRU ATCM regulations.

My decision will affect not only persons in California, but also manufacturers outside the State who must comply with California's requirements in order to produce TRU systems for sale in California. For this reason, I determine and find that this is a final action of national applicability for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed by August 27, 2013. Judicial review of this final action may not be obtained in subsequent enforcement proceedings, pursuant to section 307(b)(2) of the Act.

IV. Statutory and Executive Order Reviews

As with past authorization and waiver decisions, this action is not a rule as defined by Executive Order 12866. Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12866.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Further, the Congressional Review Act, 5 U.S.C. 801, *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule for purposes of 5 U.S.C. 804(3).

Dated: June 19, 2013.

Gina McCarthy,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 2013–15437 Filed 6–27–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9009–8]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 06/17/2013 Through 06/21/2013

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

EIS No. 20130178, Draft EIS, USACE, FL, Port Everglades Harbor Navigation Improvements, Comment Period Ends: 08/13/2013, Contact: Terri Jordan-Sellers 904–232–1817.

EIS No. 20130179, Draft EIS, BLM, WY, Buffalo Field Office Planning Area Resource Management Plan, Comment Period Ends: 09/28/2013, Contact: Thomas Bills 307–684–1133.

EIS No. 20130180, Draft EIS, BLM, WAPA, 00, TransWest Express Transmission Project, Comment Period Ends: 09/25/2013, Contact: Sharon Knowlton 307–775–6124.

The U.S. Department of the Interior's Bureau of Land Management and the U.S. Department of Energy's Western Area Power Administration are joint lead agencies for the above project.

EIS No. 20130181, Final EIS, USAF, AK, Modernization and Enhancement of Ranges, Airspace and Training Areas in the Joint Pacific Alaska Range Complex in Alaska, Review Period Ends: 07/29/2013, Contact: Tania Bryan 907–552–2341.

EIS No. 20130182, Draft EIS, EPA, LA, Designation of the Atchafalaya River Bar Channel Ocean Dredged Material Disposal Site West, Pursuant to Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, Comment Period Ends: 08/12/2013, Contact: Jessica Franks 214–665–8335.

EIS No. 20130183, Final Supplement, NRC, NY, Generic—License Renewal of Nuclear Plants, Supplement 38, Regarding Indian Point Nuclear Generating Unit Nos. 2 and 3, Review Period Ends: 07/29/2013, Contact: Lois James 301–415–3306.

EIS No. 20130184, Draft Supplement, FHWA, AK, Gravina Access Project, Comment Period Ends: 08/13/2013, Contact: Kris Riesenberg 907–465–7413 EIS No. 20130185, Draft Supplement, Caltrans, CA, San Diego Freeway (I–405) Improvement Project, Comment Period Ends: 08/12/2013, Contact: Smita Deshpande 949–724–2000.

Dated: June 25, 2013.

Cliff Rader,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2013–15612 Filed 6–27–13; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Sunshine Act Meetings

ACTION: Notice of a partially open meeting of the Board of Directors of the Export-Import Bank of the United States.

TIME AND PLACE: Tuesday, July 9, 2013 at 9:30 a.m. The meeting will be held at Ex-Im Bank in Room 321, 811 Vermont Avenue NW., Washington, DC 20571.

OPEN AGENDA ITEMS: Item No. 1: 2013 Review of the Content Policy.

PUBLIC PARTICIPATION: The meeting will be open to public observation for Item No. 1 only.

FURTHER INFORMATION: Members of the public who wish to attend the meeting should call Joyce Stone, Office of the Secretariat, 811 Vermont Avenue NW., Washington, DC 20571 (202) 565–3336 by close of business Monday, July 8, 2013.

Cristopolis A. Dieguez,

Program Specialist, Office of the General Counsel.

[FR Doc. 2013–15702 Filed 6–26–13; 4:15 pm]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meetings

Open Commission Meeting

Thursday, June 27, 2013

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, June 27, 2013. The meeting is scheduled to commence at 10:30 a.m. in Room TW–C305, at 445 12th Street SW., Washington, DC.

ITEM No.	BUREAU	SUBJECT
1	WIRELINE COMPETITION	TITLE: Modernizing the FCC Form 477 Data Program (WC Docket No. 11–10). SUMMARY: The Commission will consider a Second Report and Order to improve and streamline the collection of broadband subscription and deployment data.
2	WIRELESS TELE-COMMUNICATIONS.	TITLE: Service Rules for Advanced Wireless Services H Block-Implementation Section 6401 of the Middle Class Tax Relief and Job Creation Act of 2012 Related to the 1915–1920 MHz and 1995–2000 MHz Bands (WT Docket No. 12–357). SUMMARY: The Commission will consider a Report and Order with licensing, service, and technical rules in the H Block at 1915–1920 and 1995–2000 MHz, that would help increase the Nation's supply of spectrum for flexible-use services, including mobile broadband.
3	OFFICE OF GENERAL COUNSEL.	TITLE: Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information (CC Docket No. 96–115). SUMMARY: The Commission will consider a Declaratory Ruling clarifying that wireless carriers that collect, or direct the collection of, customer proprietary network information (CPNI) on mobile devices must adhere to statutory and regulatory CPNI requirements in protecting that information.
4	WIRELINE COMPETITION AND WIRELESS TELE–COMMUNICATIONS.	TITLE: Presentation on the Status of Universal Service Reform Implementation. SUMMARY: The Wireline Competition Bureau and Wireless Telecommunications Bureau will present an update on universal service reform implementation.
5	INCENTIVE AUCTION TASK FORCE.	TITLE: Presentation on the Status of the Broadcast Incentive Auction. SUMMARY: The Incentive Auction Task Force will present an update on progress towards the television broadcast incentive auction.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted, but may be impossible to fill. Send an email to: *fcc504@fcc.gov <mailto:fcc504@fcc.gov>* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Additional information concerning this meeting may be obtained from Meribeth McCarrick, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be broadcast live with open captioning over the Internet from the FCC Live Web page at *www.fcc.gov/live <http://www.fcc.gov/live>.*

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to *www.capitolconnection.gmu.edu <http://www.capitolconnection.gmu.edu>.*

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Best Copy and Printing, Inc. (202) 488–5300; Fax (202) 488–5563; TTY (202) 488–5562. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio and video tape. Best Copy and Printing, Inc. may be reached by email at *FCC@BCPIWEB.com.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2013–15594 Filed 6–26–13; 11:15 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

AGENCY: Federal Election Commission.

Federal Register Citation of Previous Announcement—78 FR 37222 (June 20, 2013)

DATE & TIME: Tuesday, June 25, 2013 At 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This Meeting Was Closed To The Public.

Changes In The Meeting—The Commission also discussed:

Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Signed: Shelley E. Garr,

Deputy Secretary of the Commission.

[FR Doc. 2013–15650 Filed 6–26–13; 11:15 am]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), pursuant to 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before August 27, 2013.

ADDRESSES: You may submit comments, identified by FR 2420, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx.*

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

• *Email: regs.comments@federalreserve.gov.* Include OMB number in the subject line of the message.

• *FAX:* (202) 452–3819 or (202) 452–3102.

• *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets NW.) between 9:00 a.m. and 5:00 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235 725 17th Street NW., Washington, DC 20503 or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer —Cynthia Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Request for Comment on Information Collection Proposal

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Proposal To Approve Under OMB Delegated Authority the Implementation of the Following Report

Report title: Report of Selected Money Market Rates.

Agency form number: FR 2420.

OMB control number: 7100—to be assigned.

Frequency: Daily.

Reporters: Domestically chartered commercial banks and thrifts that have $26 billion or more in total assets; U.S. branches and agencies of foreign banks with total third-party assets of $900 million or more.

Estimated annual reporting hours: Commercial banks and thrifts—13,750 hours; U.S. branches and agencies of foreign banks—21,656 hours.

Estimated average hours per response: Commercial banks and thrifts—1.1 hours; U.S. branches and agencies of foreign banks—0.825 hours.

Number of respondents: Commercial banks and thrifts—50; U.S. branches and agencies of foreign banks—105.

General description of report: This proposed information collection is authorized by sections 9 and 11 of the Federal Reserve Act (12 U.S.C. 324 and 248(a)) and by section 7(c)(2) of the International Banking Act (12 U.S.C. 3105(c)(2)) and may be made mandatory under those provisions. Individual respondent data are regarded as confidential under the Freedom of Information Act (5 U.S.C. 552(b)(4)).

Abstract: The Federal Reserve proposes to implement the mandatory Report of Selected Money Market Rates (FR 2420). The FR 2420 would be a transaction-based report that collects daily liability data on federal funds, Eurodollar transactions, and certificates of deposits (CDs) from domestically chartered commercial banks and thrifts that have $26 billion or more in total assets and from U.S. branches and agencies of foreign banks with total third-party assets of $900 million or more. The FR 2420 data would be used in the analysis of current money market conditions.

The FR 2420 would collect data for three liability types including federal funds, Eurodollars, and CDs, specifically with the amount of each transaction on the report date, the maturity of the transaction, and the interest rate for each transaction. In addition, as CDs may have floating rates, several additional items are being requested to better understand their interest rate structure.

Federal Funds (Part A)—The federal funds transaction data would be the only source of high-frequency data used in the analysis of current market conditions. Data would be reported for federal funds purchased by domestic offices of reporting institutions on the reporting date. For purposes of the FR 2420, ''federal funds'' would be defined as all unsecured borrowings of U.S. dollars made to the institution's U.S. offices at the close of business for the report date except:

• Deposits (as defined on Schedule E of the quarterly commercial bank Consolidated Reports of Condition and Income (FFIEC 031 and FFIEC 041; OMB No. 7100–0036) (Call Reports) and the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002; OMB No. 7100–0032)),

• Debt instruments (as defined on Schedule B and Schedule D of the Call Reports and the FFIEC 002),

• Repurchase agreements and security lending transactions (as defined on RC, item 14.b on the Call Reports and RAL, item 4.b.2 on the FFIEC 002),

• Equity (as defined on RC, item 28 on the Call Report),

• Currency and Coin,

• Overdrafts,

• Affiliate and related party transactions,

• Intraday transactions, and

• All forward starting transactions, even when the reporting date is the settlement date.

Eurodollar Transactions (Part B)—There are many similarities between federal funds and Eurodollars, and Federal Reserve monitors and analyzes the Eurodollar market concurrent with

the coverage of the federal funds market. At this time, the Federal Reserve has no source of transaction data from the Eurodollar market, so the transaction data collected in this report would be the main source of Eurodollar data for the Desk at the Federal Reserve Bank of New York (FRBNY). In addition, many firms can easily switch between these liabilities. Eurodollar data need to be collected to prevent reporting institutions from booking trades as Eurodollars instead of federal funds to avoid the reporting requirement. For purposes of the FR 2420, ''Eurodollar transactions'' would be defined as all unsecured liabilities at the close of business in U.S. dollars booked at each non-U.S. office whose total assets exceed $2 billion at the close of business for the report date. Excluded from Eurodollar transactions are:

- Demand deposits (as defined on the Schedule E of the Call Report) and any deposit placed under sweep agreements or other contractual cash management agreements (as defined in the General Instructions of Report of Transaction Accounts, Other Deposits and Vault Cash (FR 2900; OMB No. 7100–0087) instructions),
- Debt instruments (as defined on Schedule B and Schedule D of the Call Report),
- Repurchase agreements and security lending transactions (as defined on RC, Item 14.b on the Call Report and RAL on the FFIEC 002),
- Related Party Transactions,
- Overdrafts,
- Intraday transactions,
- Liabilities to individuals, and
- All forward starting transactions, even when the reporting date is the settlement date.

Eurodollar transactions would be collected only from foreign offices of domestic commercial banks and thrifts and not from U.S. branches and agencies of foreign banks.

CDs (Part C)—Data on CD transactions would provide an alternative source of data for the current daily survey of CD rates conducted by the Federal Reserve. These data would also improve market monitoring capabilities because it would provide CD interest rate information that is not currently available. These data could also provide some optionality for creating a broad-based unsecured dollar rate: the CD rates could be combined with the daily commercial paper rates and the federal funds and Eurodollar rates in this collection. For purposes of the FR 2420, reportable CD transactions would be defined as those CDs that have a term of seven days or more that are booked in U.S. offices in U.S. dollars and denominated in amounts of $250 thousand or more. Reportable CD transactions would include CDs evidenced by a negotiable or nonnegotiable instrument, or CDs in book-entry form evidenced by a receipt or similar acknowledgement issued by the bank. Unlike federal funds and Eurodollars, CDs may have floating rates. For that reason, the FR 2420 would collect additional data fields for reportable CD transactions that would be necessary to understand the interest rate structure over the life of each CD. These data items would be:

Floating or Fixed Rate—Respondents would provide values to indicate if the CD has a floating rate or is a fixed rate.

Reset Period—Respondents would provide a value to describe the frequency from the list below for when the rate for the reported CD can reset:

- No Reset,
- Weekly,
- Monthly,
- Quarterly,
- Semi-annual,
- Annual, or
- Other.

Reference Rate—If the CD has a floating rate, respondents would enter a value to describe the reference rate:

- 0—NA,
- 1—Federal Funds Effective Rate,
- 2—Prime,
- 3—1 Month U.S. Treasury Constant Maturity Rate,
- 4—1 Month LIBOR,
- 5—3 Month LIBOR,
- 6—Overnight Swap Index, or
- 7—Other.

Negotiability—Respondents would indicate if the CD is negotiable or non-negotiable.

Reporting panel—Since federal funds are the key category for this data collection, the FR 2420 reporting panel would be comprised of commercial banks, thrifts, and branches and agencies of foreign banks. Commercial banks and thrifts with $26 billion or more in total assets on the September 30 Call Report each year would be required to submit the FR 2420 daily for the following year. This threshold would currently capture the 50 largest depository institutions which would provide sufficient coverage to have a statistically representative sample. U.S. branches and agencies of foreign banks would be required to report daily, if third-party assets are $900 million or more on the September 30 FFIEC 002. This threshold would currently capture the 105 largest U.S. branches and agencies of foreign banks.

The combined reporter panel would capture 155 banking institutions and would be based on definitions that would cap the panel size at the point of significantly reduced marginal benefits. Using the total federal funds purchased data on the September 30, 2012, Call Report, the combined panel of 155 banking institutions is expected to capture over 80 percent of federal funds outstanding. This would create a relatively small aggregate panel, minimizing the number of institutions that would be subject to the reporting burden, yet would be expected to capture a significant portion of the targeted transaction volume.

Frequency—The FR 2420 report would be submitted daily. Data collected would be used by FRBNY daily as part of the market monitoring responsibilities. Part of that analysis would be calculating average rates across products and tenors, and following trends in the aggregate levels of transactions. In order to calculate timely effective rates, daily data are needed.

Time Schedule for Information Collection—The FR 2420 is a mandatory electronic report. Respondents would be required to file the FR 2420 daily with the FRBNY by 7 a.m. ET each business day for the preceding day's reportable transactions. There would be a short transition period, during which respondents would be permitted to file their daily data at a later hour. The transition period would provide time for reporters to upgrade their systems to meet these data demands. During the transition period, daily data during for fourth quarter of 2013 would be due no later than 10 a.m. ET the next business day. Daily data for January 2014 would be due no later than 9 a.m. ET the next business day. Data for February 2014 would be due no later 8 a.m. ET the next business day. Data for March 2014 and thereafter would be due no later than 7 a.m. ET the next business day.

Board of Governors of the Federal Reserve System, June 24, 2013.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2013–15517 Filed 6–27–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the

notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 15, 2013.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309:

1. *Lucie VanLandingham Beeley,* Leesburg, Georgia, and Stevan Reynolds Tuck, Dawson, Georgia, to retain control of Georgia Community Bancorp, Inc., Dawson, Georgia, and thereby indirectly retain shares of The Citizens State Bank of Taylor County, Reynolds, Georgia.

B. Federal Reserve Bank of San Francisco (Gerald C. Tsai, Director, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *Jefry Baker,* Lake Oswego, Oregon, to acquire additional voting shares of Merchants Bancorp, and thereby indirectly acquire additional voting shares of MBank, both of Gresham, Oregon.

Board of Governors of the Federal Reserve System, June 25, 2013.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2013–15516 Filed 6–27–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 25, 2013.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Citizens National Corporation,* Wisner, Nebraska to acquire up to an additional .35 percent for a total of 34.55 percent of the voting shares of Republic Corporation, parent of United Republic Bank, both in Omaha, Nebraska.

Board of Governors of the Federal Reserve System, June 25, 2013.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2013–15515 Filed 6–27–13; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''Medical Expenditure Panel Survey —Insurance Component.'' In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by August 27, 2013.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at *doris.lefkowitz@AHRQ.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Medical Expenditure Panel Survey—Insurance Component

Employer-sponsored health insurance is the source of coverage for 78 million current and former workers, plus many of their family members, and is a cornerstone of the U.S. health care system. The Medical Expenditure Panel Survey—Insurance Component (MEPS–IC) measures the extent, cost, and coverage of employer-sponsored health insurance on an annual basis. These statistics are produced at the National, State, and sub-State (metropolitan area) level for private industry. Statistics are also produced for State and Local governments.

This research has the following goals:

(1) To provide data for Federal policymakers evaluating the effects of National and State health care reforms.

(2) To provide descriptive data on the current employer-sponsored health insurance system and data for modeling the differential impacts of proposed health policy initiatives.

(3) To supply critical State and National estimates of health insurance spending for the National Health Accounts and Gross Domestic Product.

This study is being conducted by AHRQ through the Bureau of the Census, pursuant to AHRQ's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of healthcare services and with respect to quality measurement and improvement. 42 U.S.C. 299a(a)(1) and (2).

Method of Collection

To achieve the goals of this project the following data collections for both private sector and state and local government employers will be implemented:

(1) Prescreener Questionnaire—The purpose of the Prescreener Questionnaire, which is collected via telephone, varies depending on the insurance status of the establishment contacted. (Establishment is defined as a single, physical location in the private sector and a governmental unit in state and local governments.) For

establishments that do not offer health insurance to their employees, the prescreener is used to collect basic information such as number of employees. Collection is completed for these establishments through this telephone call. For establishments that do offer health insurance, contact name and address information is collected that is used for the mailout of the establishment and plan questionnaires. Obtaining this contact information helps ensure that the questionnaires are directed to the person in the establishment best equipped to complete them.

(2) Establishment Questionnaire—The purpose of the mailed Establishment Questionnaire is to obtain general information from employers that provide health insurance to their employees. Information such as total active enrollment in health insurance, other employee benefits, demographic characteristics of employees, and retiree health insurance is collected through the establishment questionnaire.

(3) Plan Questionnaire—The purpose of the mailed Plan Questionnaire is to collect plan-specific information on each plan (up to four plans) offered by establishments that provide health insurance to their employees. This questionnaire obtains information on total premiums, employer and employee contributions to the premium, and plan enrollment for each type of coverage offered—single, employee-plus-one, and family—within a plan. It also asks for information on deductibles, copays, and other plan characteristics.

The primary objective of the MEPS–IC is to collect information on employer-sponsored health insurance. Such information is needed in order to provide the tools for Federal, State, and academic researchers to evaluate current and proposed health policies and to support the production of important statistical measures for other Federal agencies.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondent's time to provide the requested data. The Prescreener questionnaire will be completed by 31,536 respondents and takes about 51/2 minutes to complete. The Establishment questionnaire will be completed by 27,615 respondents and takes about 23 minutes to complete. The Plan questionnaire will be completed by 23,320 respondents and will require an average of 2.2 responses per respondent. Each Plan questionnaire takes about 11 minutes to complete. The total annualized burden hours are estimated to be 22,567 hours.

Exhibit 2 shows the estimated annualized cost burden associated with the respondents' time to participate in this data collection. The annualized cost burden is estimated to be $662,116.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Prescreener Questionnaire	31,536	1	0.09	2,838
Establishment Questionnaire	27,615	1	* 0.38	10,494
Plan Questionnaire	23,320	2.2	0.18	9,235
Total	82,471	na	na	22,567

* The burden estimate printed on the establishment questionnaire is 45 minutes which includes the burden estimate for completing the establishment questionnaire, an average of 2.1 plan questionnaires, plus the prescreener. The establishment and plan questionnaires are sent to the respondent as a package and are completed by the respondent at the same time.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
Prescreener Questionnaire	31,536	2,838	29.34	$83,267
Establishment Questionnaire	27,615	10,494	29.34	307,894
Plan Questionnaire	23,320	9,235	29.34	270,955
Total	82,471	22,567	na	662,116

*Based upon the mean hourly wage for Compensation, Benefits, and Job Analysis Specialists occupation code 13–1141, at *http://bls.gov/oes/current/oes131141.htm* (U.S. Department of Labor, Bureau of Labor Statistics.)

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: June 20, 2013.

Carolyn M. Clancy,

Director.

[FR Doc. 2013–15290 Filed 6–27–13; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), announcement is made of an Agency for Healthcare Research and Quality (AHRQ) Special Emphasis Panel (SEP) meeting on ''LIMITED COMPETITION: ENHANCING INVESTMENTS COMPARATIVE EFFECTIVENESS RESEARCH RESOURCES GRANTS (R01)''.

DATES: July 23, 2013 (Open on July 23 from 8:30 a.m. to 9:00 a.m. and closed for the remainder of the meeting).

ADDRESSES: Hyatt Regency Hotel Bethesda, One Metro Center, Bethesda, MD 20814.

FOR FURTHER INFORMATION CONTACT: Anyone wishing to obtain a roster of members, agenda or minutes of the non-confidential portions of this meeting should contact: Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, AHRQ, 540 Gaither Road, Room 2038, Rockville, Maryland 20850, Telephone: (301) 427–1554.

Agenda items for this meeting are subject to change as priorities dictate.

SUPPLEMENTARY INFORMATION: A Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly-scheduled meetings and do not serve for fixed terms or a long period of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the SEP meeting referenced above will be closed to the public in accordance with the provisions set forth in 5 U.S.C. App. 2, section 10(d), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(6). Grant applications for the ''LIMITED COMPETITION: ENHANCING INVESTMENTS COMPARATIVE EFFECTIVENESS RESEARCH RESOURCES GRANTS (R01)'' are to be reviewed and discussed at this meeting. 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.

Dated: June 13, 2013.

Carolyn M. Clancy,

Director.

[FR Doc. 2013–15291 Filed 6–27–13; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Statement of Organization Functions, and Delegations of Authority

Part E, Chapter E (Agency for Healthcare Research and Quality), of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (61 FR 15955–58, April 10, 1996, most recently amended at 73 FR 12737, March 10, 2008) is amended to reflect recent organizational changes, including renaming of the Office of Performance, Accountability, Resources, and Technology to the Office of Management Services to better reflect its functions and the creation of divisions within the office. The specific amendment is as follows:

Under Section E–10, Organization, delete I. Office of Performance, Accountability, Resources, and Technology (EQ) and replace with the following:

I. Office of Management Services (EQ)

Under Section E–20. Functions. Delete Office of Performance, Accountability, Resources, and Technology (EQ) and replace with Office of Management Services (EQ). Directs and coordinates the Agency's administrative services and operational activities. Specifically, the Office provides leadership, oversight, and executive support for human capital management; contracts, grants, and financial management; and administrative services including safety, security, property, space, and facilities management, as well as non-information technology acquisitions. (1) Office of the Director: Leads the design, implementation, and evaluation of management and operational programs that respond to the Agency's needs. Devises strategies to address Departmental, Office of Personnel Management, and Office of Management and Budget initiatives, including sustainability and the Agency's conference-approval process, and oversees implementation of Agency-wide efforts to address these initiatives. Conducts complex organizational and management analyses and develops major proposals and plans. (2) Division of Administrative Services: Provides oversight and implementation of major administrative programs including the Agency's ethics program, Continuity of Operations Plans, the Employee Transit Benefit Program, quality of worklife programs, and physical safety and security programs. Manages the Agency's real property and building relocation and renovation programs, as well as Federal Occupational Health activities. Oversees Public Health Service Commissioned Corps personnel activities and manages Homeland Security Presidential Directive 12 compliance. Provides administrative services including timekeeping, travel, conference and copy center management, mail, and supplies. (3) Division of Contracts Management: Manages all aspects of the Agency's acquisition program in accordance with Federal acquisition regulations policies, and initiatives. Oversees and implements the Agency's contract planning, solicitation, review, negotiation, award, post-award administration, payment, and contract closeout activities. Develops, implements, and maintains policies and procedures for the Agency's acquisition program. Provides guidance to the contracting officer representative community. Manages inter-agency agreements, the purchase card program, and acquisition workforce training and certification programs. (4) Division of Financial Management, Performance, and Evaluation: Provides guidance in all aspects of financial management, including Agency budget formulation and execution, and ensures integration of the budget and planning processes. Manages evaluation and measurement activities for the Agency including development and implementation of the Agency's annual evaluation plan. Establishes and maintains financial accounting and reporting systems and coordinates responses on budget and accounting matters with all levels of Agency management, Departmental staff, Congressional committees, and the private sector. Serves as the Agency's focal point for Government Performance and Results Act activities and Program Integrity activities and coordinates the Agency's efforts for Office of

Management and Budget Circular A–123, Management's Responsibility for Internal Control. (5) Division of Grants Management: Provides leadership and oversight in grants management and grants management policy to the extramural research community and AHRQ extramural staff through expert guidance, grant analysis and negotiation, outreach, and related information dissemination in order to promote effective stewardship of AHRQ extramural funds in support of healthcare research. (6) Division of Human Capital and Resources Management: Provides guidance to the Agency regarding all aspects of personnel management including staff training, workforce planning and restructuring, and allocation and utilization of human capital resources. Serves as liaison to the Equal Employment Opportunity service provider and to the servicing personnel office to ensure the Agency's human capital needs, including recruitment, position classification, and compensation, are met and properly executed. Manages the Agency's human capital reporting function and competitive sourcing activities. Manages the Agency's awards and performance management program.

These changes are effective upon date of signature.

Dated: June 19, 2013.

Carolyn M. Clancy,

AHRQ Director.

[FR Doc. 2013–15289 Filed 6–27–13; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Docket No. ATSDR–2013–0001]

Availability of Draft Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (DHHS).

ACTION: Notice of availability, and request for comments.

SUMMARY: This notice announces the availability of Set 25 Toxicological Profiles for review and comment. Comments can include additional information or reports on studies about the health effects of Set 25 substances. Although ATSDR considered key studies for each of these substances during the profile development process, this **Federal Register** notice solicits any relevant, additional studies, particularly unpublished data. ATSDR will evaluate the quality and relevance of such data or studies for possible inclusion in the profile. ATSDR remains committed to providing a public comment period for this document as a means to best serve public health and our clients. The Set 25 Toxicological Profile is available online at *http://www.atsdr.cdc.gov/toxprofiles/index.asp* and *www.regulations.gov,* docket ATSDR–2013–0001.

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), § 104(i)(3), [42 U.S.C. 9604(i)(3)], directs the ATSDR administrator to prepare toxicological profiles of priority hazardous substances and, as necessary, to revise and publish each updated toxicological profile.

DATES: To be considered, comments on the draft toxicological profiles must be received not later than September 30, 2013. Comments received after close of the public comment period will be considered solely at the discretion of ATSDR, based upon what is deemed to be in the best interest of the general public.

ADDRESSES: You may submit comments, identified by docket number ASTDR–2013–0001, by any of the following methods:

- *Federal eRulemaking Portal: http://www.reguations.gov.* Follow the instructions for submitting comments.
- *Mail:* Division of Toxicology and Health and Human Sciences, 1600 Clifton Rd. NE., MS F57, Atlanta, GA. 30333.

Instructions: All submissions received must include the agency name and docket number for this notice. All relevant comments will be posted without change. Because all public comments regarding ATSDR toxicological profiles are available for public inspection, no confidential business information or other confidential information should be submitted in response to this notice. Refer to the section *Submission of Nominations (below) for* specific information required.

FOR FURTHER INFORMATION CONTACT: Ms. Delores Grant, Division of Toxicology and Human Health Sciences, 1600 Clifton Rd. NE., MS F–57, Atlanta, GA 30333. Phone: 770–488–3351.

SUPPLEMENTARY INFORMATION: The Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99–499) amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) (42 U.S.C. 9601 *et seq.*) by establishing certain responsibilities for ATSDR and the U.S. Environmental Protection Agency (U.S. EPA) with regard to hazardous substances most commonly found at facilities on the CERCLA National Priorities List (NPL). As part of these responsibilities, the ATSDR administrator must prepare toxicological profiles for substances enumerated on the priority list of hazardous substances. This list identifies 275 hazardous substances which, according to ATSDR and U.S. EPA, pose the most significant potential threat to human health. The availability of the revised priority list of 275 hazardous substances was announced in the **Federal Register** on March 6, 2008 (73 FR 12178). In addition, ATSDR has the authority to prepare toxicological profiles for substances not found at sites on the National Priorities List, in an effort to ''. . . establish and maintain inventory of literature, research, and studies on the health effects of toxic substances'' under CERCLA Section 104(i)(1)(B). This is also to respond to requests for consultation under section 104(i)(4), and as otherwise necessary to support the site-specific response actions conducted by ATSDR.

Each profile will include an examination, a summary, and an interpretation of available toxicological information and epidemiological evaluations. This information and these data identify the levels of significant human exposure for the substance and for the associated health effects. The profiles must also include a determination of whether adequate information on the health effects of each substance is available or is in the process of development. If adequate information is not available, ATSDR, in cooperation with the National Toxicology Program (NTP), is required to ensure the initiation of a program of research to determine such health effects.

All toxicological profiles issued as ''Drafts for Public Comment'' represent ATSDR's best efforts to provide important toxicological information on priority hazardous substances.

Set 25 toxicological profiles:

	Name	CAS
1	Hexachlorobenzene (UPDATE)	118–74–1
2	Endosulfan (UPDATE)	115–29–7
	Endosulfan sulfate	1031–07–8
	Endosulfan-alpha	95–99–98
	Endosulfan-beta	33213–65–9
3	1,1-Dichloroethane (UPDATE)	75–34–3
4	Dinitrotoluenes (DNT) (UPDATE).	
	2,3-DNT	602–01–7
	2,4-DNT	121–14–2
	2,5-DNT	619–15–8
	2,6-DNT	606–20–2
	3,4-DNT	610–39–9
	3,5-DNT	618–85–9

Dated: June 21, 2013.

Sascha Chaney,

Acting Director, Office of Policy, Planning and Evaluation, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry.

[FR Doc. 2013–15523 Filed 6–27–13; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

World Trade Center Health Program Scientific/Technical Advisory Committee (WTCHP–STAC)

Correction: This notice was published in the **Federal Register** on June 21, 2013, Volume 78, Number 120, Page 37543. The name of the committee was inadvertently stated as Board of Scientific Counselors, National Center for Injury Prevention and Control, (BSC, NCIPC) and the name of the Committee should read World Trade Center Health Program Scientific/Technical Advisory Committee (WTCHP–STAC),

Contact Person for More Information: Paul Middendorf, Senior Health Scientist, 1600 Clifton Rd. NE., MS: E–20, Atlanta, GA 30329; telephone (404) 498–2548 (this is not a toll-free number); email: *pmiddendorf@cdc.gov*.

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 Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention.

[FR Doc. 2013–15455 Filed 6–27–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10105, CMS–10467, CMS–10469, CMS–10325 and CMS–10330]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by July 29, 2013.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–6974 *OR* Email: *OIRA_submission@omb.eop.gov.*

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*
2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*
3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (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. The term ''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 publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Reinstatement with change of a previously approved collection; *Title of*

Information Collection: National Implementation of In-Center Hemodialysis CAHPS Survey; *Use:* Data collected in the national implementation of the In-center Hemodialysis Consumer Assessment of Healthcare Providers and Systems (CAHPS) Survey will be used to: (1) Provide a source of information from which selected measures can be publicly reported to beneficiaries as a decision aid for dialysis facility selection; (2) aid facilities with their internal quality improvement efforts and external benchmarking with other facilities; (3) provide CMS with information for monitoring and public reporting purposes; and (4) support the end-stage renal disease value-based purchasing program. In the April 19, 2013 (78 FR 23566) **Federal Register**, this information collection request was inadvertently published as a new collection under CMS–10478 (OCN: 0938–New). We will not continue seeking approval for the information collection request under CMS–10478. The CMS–10105 was discontinued in 2007, but we are now seeking to have it reinstated.

Form Number: CMS–10105 (OCN: 0938–0926).

Frequency: Occasionally;

Affected Public: Individuals or households;

Number of Respondents: 165,000;

Total Annual Responses: 165,000;

Total Annual Hours: 87,750. (For policy questions regarding this collection contact Elizabeth Goldstein at 410–786–6665.)

2. *Type of Information Collection Request:* New collection (Request for a new OMB control number);

Title of Information Collection: Evaluation of the Graduate Nurse Education Demonstration Program;

Use: The Graduate Nurse Education (GNE) Demonstration is mandated under Section 5509 of the Affordable Care Act (ACA) under title XVIII of the Social Security Act (42 U.S.C. 1395 *et seq.*). According to Section 5509 of the ACA, the five selected demonstration sites receive ''payment for the hospital's reasonable costs for the provision of qualified clinical training to advance practice registered nurses''. Section 5509 of the ACA also states that an evaluation of the graduate nurse education demonstration must be completed no later than October 17, 2017. This evaluation includes analysis of the following: (1) Growth in the number of advanced practice registered nurses (APRNs) with respect to a specific base year as a result of the demonstration; (2) growth for each of the following specialties: clinical nurse specialist, nurse practitioner, certified nurse anesthetist, certified nurse-midwife; and (3) costs to the Medicare program as result of the demonstration.

Quantitative and qualitative data from primary and secondary sources will be gathered and analyzed for this evaluation. The primary data will be collected through site visits, key stakeholder interviews, small discussion groups and focus groups, telephone interviews, electronic templates for quantitative data submission, and quarterly demonstration-site reports. The secondary data will come from mandatory hospital cost reports provided to both us and several other existing secondary data sources, such as the American Association of Colleges of Nursing (AACN).

Form Number: CMS–10467 (OCN: 0938–NEW);

Frequency: Annually;

Affected Public: State, Local, or Tribal Governments, Business and other for-profit and Not-for-profit institutions;

Number of Respondents: 330;

Total Annual Responses: 330;

Total Annual Hours: 3,370. (For policy questions regarding this collection contact Pauline Karikari-Martin at 410–786–1040.)

3. *Type of Information Collection Request:* New collection (Request for a new OMB control number);

Title of Information Collection: Issuer Reporting Requirements for Selecting a Cost-Sharing Reductions Reconciliation Methodology; *Use:* Under established Department of Health and Human Services (HHS) regulations, qualified health plan (QHP) issuers will receive advance payments of the cost-sharing reductions throughout the year. Each issuer will then be subject to one of two reconciliation processes after the year to ensure that HHS reimbursed each issuer the correct advance cost-sharing amount. This information collection request establishes the data collection requirements for a QHP issuer to report to HHS which reconciliation reporting option the issuer will be subject to for a given benefit year.

On March 23, 2010, the President signed into law H.R. 3590, the Patient Protection and Affordable Care Act (Affordable Care Act), Public Law 111–148. Sections 1402 and 1412 of the Affordable Care Act provide for reductions in cost sharing on essential health benefits for low- and moderate-income enrollees in silver level qualified health plans on individual market Exchanges. It also provides for reductions in cost sharing for Indians enrolled in QHPs at any metal level. These cost-sharing reductions will help eligible individuals and families afford the out-of-pocket spending associated with health care services provided through Exchange-based QHP coverage.

The law directs QHP issuers to notify the Secretary of HHS of cost-sharing reductions made under the statute for qualified individuals, and directs the Secretary to make periodic and timely payments to the QHP issuer equal to the value of those reductions. Further, the law permits advance payment of the cost-sharing reduction amounts to QHP issuers based upon amounts specified by the Secretary.

On December 7, 2012, HHS published a proposed rule (77 FR 73118) entitled ''HHS Notice of Benefit and Payment Parameters for 2014.'' This rule proposed a payment approach under which we would make monthly advance payments to issuers to cover projected cost-sharing reduction amounts, and then reconcile those advance payments after the end of the benefit year to the actual cost-sharing reduction amounts. The reconciliation process described in the rule would require that QHP issuers provide us with the amount of cost-sharing paid by each enrollee, as well as the level of cost-sharing that enrollee would have paid under a standard plan without cost-sharing reductions. To determine the amount of cost-sharing an enrollee receiving cost-sharing reductions would have paid under a standard plan, QHP issuers would need to re-adjudicate each claim for these enrollees under a standard plan structure. HHS finalized the proposed notice of benefit and payment parameters for 2014 and this approach on March 11, 2013 (78 FR 15410).

During the comment period for the proposed rule, HHS received numerous comments suggesting that the reporting requirements of the reconciliation process for QHP issuers would be operationally challenging for some issuers. In response to these comments, HHS issued an interim final rule (CMS–9964–IFC) with comment period on March 11, 2013 (78 FR 15541) entitled ''Amendments to the HHS Notice of Benefit and Payment Parameters for 2014,'' which laid out an alternative approach that QHP issuers may elect to pursue with respect to the reporting requirements. This alternative approach would allow a QHP issuer to estimate the amount of cost-sharing an enrollee receiving cost-sharing reductions would have paid under a standard plan in the Exchange, rather than re-adjudicating each of the enrollee's claims. This approach is intended to permit a reasonable transitional period in which QHP issuers will be allowed to choose the methodology that best aligns with their operational practices, which

should reduce the administrative burden on issuers in the initial years of the Exchanges. The interim final rule describes the estimation methodology in sufficient detail to allow QHP issuers to make an informed decision of which reporting approach to pursue.

Prior to the start of each coverage year, QHP issuers must notify HHS of the methodology it is selecting for the benefit year. QHP issuers will receive a notification by email with instructions on how to inform HHS of their selection. All submissions will be made electronically and no paper submissions are required. The QHP issuer must select the same methodology for all plan variations it offers on the Exchange for a benefit year. Moreover, as the estimated methodology is intended as a transition to the actual methodology, the QHP issuer may not select the estimated methodology if it selected the actual methodology for the prior benefit year.

A **Federal Register** notice was published on April 12, 2013 (78 FR 21956), providing the public with a 60-day period to submit written comments on the information collection requirements, no comments were received.

Form Number: CMS–10469 (OCN: 0938–NEW);

Frequency: Annually;

Affected Public: Private Sector (business or other for-profits);

Number of Respondents: 1,200;

Total Annual Responses: 1,200;

Total Annual Hours: 13,200. (For policy questions regarding this collection contact Chris Weiser at 410–786–0650.)

4. *Type of Information Collection Request:* Reinstatement with change of a previously approved collection of information;

Title of Information Collection: Disclosure and Recordkeeping Requirements for Grandfathered Health Plans under the Affordable Care Act;

Use: Section 1251 of the Patient Protection and Affordable Care Act, Public Law 111–148, (the Affordable Care Act) provides that certain plans and health insurance coverage in existence as of March 23, 2010, known as grandfathered health plans, are not required to comply with certain statutory provisions in the Act. To maintain its status as a grandfathered health plan, the interim final regulations titled ''Interim Final Rules for Group Health Plans and Health Insurance Coverage Relating to Status as a Grandfathered Health Plan Under the Patient Protection and Affordable Care Act'' (75 FR 34538, June 17, 2010) require the plan to maintain records documenting the terms of the plan in effect on March 23, 2010, and any other documents that are necessary to verify, explain or clarify status as a grandfathered health plan. The plan must make such records available for examination upon request by participants, beneficiaries, individual policy subscribers, or a State or Federal agency official. The recordkeeping requirement will allow a participant, beneficiary, or federal or state official to inspect plan documents to verify that a plan or health insurance coverage is a grandfathered health plan. A grandfathered health plan must include a statement in any plan materials provided to participants or beneficiaries (in the individual market, primary subscriber) describing the benefits provided under the plan or health insurance coverage, and that the plan or coverage is intended to be grandfathered health plan. The disclosure requirement will provide participants and beneficiaries with important information about their grandfathered health plans, such as that grandfathered plans are not required to comply with certain consumer protection provisions contained in the Act. It also will provide important contact information for participants to find out which protections apply and which protections do not apply to a grandfathered health plan and what might cause a plan to change from grandfathered to non-grandfathered health plan status. An amendment to the interim final regulations (75 FR 70114, November 17, 2010) requires a grandfathered group health plan that is changing health insurance issuers to provide the succeeding health insurance issuer (and the succeeding health insurance issuer must require) documentation of plan terms (including benefits, cost sharing, employer contributions, and annual limits) under the prior health insurance coverage sufficient to make a determination whether the standards set forth in paragraph (g)(1) of the interim final regulations are exceeded.

Form Number: CMS–10325 (OCN: 0938–1093);

Frequency: Annually;

Affected Public: State, Local, or Tribal governments and health insurance coverage issuers;

Number of Respondents: 64,552;

Number of Responses: 10,113,926;

Total Annual Hours: 85. (For policy questions regarding this collection, contact Usree Bandyopadhyay at (410) 786–6650.)

5. *Type of Information Collection Request:* Reinstatement with change of a previously approved information collection;

Title of Information Collection: Enrollment Opportunity Notice Relating to Lifetime Limits; Required Notice of Rescission of Coverage; and Disclosure Requirements for Patient Protection under the Affordable Care Act;

Use: Under section 2711 of the Public Health Services Act (PHS Act) amended by the Affordable Care Act, the enrollment opportunity notice was to be used by health plans to notify certain individuals of their right to re-enroll in their plan. The affected individuals were those whose coverage ended due to reaching a lifetime limit on the dollar value of all benefits for any individual. This notice was a one-time requirement and is being discontinued. Under section 2712 of the PHS Act as amended by the Affordable Care Act, the rescission notice will be used by health plans to provide advance notice to certain individuals that their coverage may be rescinded. The affected individuals are those who are at risk of rescission on their health insurance coverage. Under section 2719A of the PHS Act as amended by the Affordable Care Act, the patient protection notification will be used by health plans to inform certain individuals of their right to choose a primary care provider or pediatrician and to use obstetrical/gynecological services without prior authorization.

Form Number: CMS–10330 (OCN: 0938–1094);

Frequency: Occasionally;

Affected Public: State, Local, or Tribal Governments, Private Sector;

Number of Respondents: 8,382;

Number of Responses: 1,583,371;

Total Annual Hours: 2,267. (For policy questions regarding this collection, contact Usree Bandyopadhyay at 410–786–6650.)

Dated: June 25, 2013.

Martique Jones

Deputy Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2013–15539 Filed 6–27–13; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10199, CMS–10484, CMS–R–38, CMS–10237, CMS–10198, CMS–R–267, CMS–10137, CMS–43, CMS–1763, CMS–1728–94, CMS–10174, CMS–10305 and CMS–10488]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by August 27, 2013:

ADDRESSES: When commenting, please reference the document identifier or OMB control number (OCN). To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number ___ Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION: This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10199 Data Collection for Medicare Facilities Performing Carotid Artery Stenting with Embolic Protection in Patients at High Risk for Carotid Endarterectomy

CMS–10484 End Stage Renal Disease (ESRD) Application Access Request Form

CMS–R–38 Conditions of Certification for Rural Health Clinics

CMS–10266 Conditions of Participation: Requirements for Approval and Reapproval of Transplant Centers to Perform Organ Transplants

CMS–10237 Part C—Medicare Advantage and 1876 Cost Plan Expansion Application

CMS–10198 Collection Requirements Pertaining to the Creditable Coverage Disclosure to CMS On-Line Form and Instructions

CMS–R–267 Medicare Advantage Program Requirements

CMS–10137 Solicitation for Applications for Medicare Prescription Drug Plan 2015 Contracts

CMS–43 Application for Hospital Insurance Benefits for Individuals with End Stage Renal Disease

CMS–1763 Request for Termination of Premium Hospital and/or Supplementary Medical Insurance

CMS–1728–94 Home Health Agency Cost Report

CMS–10174 Collection of Prescription Drug Event Data from Contracted Part D Providers for Payment

CMS–10305 Part C Medicare Advantage Reporting Requirements and Supporting Regulations

CMS–10488 Enrollee Satisfaction Survey Data Collection

Under the Paperwork Reduction Act of 1995 (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. The term ''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 requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collections

1. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection; *Title of Information Collection:* Data Collection for Medicare Facilities Performing Carotid Artery Stenting with Embolic Protection in Patients at High Risk for Carotid Endarterectomy; *Use:* We provide coverage for carotid artery stenting (CAS) with embolic protection for patients at high risk for carotid endarterectomy and who also have symptomatic carotid artery stenosis between 50 percent and 70 percent or have asymptomatic carotid artery stenosis ≥ 80 percent in accordance with the Category B IDE clinical trials regulation (42 CFR 405.201), a trial under the CMS Clinical Trial Policy (NCD Manual § 310.1, or in accordance with the National Coverage Determination on CAS post approval studies (Medicare NCD Manual 20.7).

Accordingly, we consider coverage for CAS reasonable and necessary (section 1862(A)(1)(a) of the Social Security Act). However, evidence for use of CAS with embolic protection for patients with high risk for carotid endarterectomy and who also have symptomatic carotid artery stenosis ≥ 70 percent who are not enrolled in a study or trial is less compelling. To encourage responsible and appropriate use of CAS with embolic protection, we issued a Decision Memo for Carotid Artery Stenting on March 17, 2005, indicating that CAS with embolic protection for symptomatic carotid artery stenosis ≥ 70 percent will be covered only if performed in facilities that have been

determined to be competent in performing the evaluation, procedure and follow-up necessary to ensure optimal patient outcomes. In accordance with this criteria, we consider coverage for CAS reasonable and necessary (section 1862(A)(1)(a) of the Social Security Act). *Form Number:* CMS–10199 (OCN: 0938–1011); *Frequency:* Yearly; *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 1,000; *Total Annual Responses:* 1,000; *Total Annual Hours:* 500. (For policy questions regarding this collection contact Lori Ashby at 410–786–6322.)

2. *Type of Information Collection Request:* New Collection (Request for a new OMB control number); *Title of Information Collection:* End Stage Renal Disease (ESRD) Application Access Request Form; *Use:* We are developing a new suite of systems to support the End Stage Renal Disease (ESRD) program. Due to the sensitivity of the data being collected and reported, we must ensure that only authorized personnel have access to data. Personnel are given access to the ESRD systems through the creation of user IDs and passwords within the QualityNet Identity Management System (QIMS); however, once within the system, the system determines the rights and privileges the personnel has over the data within the system. Such access rights include: Viewing and reporting, updating adding and deleting.

The sole purpose of the ESRD Application Access Request Form is to identify the individual's data access rights once within the ESRD system. This data collection is currently being accomplished under ''Part B'' of the QualityNet Identity Management System Account Form. Once the ESRD Application Access Form is approved, the QualityNet Identity Management System (QIMS) Account Form will be revised to remove Part B from the QIMS data collection. The ESRD Application Access Request Form will be a new form and will be assigned its own OMB Control number. The ESRD system accounts created using the current QIMS Account Form—Part B will not need to submit an ESRD Application Access Form for the creation of their account since that information was collected under Part B.

The QIMS Account Registration and the ESRD Application Access Request forms are required for identity and security management of individuals accessing the Consolidated Renal Operations in a Web Enabled Network (CROWNWeb) system and the End Stage Renal Disease Quality Incentive Program (ESRD QIP) system. The CROWNWeb system is the system that is mandated for the Medicare and Medicaid Programs Conditions of Coverage for End-Stage Renal Disease Facilities, Final Rule published April 15, 2008. *Form Number:* CMS–10484 (OCN: 0938–NEW); *Frequency:* Annually; *Affected Public:* Business and other for-profits; and not-for-profits; *Number of Respondents:* 27,000; *Total Annual Responses:* 27,000; *Total Annual Hours:* 6,750. (For policy questions regarding this collection contact Victoria Schlining at 410–786–6878.)

3. *Type of Information Collection Request:* Reinstatement with change of a currently approved collection; *Title of Information Collection:* Conditions of Certification for Rural Health Clinics; *Use:* The Rural Health Clinic (RHC) conditions of certification are based on criteria prescribed in law and are designed to ensure that each facility has a properly trained staff to provide appropriate care and to assure a safe physical environment for patients. We use these conditions of participation to certify RHCs wishing to participate in the Medicare program. These requirements are similar in intent to standards developed by industry organizations such as the Joint Commission on Accreditation of Hospitals, and the National League of Nursing and the American Public Association and merely reflect accepted standards of management and care to which rural health clinics must adhere. *Form Number:* CMS–R–38 (OCN: 0938–0334); *Frequency:* Recordkeeping and Reporting—Annually; *Affected Public:* Business or other for-profits; *Number of Respondents:* 9,716; *Total Annual Responses:* 9,716; *Total Annual Hours:* 33,304. (For policy questions regarding this collection contact Mary Collins at 410–786–3189.)

4. *Type of Information Collection Request:* Reinstatement with change of a currently approved collection; *Title of Information Collection:* Conditions of Participation: Requirements for Approval and Reapproval of Transplant Centers to Perform Organ Transplants; *Use:* The Conditions of Participation and accompanying requirements specified in the regulations are used by our surveyors as a basis for determining whether a transplant center qualifies for approval or re-approval under Medicare. We, along with the healthcare industry, believe that the availability to the facility of the type of records and general content of records is standard medical practice and is necessary in order to ensure the well-being and safety of patients and professional treatment accountability. *Form Number:* CMS–10266 (OCN: 0938–1069); *Frequency:* Yearly; *Affected Public:* Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 226; *Total Annual Responses:* 528; *Total Annual Hours:* 2,523. (For policy questions regarding this collection contact Diane Corning at 410–786–8486.)

5. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Part C—Medicare Advantage and 1876 Cost Plan Expansion Application; *Use:* Organizations wishing to provide healthcare services under Medicare Advantage (MA) and/or MA organizations that offer integrated prescription drug and health care products must complete an application, file a bid, and receive final approval from us. Existing MA plans may request to expand their contracted service area by completing the Service Area Expansion application. Any current 1876 Cost Plan Contractor that wants to expand its Medicare cost-based contract with CMS can complete the application. Information is collected to ensure applicant compliance with our requirements and to gather data used to support its determination of contract awards. *Form Number:* CMS–10237 (OCN 0938–0935); *Frequency:* Yearly; *Affected Public:* Business or other for-profits and Not-for-profits institutions; *Number of Respondents:* 566; *Total Annual Responses:* 566; *Total Annual Hours:* 22,955. (For policy questions regarding this collection contact Melissa Staud at 410–786–3669.)

6. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection; *Title of Information Collection:* Creditable Coverage Disclosure to CMS On-Line Form and Instructions; *Use:* Most entities that currently provide prescription drug benefits to any Medicare Part D eligible individual must disclose whether their prescription drug benefit is creditable (expected to pay at least as much, on average, as the standard prescription drug plan under Medicare). The disclosure must be provided annually and upon any change that affects whether the coverage is creditable prescription drug coverage. *Form Number:* CMS–10198 (OCN: 0938–1013). *Frequency:* Yearly and semi-annually; *Affected Public:* Business or other for-profits and not-for-profit institutions, State, Local, or Tribal Governments. *Number of Respondents:* 85,610; *Total Annual Responses:* 87,265; *Total Annual Hours:* 7,272. (For policy questions regarding this

collection contact Roslyn Thomas at 410–786–9621.)

7. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Medicare Advantage Program Requirements; *Use:* Medicare Advantage (MA) organizations and potential MA organizations (applicants) use the information to comply with the application requirements and the MA contract requirements. We will use this information to: Approve contract applications, monitor compliance with contract requirements, make proper payment to MA organizations, determine compliance with the new prescription drug benefit requirements, and to ensure that correct information is disclosed to Medicare beneficiaries (both potential enrollees and enrollees). *Form Number:* CMS–R–267 (OCN: 0938–0753). *Frequency:* Yearly. *Affected Public:* Individuals or households and Business or other for-profits; *Number of Respondents:* 18,043,776; *Total Annual Responses:* 21,935,728; *Total Annual Hours:* 8,529,541. (For policy questions regarding this collection contact Dana Burley at 410–786–4547.)

8. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Solicitation for Applications for Medicare Prescription Drug Plan 2015 Contracts; *Use:* The information will be collected under the solicitation of proposals from prescription drug plans, Medicare Advantage (MA) plans that offer integrated prescription drug and health care coverage, Cost Plans, PACE, and EGWP applicants. We will use the information collected to ensure that applicants meet our requirements and to support the determination of contract awards. *Form Number:* CMS–10137 (OCN: 0938–0936); *Frequency:* Yearly; *Affected Public:* Business or other for-profits and Not-for-profits institutions; *Number of Respondents:* 254; *Total Annual Responses:* 254; *Total Annual Hours:* 2,319. (For policy questions regarding this collection contact Linda Anders at 410–786–0459.)

9. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection; *Title of Information Collection:* Application for Hospital Insurance Benefits for Individuals with End Stage Renal Disease; *Use:* The CMS–43 application is used (in conjunction with CMS–2728) to establish entitlement to, and enrollment in, Medicare Part A (and Part B) for individuals with end stage renal disease. The application is completed by a Social Security Administration (SSA) claims representative or field representative using information provided by the individual during an interview. The CMS–43 application follows the questions and requirements used by SSA to determine Title II eligibility. This is done not only for consistency purposes, but because certain Title II and Title XVIII insured status and relationship requirements must be met in order to qualify for Medicare under the end stage renal disease provisions. *Form Number:* CMS–43 (OCN: 0938–0800); *Frequency:* Once; *Affected Public:* Individuals or households; *Number of Respondents:* 60,000; *Total Annual Responses:* 60,000; *Total Annual Hours:* 24,960. (For policy questions regarding this collection contact Lindsay Smith at 410–786–6843.)

10. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection; *Title of Information Collection:* Request for Termination of Premium Hospital and Supplementary Medical Insurance; *Use:* The CMS–1763 provides us and the Social Security Administration (SSA) with the enrollee's request for termination of Part B, Part A or both Part B and A premium coverage. The form is completed by an SSA claims or field representative using information provided by the Medicare enrollee during an interview. The purpose of the form is to provide to the enrollee with a standardized format to request termination of Part B, Part A premium coverage or both, explain why the enrollee wishes to terminate such coverage, and to acknowledge that the ramifications of the decision are understood. *Form Number:* CMS–1763 (OCN: 0938–0025); *Frequency:* Once; *Affected Public:* Individuals or households; *Number of Respondents:* 14,000; *Total Annual Responses:* 14,000; *Total Annual Hours:* 5,833. (For policy questions regarding this collection contact Lindsay Smith at 410–786–6843.)

11. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Home Health Agency Cost Report; *Use:* In accordance with sections 1815(a), 1833(e) and 1861(v)(1)(A) of the Social Security Act, providers of service in the Medicare program are required to submit annual information to achieve reimbursement for health care services rendered to Medicare beneficiaries. In addition, 42 CFR 413.20(b) requires that cost reports are required from providers on an annual basis. Such cost reports are required to be filed with the provider's Medicare contractor. The Medicare contractor uses the cost report not only to make settlement with the provider for the fiscal period covered by the cost report, but also in deciding whether to audit the records of the provider. Section 413.24(a) requires providers receiving payment on the basis of reimbursable cost provide adequate cost data based on their financial and statistical records that must be capable of verification by qualified auditors. Besides determining program reimbursement, the data submitted on the cost reports supports the management of federal programs. The data is extracted from the cost report and used for making projections of Medicare Trust Fund requirements and for analysis to rebase home health agency prospective payment system. The data is also available to Congress, researchers, universities, and other interested parties. While the collection of data is a secondary function of the cost report, its primary function is to reimburse providers for services rendered to program beneficiaries. *Form Number:* CMS–1728–94 (OCN: 0938–0022): *Frequency:* Yearly; *Affected Public:* Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 11,563; *Total Annual Responses:* 11,563; *Total Annual Hours:* 2,613,238. (For policy questions regarding this collection contact Angela Havrilla at 410–786–4516.)

12. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection; *Title of Information Collection:* Collection of Prescription Drug Event Data from Contracted Part D Providers for Payment; *Use:* The information users for this information collection request include Pharmacy Benefit Managers, third party administrators and pharmacies and prescription drug plans, Medicare Advantage plans that offer integrated prescription drug and health care coverage, Fallbacks and other plans that offer coverage of outpatient prescription drugs under the Medicare Part D benefit to Medicare beneficiaries. The data is used primarily for payment, but is also used for claim validation as well as for other legislated functions such as quality monitoring, program integrity, and oversight. *Form Number:* CMS–10174 (OCN: 0938–0982); *Frequency:* Monthly; *Affected Public:* Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 747; *Total Annual Responses:* 947,881,770; *Total Annual Hours:* 1,896. (For policy questions regarding this collection contact Ivan Iveljic at 410–786–3312.)

13. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Part C Medicare Advantage Reporting Requirements and Supporting Regulations; *Use:* There are a number of information users of Part C reporting, including central and regional office staff that use this information to monitor health plans and to hold them accountable for their performance. Other government agencies such as the Government Accountability Office have inquired about this information. Health plans can use this information to measure and benchmark their performance. CMS intends to make some of these data available for public reporting as ''display measures'' in 2013. *Form Number:* CMS–10305 (OCN: 0938–1115); *Frequency:* Yearly and semi-annually; *Affected Public:* Business or other for-profits; *Number of Respondents:* 588; *Total Annual Responses:* 6,715; *Total Annual Hours:* 200,918. (For policy questions regarding this collection contact Terry Lied at 410–786–8973.)

14. *Type of Information Collection Request:* New Collection (Request for a new OMB control number; *Title of Information Collection:* Enrollee Satisfaction Survey Data Collection; *Use:* Section 1311(c)(4) of the Affordable Care Act (ACA) requires the Department of Health and Human Services (HHS) to develop an enrollee satisfaction survey system that assesses consumer experience with qualified health plans (QHPs) offered through an Exchange. It also requires public display of enrollee satisfaction information by the Exchange to allow individuals to easily compare enrollee satisfaction levels between comparable plans. HHS intends to establish an enrollee satisfaction survey system that assesses consumer experience with the Marketplaces and the qualified health plans (QHPs) offered through the Marketplaces. The surveys will include topics to assess consumer experience with the Marketplace such as enrollment and customer service, as well as experience with the health care system such as communication skills of providers and ease of access to health care services. We are considering using the Consumer Assessment of Health Providers and Systems (CAHPS®) principles (*http://www.cahps.ahrq.gov/about.htm*) for developing the surveys. We are also considering an application and approval process for enrollee satisfaction survey vendors who want to participate in collecting ESS data. The application form for survey vendors includes information regarding organization name and contact(s) as well as minimum business requirements such as relevant survey experience, organizational survey capacity, and quality control procedures.

The Marketplace Survey will provide (1) actionable information that the Marketplaces can use to improve performance, (2) information that we and state regulatory organizations can use for oversight, and (3) a longitudinal database for future Marketplace research. The CAHPS® family of instruments does not have a survey that assesses entities similar to Marketplaces, so the Marketplace survey items were generated by the project team. The QHP survey will (1) help consumers choose among competing health plans, (2) provide actionable information that the QHPs can use to improve performance, (3) provide information that regulatory and accreditation organizations can use to regulate and accredit plans, and (4) provide a longitudinal database for consumer research. CMS plans to base the QHP survey on the CAHPS® Health Plan Survey.

We are planning for two rounds of developmental testing for the Marketplace and QHP surveys. The 2014 survey field tests will help determine psychometric properties and provide an initial measure of performance for Marketplaces and QHPs to use for quality improvement. Based on field test results, there will be further refinement of the questionnaires and sampling designs to conduct the 2015 beta test of each survey. We plan to request clearance for two additional rounds of national implementation with public reporting of scores for each survey in the future. A summary of findings from the testing rounds will be included when requesting clearance for the additional two rounds of national implementation with public reporting, which will take place in 2016 and 2017. *Form Number:* CMS–10488 (OCN: 0938–NEW); *Frequency:* Annually; *Affected Public:* Individuals and Households, Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 251,671; *Total Annual Responses:* 251,671; *Total Annual Hours:* 86,014. (For policy questions regarding this collection contact Kathleen Jack at 410–786–7214.)

Dated: June 25, 2013.

Martique Jones,

Deputy Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2013–15558 Filed 6–27–13; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

New Policies and Procedural Requirements for Electronic Submission of State Plans, and Program and Financial Reporting Forms, for Mandatory Grant Programs

AGENCY: Office of Administration (OA), Administration for Children and Families (ACF), Department of Health and Humans Services (HHS).

ACTION: Notice for public comment of new policies and procedural requirements for the electronic submission of State plans, and program and financial reporting forms, for mandatory grant programs.

SUMMARY: The Administration for Children and Families (ACF), an Operating Division of the Department of Health and Human Services (HHS), announces the opportunity for public comment on our plan to implement required electronic submission of State plans, which includes applications as applicable; and programmatic and financial reporting forms, for mandatory grant programs. In accordance with the e-Government initiatives mandated by the Federal Financial Assistance Management Improvement Act of 1999, ACF officially acknowledges that electronically generated and/or stored documents are recognized equivalents of an official paper grant file. Recognizing the equivalency of such documents eliminates duplicative effort and administrative burden for Federal grant applicants, recipients, and the awarding agency, by facilitating the submission and storage of official grant files. ACF has previously afforded recipients of mandatory State grant programs the option of submitting State plans, and programmatic and financial reporting forms, in both electronic and paper formats. This notice announces that recipients of mandatory State grant programs will now be required to submit State plans, and programmatic and financial reporting forms, electronically. The electronic portal used to support this effort is the ACF On-Line Data Collection (OLDC) system, which is available to State applicants and grantees at *https://extranet.acf.hhs.gov/oldcdocs/materials.html*.

DATES: Submit written or electronic comments on the policies and procedures announced in this Notice, on or before August 27, 2013.

ADDRESSES: The public may submit written or electronic comments concerning this notice to Karen Shields, Grants Policy Specialist, Department of Health and Human Services, Administration for Children and Families, Division of Grants Policy, 370 L'Enfant Promenade SW., Aerospace Building, 6th Floor East, Washington, DC 20447. Email address: *karen.shields@acf.hhs.gov*. Delays may occur in mail delivery to Federal offices; therefore, a copy of submitted comments may also be faxed to (202) 205–4270.

Received comments will be available for inspection by members of the public at the Office of Administration, Aerospace Building, Division of Grants Policy, 901 D Street SW., 6th Floor East, Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Karen Shields, Grants Policy Specialist, Department of Health and Human Services, Administration for Children and Families, OA/Division of Grants Policy, 370 L'Enfant Promenade SW., Aerospace Building, 6th Floor East, Washington, DC 20447. Email: *karen.shields@acf.hhs.gov*. Fax: (202) 205–4270.

SUPPLEMENTARY INFORMATION:

Electronic Submission of Mandatory Program State Plans

In previous fiscal years, recipients of mandatory State grant programs had the option of submitting State plans in a format of their choosing. Effective October 1, 2013, ACF will require the use of the Standard Form SF–424M Mandatory Form when preparing State plans. The form is available to applicants and grantees within the OLDC system at *https://extranet.acf.hhs.gov/oldcdocs/materials.html*.

Electronic Submission of Program Progress and Financial Reporting Forms Beginning with the effective date of October 1, 2013, the following reporting forms for mandatory State grant programs must be submitted electronically through the OLDC at *https: //extranet.acf.hhs.gov/oldcdocs/materials.html*.

Program name	Form title.
Abstinence Education Grant Program	AEGP Performance Progress Report (PPR).
Abstinence Education Grant Program	Form SF–425: Federal Financial Report (FFR).
Adoption Assistance	Form CB–496: Title IV–E Programs Quarterly Financial Report.
Adoption Incentive Payments	Form SF–425: Federal Financial Report (FFR).
Chafee (formerly ILP)	Form SF–425: Federal Financial Report (FFR).
Chafee Ed & Training Vouchers State Grants	Form SF–425: Federal Financial Report (FFR).
Child Abuse and Neglect State Grant Part 1	Form SF–425: Federal Financial Report (FFR).
Child Care and Development Fund Mandatory & Matching	Form ACF–696T: Child Care and Development Fund Annual Financial Report for Tribes.
Child Care and Development Fund Mandatory & Matching	Form ACF–402: Improper Authorizations.
Child Care and Development Fund Mandatory & Matching	Form ACF–696: Child Care and Development Fund Financial Report for States and Territories.
Child Support Enforcement—States	Form OCSE34A: Child Support Enforcement Program Quarterly Collection Report.
Child Support Enforcement—States	Form OCSE–396A: Child Support Enforcement Program Quarterly Financial Report.
Child Support Enforcement—States	Form OCSE 157: Child Support Enforcement Annual Data Report.
Child Support Enforcement—Tribes	Form OCSE–75: Tribal Child Support Enforcement Annual Data Report.
Child Support Enforcement—Tribes	Form OCSE34A: Child Support Enforcement Program Quarterly Collection Report.
Child Support Enforcement—Tribes	Form SF–425: Federal Financial Report (FFR).
Child Welfare Social Services	Form SF–425: Federal Financial Report (FFR).
Children's Justice Act	Form SF–425: Federal Financial Report (FFR).
Community Services Block Grant	Form SF–425: Federal Financial Report (FFR).
Community-Based Child Abuse Prevention (formerly Community-Based Family Resource and Support).	Form SF–425: Federal Financial Report (FFR).
Family Violence Prevention & Services State Grants	FVPS Performance Progress Report (PPR)—(State).
Family Violence Prevention & Services Tribal Grants	FVPS Performance Progress Report (PPR)—(Tribal).
Family Violence Prevention & Services State Grants	Form SF–425: Federal Financial Report (FFR).
Foster Care	Form CB–496: Title IV–E Programs Quarterly Financial Report.
Guardianship Assistance	Form CB–496: Title IV–E Programs Quarterly Financial Report.
Healthy Marriages/Healthy Relationships Demo	Form SF–425: Federal Financial Report (FFR).
Leveraging (LIHEAP)	Form SF–425: Federal Financial Report (FFR).
Low Income Home Energy Assistance	Form SF–425: Federal Financial Report (FFR).
Native Employment Works Program	Form SF–425: Federal Financial Report (FFR).
Promoting Safe and Stable Families Caseworker Visitation	Form SF–425: Federal Financial Report (FFR).
Personal Responsibility Education Program	PREP Performance Progress Report (PPR).
Personal Responsibility Education Program	Form SF–425: Federal Financial Report (FFR).
Promoting Safe and Stable Families	Form SF–425: Federal Financial Report (FFR).
Refugee Cash and Medical Assistance	Form ORR–1: Cash and Medical Assistance Program Estimates.
Refugee Cash and Medical Assistance	Form ORR–2: Quarterly Report on Expenditures and Obligations.
Refugee Social Services	Form SF–425: Federal Financial Report (FFR).
Refugee Targeted Assistance	Form SF–425: Federal Financial Report (FFR).
Residential Energy Assistance Challenge Options Program	Form SF–425: Federal Financial Report (FFR).
Social Services Block Grant	Form SF–425: Federal Financial Report (FFR).
Social Services Emergency Disaster Relief	Form SF–425: Federal Financial Report (FFR).
State Access and Visitation	Form SF–425: Federal Financial Report (FFR).
State Court Improvement—Basic Program	Form SF–425: Federal Financial Report (FFR).
State Court Improvement—Data Program	Form SF–425: Federal Financial Report (FFR).
State Court Improvement—Training Program	Form SF–425: Federal Financial Report (FFR).
Statewide Domestic Violence Coalition	Form SF–425: Federal Financial Report (FFR).

Program name	Form title.
Temporary Assistance for Needy Families	Form ACF–196T: Tribal TANF Financial Report.
Temporary Assistance for Needy Families	ACF–196T: TANF ARRA Financial Report.
Temporary Assistance for Needy Families	Form SF–425: Federal Financial Report (FFR).
Temporary Assistance for Needy Families	ACF–204.
Temporary Assistance for Needy Families	Form ACF–196: TANF Quarterly Financial Report.
Tribal Construction	Form SF–425: Federal Financial Report (FFR).

Exemptions From the Electronic Submission Requirement

ACF recognizes that some of the recipient community may have limited or no Internet access, and/or limited computer capacity, which may prohibit uploading large files to the Internet through the OLDC system. To accommodate such recipients, ACF is instituting an exemption procedure, on a case-by-case basis, that will allow such recipients to submit hard copy, paper State plans and reporting forms by the United States Postal Service, hand-delivery, recipient courier, overnight/express mail couriers, or other representatives of the recipient.

Additionally, on a case-by-case basis, we will consider requests to accept hard copy, paper submissions of State plans and reporting forms when circumstances such as natural disasters occur (floods, hurricanes, etc.); or when there are widespread disruptions of mail service; or in other rare cases that would prevent electronic submission of the documents.

Recipients will be required to submit a written statement to ACF that the recipient qualifies for an exemption under one of these grounds: lack of Internet access; or limited computer capacity that prevents the uploading of large files to the Internet; the occurrence of natural disasters (floods, hurricanes, etc.); or when there are widespread disruptions of mail service; or in other rare cases that would prevent electronic submission of the documents.

Exemption requests will be reviewed and the recipient will be notified of a decision to approve or deny the request. The written statement must be sent to the cognizant ACF Program Official and to ACF's Grants Management Office point of contact shown in funding opportunity announcements (if applicable) or in a previously received Notices of Award. Exemption requests may be submitted by regular mail or by email.

In all cases, the decision to allow an exemption to accept submission of hard copy, paper State plans and reporting forms will rest with the cognizant ACF Program Office. Exemptions are applicable only to the Federal fiscal year in which they are received and approved. If an exemption is necessary for a future Federal fiscal year, a request must be submitted during each Federal fiscal year for which an exemption is necessary.

Records Retention

The HHS regulations pertaining to the retrieval, retention, disposition, and destruction of official grant files, 45 CFR 92.42, remains in effect for electronically submitted documents.

Future Implementation

This guidance represents the initial phase of ACF's transition to required electronic submission of official grant documents for recipients of mandatory State grant programs. ACF will continue to communicate transition plans as they evolve, and will provide the recipient communities and the general public with sufficient notice of implementation details. In general, notices will be published in the **Federal Register** at least 60 days before the implementation becomes effective.

Universal Identifier (DUNS) and SAM Registration

ACF is prohibited from making an award until an applicant has complied with the following requirements:

All applicants must have a DUNS number (*www.dnb.com*) and be registered with the System for Award Management (SAM, *www.sam.gov)*.

DUNS Number Requirement

The Data Universal Numbering System (DUNS) Number is the nine-digit, or thirteen-digit (DUNS + 4), number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities.

All applicants and sub-recipients must have a DUNS number at the time of submission of the State plan in order to be considered for an award under a mandatory program.

A DUNS number is required whether an applicant is submitting a hard copy, paper State plan or using the OLDC system. Exemption procedures for submitting hard copy, paper State plans in lieu of electronic submission are discussed in an earlier section of this Notice. DUNS numbers are required for every State plan for a new award, including State plans under formula, entitlement, and block grant programs. A DUNS number may be acquired at no cost online at *http://fedgov.dnb.com/webform.*

System for Award Management

Applicants must maintain an active SAM registration until the State plan submission process is complete and throughout the life of the award. Applicants should finalize a new, or renew an existing, registration at least two weeks before the State plan submission deadline. This action should allow sufficient time to resolve any issues that may arise. Failure to comply with these requirements may result in the inability to submit a State plan or receive an award. Maintain documentation (with dates) of efforts made to register or renew a registration at least two weeks before the deadline. Please see the SAM Quick Guide for Grantees at: *www.sam.gov/sam/transcript/SAM_Quick_Guide_Grants_Registrations-v1.6.pdf.*

Applicants are strongly encouraged to register at SAM.gov well in advance of the State plan submission due date. Registration at SAM.gov must be updated annually.

Note: It can take 24 hours or more for updates to registrations at SAM.gov to take effect. An entity's registration will become active after 3–5 days. Therefore, check for active registration well before the State plan submission due date and deadline. Recipients can view the registration status by visiting *http://www.bpn.gov/CCRSearch/Search.aspx* and searching by the organization's DUNS number. See the SAM Quick Guide for Grantees at *https://www.sam.gov/sam/transcript/SAM_Quick_Guide_Grants_Registrations-v1.6.pdf.*

Statutory Authority: Financial Assistance Management Improvement Act of 1999, Pub. L. 106–107.

Robert Noonan,

Deputy Assistant Secretary for Administration, Administration for Children and Families.

[FR Doc. 2013–15465 Filed 6–27–13; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0723]

Agency Information Collection Activities; Proposed Collection; Comment Request; Reports of Corrections and Removals of Medical Devices and Radiation Emitting Products

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 revision of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on an electronic process for submitting reports of corrections and removals (806 reports) that are associated with medical and radiation emitting products regulated by FDA's Center for Devices and Radiological Health (CDRH). The electronic process is expected to both enhance consistency of submission data and speed submission processing.

DATES: Submit either electronic or written comments on the collection of information by August 27, 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:

Regarding the collection of information: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov.*

Regarding reports of corrections and removals: Ronny D. Brown, Division of Risk Management Operations, Office of Compliance, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2611, Silver Spring, MD 20993, 301–796–6163, *Ronny.Brown@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 revision 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.

Reports of Corrections and Removals—21 CFR Part 806 (OMB Control Number 0910–0359)—Revision

I. Reports of Corrections and Removals

Under § 806.10 (21 CFR 806.10), each device manufacturer or importer shall submit a written report to FDA of any action initiated to correct or remove a device to reduce a risk to health posed by the device or to remedy a violation of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) caused by the device which may present a risk to health within 10-working days of initiating the correction or removal.

Under § 806.20(a) (21 CFR 806.20(a)), each device manufacturer or importer of a device who initiates a correction or removal of a device that is not required to be reported to FDA, shall keep a record of the correction or removal.

FDA currently accepts by mail reports of corrections and removals (806 reports) associated with medical and radiation emitting products regulated by CDRH under part 806 (21 CFR part 806).

For general information and assistance with 806 reports, contact the CDRH Division of Small Manufacturers, International and Consumer Assistance (DSMICA) by telephone: 1–800–638–2041 or 301–796–7100; or by email: *dsmica@fda.hhs.gov.*

II. Proposed Electronic Submission Process

FDA is now proposing to make available, as a voluntary alternative to paper submissions, an electronic process for submitting 806 reports. The electronic process is expected to enhance consistency of submission data and to speed submission processing. Submission by mail will remain available and will be augmented by the new electronic submission process.

Establishing a process for using electronic submissions does necessitate some preparation by reporters, which includes obtaining both: (1) A WebTrader account and (2) a digital verification certificate. Many other FDA applications also utilize WebTrader. If an applicant already has an account with the WebTrader Electronic Submission Gateway and a digital verification certificate (certificate must be valid for 1 to 3 years), no additional burden or cost will be incurred outside of the time it takes to make the submission of corrections and removals. However, for calculating the burden for this collection, FDA is assuming that all respondents will be establishing a new WebTrader account and purchasing a digital verification certificate.

Establishing a new account for sending electronic submissions may take up to 2 weeks. During that time, new reporters are advised to submit paper reports to avoid inadvertently missing the 10-day timeframes associated with submission of reports under part 806.

Upon approval of the information collection, a submitter would go to *http://www.fda.gov/ForIndustry/FDAeSubmitter/default.htm* to submit an 806 report via the electronic portal. Additional information about FDA's Electronic Submission Gateway is posted at *http://www.fda.gov/ForIndustry/ElectronicSubmissionsGateway/default.htm.* You can also email questions about the system to FDA's Electronic Submissions Gateway Help Desk: *esgreg@gnsi.com.*

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

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity (21 CFR Part)	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours [2]	Total operating & maintenance costs
Electronic process set-up (one time)	1,022	1	1,022	9.25	9,454	$30,660
Submission of corrections and removals (part 806)	1,033	1	1,033	10	10,330	

[1] There are no capital costs associated with this collection of information.
[2] Totals may not sum due to rounding.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Activity (21 CFR Part)	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Records of corrections and removals (part 806)	93	1	93	10	930

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

FDA's estimate of the reporting and recordkeeping burden is based on our experience with this program and similar programs that utilize the Electronic Submission Gateway. For respondents who use the electronic process, the operating and maintenance costs associated with this information collection are approximately $30 per year to purchase a digital verification certificate (certificate must be valid for 1 to 3 years). This burden may be minimized if the respondent has already purchased a verification certificate for other electronic submissions to FDA. However, FDA is assuming that all respondents who submit corrections and removals using the electronic process will be establishing a new WebTrader account and purchasing a digital verification certificate.

III. Online Support and Information

CDRH intends to establish a Web site for online support and information about electronic submissions of 806 reports. The Web site will provide the following information:

- Introduction
- Tracking information
- Contact information
  - Submitter identification
  - Manufacturer information
  - Recalling firm information
  - Importer information
- Correction and removal report information
  - Event
  - Correction and removal product data
  - Domestic consignee information
  - Foreign consignee information
  - Communication documentation
  - Additional documentation (which allows for attaching Word™, Excel™, and PDF™ documents)

Within the online help provided by FDA, users will find yellow light bulb icons. These icons indicate supplemental tips and information.

Dated: June 24, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–15468 Filed 6–27–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0748]

Agency Information Collection Activities: Proposed Collection; Comment Request; Focus Groups About Drug Products as Used by the Food and Drug Administration

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 information collection resulting from focus groups about drug products as used by FDA.

DATES: Submit either electronic or written comments on the collection of information by August 27, 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: Ila S. Mizrachi, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., P150–400B, Rockville, MD 20850, 301–796–7726, *Ila.Mizrachi@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.

Focus Groups About Drug Products as Used by the Food and Drug Administration—(OMB Control Number 0910–0677)—Extension

Focus groups provide an important role in gathering information because they allow for a more in-depth understanding of individuals' attitudes, beliefs, motivations, and feelings than do quantitative studies. Focus groups serve the narrowly defined need for direct and informal opinion on a specific topic and as a qualitative research tool have three major purposes:

- To obtain information that is useful for developing variables and measures for quantitative studies,
- To better understand people's attitudes and emotions in response to topics and concepts, and
- To further explore findings obtained from quantitative studies.

FDA will use focus group findings to test and refine its ideas and to help develop messages and other communications, but will generally conduct further research before making important decisions such as adopting new policies and allocating or redirecting significant resources to support these policies.

FDA's Center for Drug Evaluation and Research, Office of the Commissioner, and any other Centers or Offices conducting focus groups about regulated drug products may need to conduct focus groups on a variety of subjects related to consumer, patient, or healthcare professional perceptions and use of drug products and related materials, including but not limited to, direct-to-consumer prescription drug promotion, physician labeling of prescription drugs, Medication Guides, over-the-counter drug labeling, emerging risk communications, patient labeling, online sales of medical products, and consumer and professional education.

Annually, FDA projects about 20 focus group studies using 160 focus groups with an average of 9 persons per group, and lasting an average of 1.75 hours each. FDA is requesting this burden for unplanned focus groups so as not to restrict the Agency's ability to gather information on public sentiment for its proposals in its regulatory and communications programs.

FDA estimates the burden of this information collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Focus groups about drug products	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
	1,440	1	1,440	1.75	2,520

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

Dated: June 24, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–15469 Filed 6–27–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–0749]

Implanted Blood Access Devices for Hemodialysis; Draft Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Implanted Blood Access Devices for Hemodialysis.'' This guidance was developed to support the reclassification of the Implanted Blood Access Devices for Hemodialysis into class II (special controls). This draft guidance is not final nor is it in effect at this time.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by August 27, 2013.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled ''Implanted Blood Access Devices for Hemodialysis'' to the Division of Small Manufacturers, International, and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4613, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–847–8149. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Rebecca Nipper, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1540, Silver Spring, MD 20993, 301–796–6527.

SUPPLEMENTARY INFORMATION:

I. Background

This draft guidance document is being issued in conjunction with a **Federal Register** notice announcing the proposal to reclassify this device type. This draft guidance provides recommendations to assist manufacturers in developing their premarket submissions of implanted blood access devices for hemodialysis regulated under § 876.5540(a)(1) (21 CFR 876.5540(a)(1) and FDA believes

that special controls, when combined with the general controls, will be sufficient to provide reasonable assurance of the safety and effectiveness of implanted blood access devices for hemodialysis. Thus, a manufacturer who intends to market a device of this generic type must (1) conform to the general controls of the Federal Food, Drug & Cosmetic Act (the FD&C Act), including the premarket notification requirements described in 21 CFR part 807 Subpart E, (2) address the special controls associated with implanted blood access devices for hemodialysis codified in the Code of Federal Regulations § 876.5540(b)(1), and (b)(3) obtain a substantial equivalence determination from FDA prior to marketing the device.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on implanted blood access devices for hemodialysis. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using the Internet. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov.* To receive ''implanted blood access devices for hemodialysis'' you may either send an email request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 301–847–8149 to receive a hard copy. Please use the document number 1781 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807, subpart E have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073; the collections of information in 21 CFR part 801 and 809 have been approved under OMB control number 0910–0485; the collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; the collections of information in 21 CFR 56.115 have been approved under OMB control number 0910–0130; and the collections of information in 21 CFR part 54 have been approved under OMB control number 0910–0396.

V. Comments

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

Dated: June 25, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–15505 Filed 6–27–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program, List of Petitions Received

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (''the Program''), as required by Section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact the Clerk, United States Court of Federal Claims, 717 Madison Place NW., Washington, DC 20005, (202) 357–6400. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 11C–26, Rockville, MD 20857; (301) 443–6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.,* provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated her responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at Section 2114 of the PHS Act or as set forth at 42 CFR 100.3, as applicable. This Table lists for each covered childhood vaccine the conditions which may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that ''[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register**.'' Set forth below is a list of petitions received by HRSA on May 1, 2013, through May 30, 2013. This list provides the name of petitioner, city, and state of vaccination (if unknown then city and state of person or attorney filing claim), and case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

(a) ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Table but which was caused by'' one of the vaccines referred to in the Table, or

(b) ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

In accordance with Section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading **FOR FURTHER INFORMATION CONTACT**), with a copy to HRSA addressed to Director, Division of Vaccine Injury Compensation Program, Healthcare Systems Bureau, 5600 Fishers Lane, Room 11C–26, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

Dated: June 24, 2013.

Mary K. Wakefield,

Administrator.

List of Petitions Filed

1. James Gordon Cook, Vinita, Oklahoma, Court of Federal Claims No: 13–0309V.
2. Brian Charles Jensen, Santa Clarita, California, Court of Federal Claims No: 13–0310V.
3. Sandy Richardson on behalf of Indy Gantt, Columbus, Ohio, Court of Federal Claims No: 13–0313V.
4. Brooke Searles, Torrance, California, Court of Federal Claims No: 13–0318V.
5. Alfonso Pacheco, New Fairfield, Connecticut, Court of Federal Claims No: 13–0322V.
6. Michael and Kimberly Prater on behalf of Christian M. Prater, Sheridan, Indiana, Court of Federal Claims No: 13–0325V.
7. Earleen Bean-Sasser, Eureka, California, Court of Federal Claims No: 13–0326V.
8. Michael G. Corcoran on behalf of S.R.C., Chagrin Falls, Ohio, Court of Federal Claims No: 13–0330V.
9. Daniella Castillo and Daniel Ruiz on behalf of D.R., Coral Gables, Florida, Court of Federal Claims No: 13–0333V.
10. Isabel Terrell, Palm Beach Gardens, Florida, Court of Federal Claims No: 13–0334V.
11. Teresa N. Gore, Loris, South Carolina, Court of Federal Claims No: 13–0335V.
12. Charlise Ellis on behalf of X'Von Godwin, Brentwood, New Jersey, Court of Federal Claims No: 13–0336V.
13. Brian Randall, Ventura, California, Court of Federal Claims No: 13–0337V.
14. Amy Cain, Charleston, West Virginia, Court of Federal Claims No: 13–0342V.
15. Marva Ross, Vienna, Virginia, Court of Federal Claims No: 13–0343V.
16. Jesse Knight, Gilbert, Arizona, Court of Federal Claims No: 13–0344V.
17. Christina and Greg Schniegenberg on behalf of Morgan Schniegenberg, Napa, California, Court of Federal Claims No: 13–0347V.
18. Glynis Lee, Houston, Texas, Court of Federal Claims No: 13–0348V.
19. Cristal Bello, Baraboo, Wisconsin, Court of Federal Claims No: 13–0349V.
20. Arlene Trompczynski, Oakland, California, Court of Federal Claims No: 13–0351V.
21. Glenn C. Ryan, St. Augustine, Florida, Court of Federal Claims No: 13–0354V.
22. Stacy and William Boula on behalf of Stephanie Boula, Rochester, New York, Court of Federal Claims No: 13–0356V.
24. Terry Lee Estvold, Federal Way, Washington, Court of Federal Claims No: 13–0358V.
25. Amanda LaCroix, San Antonio, Texas, Court of Federal Claims No: 13–0359V.
26. Timothy Woody and Carmen Verdugo-Woody on behalf of V. W., Homestead, Florida, Court of Federal Claims No: 13–0366V.

[FR Doc. 2013–15535 Filed 6–27–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; Family Life, Activity, Sun, Health, and Eating (FLASHE) Study (NCI)

Summary: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

To Submit Comments and For Further Information: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Linda Nebeling, Ph.D., Division of Cancer Control and Population Sciences, National Cancer Institute, 9609 Medical Center Drive, Room 3E102, Bethesda, MD 20892–9671 or call non-toll-free number 240–276–6855 or Email your request, including your address to: *nebelinl@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if

received within 60 days of the date of this publication.

Proposed Collection: Family Life, Activity, Sun, Health, and Eating (FLASHE) Study 0925—NEW, National Cancer Institute (NCI), National Institutes of Health (NIH).

Need and Use of Information Collection: The FLASHE study seeks to examine psychosocial, generational (parent-adolescent), and environmental correlates of cancer preventive behaviors. FLASHE will examine the science of cancer and obesity prevention by examining correlates of cancer preventive behaviors, mainly diet, activity, and sedentary behaviors (but also examining other behaviors such as sleep, sun-safety, and tobacco) in new ways not previously addressed comprehensively on other surveys. The survey's goal is to advance understanding of the dynamic relationship between the environment, psychosocial factors, and behavior from a dyadic perspective. Data collected will ultimately be a public use dataset and resource to the research community. FLASHE will be collecting data from parents and their adolescent children through a web survey with a final sample size of 2,500 dyads with motion sensing data collected in a subsample of 900 adolescents.

OMB approval is requested for two years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 1,931.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
Enrollment	Parents (enrolling self)	1,250	1	5/60	104
	Parents (enrolling adolescent)	1,250	1	5/60	104
Web survey with demographics	Parents	1,250	1	20/60	417
	Adolescents	1,250	1	20/60	417
Web survey without demographics	Parents	1,250	1	15/60	313
	Adolescents	1,250	1	15/60	313
Wear Log	Adolescents	450	7	5/60	263

Dated: June 24, 2013.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2013–15541 Filed 6–27–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; 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 General Medical Sciences Special Emphasis Panel; Clinical Trials of Pain Treatment.

Date: July 19, 2013.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room 3An.18, Bethesda, MD 20892–4874, (Telephone Conference Call).

Contact Person: Brian R. Pike, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.18K, Bethesda, MD 20892–4874, 301–594–3607, *pikbr@mail.nih.gov.*

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of K99 Grant Applications.

Date: July 23, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree by Hilton Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Robert Horowits, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.18I, Bethesda, MD 20892–4874, 301–594–6904, *horowitr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: June 24, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–15450 Filed 6–27–13; 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; Time-Sensitive Obesity Research.

Date: July 15, 2013.

Time: 11:00 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: Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard,

Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Kidney Disease Ancillary Study.

Date: July 25, 2013.

Time: 3:00 p.m. to 5:00 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: Robert Wellner, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 706, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, 301–594–4721, *rw175w@nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; PO1 for Organ Transplantation.

Date: August 14, 2013.

Time: 2:00 p.m. to 6:00 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: D.G. Patel, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7682, *pateldg@niddk.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)

Dated: June 21, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–15452 Filed 6–27–13; 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 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 Allergy and Infectious Diseases Special Emphasis Panel; Immunity in the Elderly (R01).

Date: July 16–17, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Silver Spring Hotel, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Louis A. Rosenthal, Ph.D., Scientific Review Officer, Scientific Review Program, DHHS/NIH/NIAID/DEA, 6700B Rockledge Drive, MSC–7616, Bethesda, MD 20892, 301–402–8399, *rosenthalla@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; AIDSRRC Independent SEP.

Date: July 18, 2013.

Time: 10:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Vasundhara Varthakavi, Ph.D., DVM, Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, Room 2217, 6700–B Rockledge Drive, Bethesda, MD 20892–7616, 301–496–2550, *varthakaviv@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; PAR 10–271; NIAID Investigator Initiated Program Project Applications (P01).

Date: July 24, 2013.

Time: 11:30 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Jay R. Radke, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, *jay.radke@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: June 21, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–15451 Filed 6–27–13; 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; Fellowships: AIDS and AIDS Related Applications.

Date: July 23, 2013.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Mary Clare Walker, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7852, Bethesda, MD 20892, (301) 435–1165, *walkermc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Behavioral Genetics, Substance Use, and Pulmonary Conditions.

Date: July 23, 2013.

Time: 2:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Ann Guadagno, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7770, Bethesda, MD 20892, (301) 451–8011, *guadagma@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts: Asthma and Lung Host Defense.

Date: July 25–26, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Bradley Nuss, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC7814, Bethesda, MD 20892, 301–451–8754, *nussb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Respiratory Sciences.
Date: July 25–26, 2013.
Time: 9:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Ghenima Dirami, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7814, Bethesda, MD 20892, 240–498–7546, *diramig@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Oral Microbiology, Oral Pathology and Tooth Mobility.
Date: July 25, 2013.
Time: 12:00 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: Priscilla B Chen, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787, *chenp@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: June 24, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–15454 Filed 6–27–13; 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; Program Project: Insulin-Like Peptide Network.
Date: July 22–23, 2013.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Elena Smirnova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5187, MSC 7840, Bethesda, MD 20892, 301–435–1236, *smirnove@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Multidisciplinary Studies of HIV/AIDS and Aging (R21).
Date: July 23, 2013.
Time: 9:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.
Contact Person: Robert Freund, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7852, Bethesda, MD 20892, 301–435–1050, *freundr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; HIV/AIDS Innovative Research Applications.
Date: July 24–25, 2013.
Time: 10:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Kenneth A Roebuck, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR13–029: Opportunities for Collaborative Research at the NIH Clinical Center (U01).
Date: July 25–26, 2013.
Time: 8:00 a.m. to 1:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Seetha Bhagavan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 237–9838, *bhagavas@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Metabolic Diseases.
Date: July 25, 2013.
Time: 9:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Krish Krishnan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1041, *krishnak@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Area Review: Cardiovascular and Respiratory Sciences.
Date: July 25–26, 2013.
Time: 10:00 a.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Sara Ahlgren, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 4136, Bethesda, MD 20892, 301–435–0904, *sara.ahlgren@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR13–008: Shared Instrumentation: Genomics.
Date: July 26, 2013.
Time: 1:00 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, (Virtual Meeting).
Contact Person: Dominique Lorang-Leins, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 5108, MSC 7766, Bethesda, MD 20892, 301–326–9721, *Lorangd@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: June 21, 2013.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–15453 Filed 6–27–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2013–0437]

Recreational Boating—Estimating Benefits of Reducing Injuries

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability and request for comments.

SUMMARY: The Coast Guard announces the availability of a report produced for the Coast Guard entitled ''Estimating Benefits of Reducing Recreational Boating Injuries: Alternative Sources of Information on Fatalities, Injuries, and

Property Damages,'' dated September 12, 2011. The Coast Guard requests your comments on the report.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before August 27, 2013 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG–2013–0437 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Mr. Jeff Ludwig, Coast Guard; telephone 202–372–1061, email *Jeffrey.A.Ludwig@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:

Public Participation and Request for Comments

We encourage you to submit comments and related material on the report entitled ''Estimating Benefits of Reducing Recreational Boating Injuries: Alternative Sources of Information on Fatalities, Injuries, and Property Damages,'' dated September 12, 2011. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting comments: If you submit a comment, please include the docket number for this notice (USCG–2013–0437) and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Notices'' and insert ''USCG–2013–0437'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½; by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Viewing the comments and documents:

To view the comments and the IEc Final Report entitled, ''Estimating Benefits of Reducing Recreational Boating Injuries: Alternative Sources of Information on Fatalities, Injuries, and Property Damages,'' dated September 12, 2011, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* and insert ''USCG–2013–0437'' in the ''Search'' Box. Click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act:

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Background and Purpose

We announce the availability of a report produced for the Coast Guard, entitled ''Estimating Benefits of Reducing Recreational Boating Injuries: Alternative Sources of Information on Fatalities, Injuries, and Property Damages,'' and dated September 12, 2011. The report examines data on the consequences of recreational boating accidents to help the Coast Guard determine how our analyses of accident data can be enhanced to improve how we can quantify the benefits of Coast Guard regulations, policies, and programs.

The report reviews available recreational boating accident data (fatalities, nonfatal injuries and property damage) reported in Coast Guard's Boating Accident Report Database (BARD) and compares this information to national databases. The report suggests that available BARD data on fatalities and the value of reductions in fatality risks are reasonably accurate and appropriate for use in benefit-cost analysis. For nonfatal injuries, the available BARD data is more uncertain. The report notes that nonfatal injuries in BARD are underreported, with the degree of underreporting increasing as the severity of the injury decreases. In addition, the report finds that the approaches used for valuation do not directly address boating-related injuries and rely on rough proxies for willingness to pay for risk reductions. Regarding property damages, the report concludes that more research is needed to determine the accuracy of the available estimates.

The Coast Guard seeks comments on the content of the report generally, as well as any additional data or analysis that could further support the report's conclusions, could provide data to the contrary, or that may fill in any gaps identified by the report. Additionally, the Coast Guard seeks comments on, as well as any additional data or analysis, helping to identify property damages related to recreational boating activities.

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

Dated: May 30, 2013.

J.G. Lantz,

Director of Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. 2013–15500 Filed 6–27–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of AmSpec Services, LLC, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of AmSpec Services, LLC, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that AmSpec Services, LLC, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes for the next three years as of September 5, 2012.

DATES: *Effective Dates:* The accreditation and approval of AmSpec Services, LLC, as commercial gauger and laboratory became effective on September 5, 2012. The next triennial inspection date will be scheduled for September 2015.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, AmSpec Services, LLC, 2800–B Loop 197 South, Texas City, TX 77590, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/linkhandler/cgov/trade/basic_trade/labs_scientific_svcs/commercial_gaugers/gaulist.ctt/gaulist.pdf*.

Dated: June 21, 2013.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2013–15483 Filed 6–27–13; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Saybolt, LP, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Saybolt, LP, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Saybolt, LP, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes for the next three years as of February 26, 2013.

DATES: The accreditation and approval of Saybolt, LP, as commercial gauger and laboratory became effective on February 26, 2013. The next triennial inspection date will be scheduled for February 2016.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, Saybolt, LP, Road 127, KM 13.4, Bo. Magas Arriba Guayanilla, P.R. 00656, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories: *http://cbp.gov/linkhandler/cgov/trade/basic_trade/labs_scientific_svcs/commercial_gaugers/gaulist.ctt/gaulist.pdf*.

Dated: June 21, 2013.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2013–15484 Filed 6–27–13; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5683–N–52]

30-Day Notice of Proposed Information Collection: Uniform Physical Standards and Physical Inspection Requirements

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* July 29, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on March 18, 2013.

A. Overview of Information Collection

Title of Information Collection: Uniform Physical Standards and Physical Inspection Requirements.

OMB Approval Number: 2502–0369.

Type of Request: Extension without change of a currently approved collection.

Form Number: HUD–92426.

Description of the need for the information and proposed use: All multifamily properties with Section 8 project based assistance or housing with HUD insured or HUD Held mortgages or Housing that is receiving insurance from HUD must be inspected regularly. Entities responsible for conducting physical inspections of the properties are HUD, the lender or the owner. Owners/Agents which have been cited with Exigent Health and Safety (EH&S) deficiencies must certify that (EH&S) deficiencies noted during the than 30 days past due on a mortgage payment, and to elect to assign a defaulted mortgage to the Department (per regulations at 24 CFR Part 207.256) by the 75th day from the date of default. To avoid an assignment of mortgage to HUD, which costs the Government millions of dollars each year, HUD and the mortgagor may develop a plan for reinstating the loan since HUD uses the information as an early warning mechanism. HUD Field Office and Headquarters staff use the data to (a) monitor mortgagee compliance with HUD's loan servicing procedures and assignments; and (b) potentially avoid mortgage assignments. This information is submitted electronically via the Internet.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 1,159. The number of respondents is 44, the number of responses is 6,959, the frequency of response is 158, and the burden hour per response is 10 minutes.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

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

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: June 25, 2013.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2013–15555 Filed 6–27–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5683–N–51]

30-Day Notice of Proposed Information Collection: Request for Withdrawals From Replacements Reserves/ Residual Receipts Funds

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* July 29, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on February 22, 2013.

A. Overview of Information Collection

Title of Information Collection: Request for Withdrawals from Replacements Reserves/Residual Receipts Funds.

OMB Approval Number: 2502–0555.

Type of Request: Revision of a currently approved collection.

Form Number: HUD–9250.

Description of the need for the information and proposed use: The purpose of this information collection is to ensure that advances from the Reserve for Replacement and/or Residual Receipts Funds are reviewed and authorized by HUD in accordance with regulatory and administrative guidelines.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 20,595. The number of respondents is 9,153, the number of responses is 9,153, the frequency of response is on occasion, and the burden hour per response is 30 minutes.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

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

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: June 25, 2013.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2013–15560 Filed 6–27–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5687–N–29]

60-Day Notice of Proposed Information Collection: Section 202 Supportive Housing for the Elderly Application Submission Requirements

AGENCY: Multifamily Housing Program, Office of Housing Assistance and Grant Administration, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* August 27, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–5564 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Catherine M. Brennan, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Catherine M. Brennan at *Catherine_M_Brennan@hud.gov* or telephone 202–402–3000. 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.

Copies of available documents submitted to OMB may be obtained from Ms. Brennan.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Section 202 Supportive Housing for the Elderly Application Submission Requirements.

OMB Approval Number: 2502–0267.

Type of Request (i.e. new, revision or extension of currently approved collection): Revision of a currently approved collection.

Form Number: HUD–92015–CA, HUD–96010, HUD–92041, SF–424, SF–424-Supplemental, SF–LLL, HUD–2880, HUD–2530, HUD–2991, HUD–2995, HUD–92042, HUD–96010 and, HUD–96011.

Description of the need for the information and proposed use: The collection of this information is necessary to the Department to assist HUD in determining applicant eligibility and ability to develop housing for the elderly within statutory and program criteria. A thorough evaluation of an applicant's submission is necessary to protect the Government's financial interest.

Respondents (i.e. affected public): Private Sector.

Estimated Number of Respondents: 150

Estimated Number of Responses: 2677.

Frequency of Response: On Occasion.

Average Hours per Response: Varies, 30 mins. to 24 hours.

Total Estimated Burdens: 10,568.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

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

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: June 24, 2013.

Laura M. Marin,

Acting General Deputy Assistant Secretary for Housing—Acting General Deputy Federal Housing Commissioner.

[FR Doc. 2013–15554 Filed 6–27–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5687–N–30]

60-Day Notice of Proposed Information Collection: FHA-Application for Insurance of Advance of Mortgage Proceeds

AGENCY: Office of Multifamily Development, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* August 27, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–5564 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-

free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Theodore K. Toon, Director, Office of Multifamily Housing Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Theodore K. Toon, at *Theodore.K.Toon@hud.gov* or telephone 202–402–1142. 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.

Copies of available documents submitted to OMB may be obtained from Mr. Toon.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: FHA-Application for Insurance of Advance of Mortgage Proceeds.

OMB Approval Number: 2502–0097.

Type of Request (i.e. new, revision or extension of currently approved collection): Extension of a currently approved collection.

Form Number: HUD–92403.

Description of the need for the information and proposed use: To indicate to the mortgagee amounts approved for advance and mortgage insurance.

Respondents (i.e. affected public): Business or other for profit.

Estimated Number of Respondents: 526.

Estimated Number of Responses: 13,128.

Frequency of Response: As needed.

Average Hours per Response: 2 hours.

Total Estimated Burdens: 26,256.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

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

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: June 24, 2013.

Laura M. Marin,

Acting General Deputy Assistant Secretary for Housing—Acting General Deputy Federal Housing Commissioner.

[FR Doc. 2013–15553 Filed 6–27–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5681–N–26]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402–3970; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, and suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Ritta, Office of Enterprise Support Programs, Program Support Center, HHS, Room 12–07, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed

instructions or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: AIR FORCE: Mr. Robert Moore, Air Force Real Property Agency, 2261 Hughes Avenue, Suite 156, Lackland AFB, TX 78236–9852, (210) 395–9512; (This is not a toll-free number).

Dated: June 20, 2013.

Mark Johnston,

Deputy Assistant Secretary for Special Needs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 06/28/2013

Suitable/Available Properties

Building

Colorado
Building 304
Cheyenne Mountain AFS
Colorado Springs CO 80914
Landholding Agency: Air Force
Property Number: 18201320040
Status: Underutilized
Comments: Off-site removal only; no future AF need; 960 sf; mailroom; good conditions; secured area, contact AF for more info.

6 Buildings
GJKZ
Fairchild AFB CO 99011
Landholding Agency: Air Force
Property Number: 18201320042
Status: Underutilized
Directions: 1478, 1479, 1480,1482,1483,1484
Comments: Off-site removal only; no future AF need; sf. varies; w/inactive military installation; contact AF for removal/accessibility requirements

Iowa

Building 310
1500 Perimeter Rd.
Sioux City IA 51111
Landholding Agency: Air Force
Property Number: 18201320070
Status: Excess
Comments: 7,575 sf.; munitions maint./admin.; 24+ months vacant; adequate conditions; secured area; escort required each time to access property; contact AF for more info.

Building 114
1649 Nelson Ave.
Ft. Dodge IA 50501
Landholding Agency: Air Force
Property Number: 18201320071
Status: Excess
Comments: 300 sf.; gym; 2+ months vacant; adequate conditions; secured area; escort required each time to access property; contact AF for more info.

Building 314
1500 Perimeter Ave.
Sioux City IA 51111
Landholding Agency: Air Force
Property Number: 18201320074
Status: Excess
Comments: 2,350 sf.; munitions storage/maint.; 24+ months vacant; adequate conditions; secured area; escort required to access property each time; contact AF for more info.

Building 313
1500 Perimeter Rd.
Sioux City IA 51111
Landholding Agency: Air Force
Property Number: 18201320075
Status: Excess
Comments: 2,220 sf.; munitions storage; adequate conditions; secured area; escort required each time to access property; contact AF for more info.

Building 311
1500 Perimeter Rd.
Sioux City IA 51111
Landholding Agency: Air Force
Property Number: 18201320076
Status: Excess
Comments: 4,595 sf.; munitions maint.; 24 months vacant; adequate conditions; secured area; escort required each time to access property; contact AF for more info.

Building 312
1500 Perimeter Rd.
Sioux City IA 51111
Landholding Agency: Air Force
Property Number: 18201320077
Status: Excess
Comments: 1,685 sf.; munitions storage; adequate conditions; secured area; contact AF for more info.

Louisiana

Building 4143
Barksdale AFB
Barksdale LA 71110
Landholding Agency: Air Force
Property Number: 18201320007
Status: Unutilized
Comments: Off-site removal only, 8,719 sf., auto hobby shop; 1 month vacant secured area, contact AF for more info.

Massachusetts

7 Buildings
Westover ARB
Chicopee MA 01022
Landholding Agency: Air Force
Property Number: 18201320062
Status: Underutilized
Directions: 7701, 7704, 7706, 7707, 2426, 2765, 7700
Comments: Off-site removal only; no future AF need; sf. varies; adequate to very poor conditions; contamination; restricted area; escort required; contact AF for more info.

New Jersey

1932 Disaster Prep
1932 Glenn Road
JBMDL NJ 08641
Landholding Agency: Air Force
Property Number: 18201320015
Status: Underutilized
Comments: Off-site removal only; no future AF need; 5,852 sf; storage; poor secured area, contact AF for more info.

1911 SP Operations
1911 East Fourth Street
JBMDL NJ 08641
Landholding Agency: Air Force
Property Number: 18201320016
Status: Underutilized
Comments: Off-site removal only; 6,432 sf., AF has no future need, office/admin., poor conditions; secured area; contact AF for more info.

9719 Latrine
Range 34, 9720 Range Road
JBMDL NJ 08640
Landholding Agency: Air Force
Property Number: 18201320017
Status: Underutilized
Comments: Off-site removal only; AF has no future need; 285 sf., secured area; contact AF for more info.

9721 Compressor Plant #1
Range 34, 9720 Range Road
JBMDL NJ 08640
Landholding Agency: Air Force
Property Number: 18201320018
Status: Underutilized
Comments: Off-site removal only; AF has no future need; fair conditions; secured area; 63 sf., contact AF for more info.

9726 Compressor Plant #2
Range 34, 9720 Range Road
JBMDL NJ 08640
Landholding Agency: Air Force
Property Number: 18201320019
Status: Underutilized
Comments: Off-site removal only; 112 sf., AF has no future need; fair conditions, secured area; contact AF for more info.

6045 MWR Support
6045 Doughboy Loop
JBMDL NJ 08640
Landholding Agency: Air Force
Property Number: 18201320020
Status: Excess
Comments: Off-site removal only; 4,087 sf.; poor conditions, secured area; contact AF for more info.

1902 Comm Facility
1902 Ammo Road
JBMDL NJ 08641
Landholding Agency: Air Force
Property Number: 18201320021
Status: Underutilized
Comments: Off-site removal only; 25,966 sf.; AF has no future need; storage; poor conditions; secured area; contact AF for more into.

6 Building
JB MDL
JB MDL NJ 08640
Landholding Agency: Air Force
Property Number: 18201320048
Status: Underutilized
Directions: 1911, 9919, 9721, 9726, 1902(zip code 08641) 1932(zip code 08641)
Comments: Off-site removal only, no future AF need; SF varies poor conditions; restricted area contact AF for info. re. accessibility removal tips.

Building 6045
Doughboy Loop
JB MDL NJ 08640

Landholding Agency: Air Force
Property Number: 18201320049
Status: Excess
Comments: Off-site removal only; 4,087 sf.; poor conditions; storage/admin.; secured area; contact AF for more info.

Oklahoma

Building 1100
7492 Patrol Road
Tinker AFB OK 73145
Landholding Agency: Air Force
Property Number: 18201320024
Status: Underutilized
Comments: Off-site removal only; no future AF need; 5,471 sf.; maint. facility; fair/poor condition; controlled AF installation, contact AF for more info.

Building 944
4600 Air Depot Blvd.
Tinker AFB OK 73145
Landholding Agency: Air Force
Property Number: 18201320026
Status: Underutilized
Comments: Off-site removal only; no future AF need; 2,400 sf.; warehouse; fair/poor condition; controlled AF installation; contact AF for info. re: accessibility/removal

Puerto Rico

Muniz IAP
200 JoséA (Tony) Santana Ave.
Carolina PR 09879
Landholding Agency: Air Force
Property Number: 18201320069
Status: Unutilized
Comments: 755 sf.; potable water storage & pump house; poor conditions; secured area; escort required to access property; contact AF for more info.

South Carolina

2 Building
Shaw AFB
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18201320054
Status: Unutilized
Directions: 1036, 1826
Comments: Off-site removal only; no AF future need; sf. varies; poor conditions; secured area, contact AF for more info.

4 Buildings
Shaw AFB
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18201320055
Status: Underutilized
Directions: 1027, 1028, 2451, 1034
Comments: Off-site removal only; no AF future need; sf. varies; poor conditions; secured area; contact AF for more info.

Unsuitable Properties

Building

Alabama

Building 27, Heating Facility
323 Kirkpatrick Avenue
Maxwell AFB AL 36112
Landholding Agency: Air Force
Property Number: 18201320013
Status: Unutilized
Comments: Public access denied & no alternative method to gain access w/out compromising nat'l security. w/out compromising nat'l sec.
Reasons: Secured Area

Buildings 1450 & 1451
320 Chennault Circle
Maxwell AFB AL 36112
Landholding Agency: Air Force
Property Number: 18201320008
Status: Underutilized
Comments: Public access denied & no alternative method to gain access w/out compromising nat'l security. method w/out compromising nat'l sec.
Reasons: Secured Area

Building 1411, Visiting Airman
635 McDonnell Street
Maxwell AFB AL 36114
Landholding Agency: Air Force
Property Number: 18201320009
Status: Underutilized
Comments: Public access denied & no alternative method to gain access w/out compromising nat'l security.
Reasons: Secured Area

3 Buildings
Maxwell AFB, Gunter Annex
Maxwell AFB AL 36114
Landholding Agency: Air Force
Property Number: 18201320010
Status: Underutilized
Directions: 1014, 1015, 1016
Comments: Public access denied & no alternative method to gain access w/out compromising nat'l security.
Reasons: Secured Area

Building 26, Theater
325 Kirkpatrick Avenue
Maxwell AFB AL 36112
Landholding Agency: Air Force
Property Number: 18201320011
Status: Unutilized
Comments: Public access denied & no alternative method to gain access w/out compromising nat'l security.
Reasons: Secured Area

Building 122, Military Family
321 Hickory Street
Maxwell AFB AL 36112
Landholding Agency: Air Force
Property Number: 18201320012
Status: Underutilized
Comments: Public access denied & no alternative method to gain access w/out compromising nat'l security.
Reasons: Secured Area

4 Facilities
20 Kelly Street
Maxwell AFB AL 36112
Landholding Agency: Air Force
Property Number: 18201320014
Status: Excess
Directions: 1073, 1074, 1075, 1076
Comments: Public access denied & no alternative method to gain access w/out compromising nat'l security.
Reasons: Secured Area

Alaska

Building 3 & 21
Flaxman Island
Flaxman Island AK
Landholding Agency: Air Force
Property Number: 18201320030
Status: Excess
Comments: Public access denied & no alternative method to gain access w/out compromising nat'l security.
Reasons: Secured Area

10 Buildings
Flaxman Island
Flaxman Island AK
Landholding Agency: Air Force
Property Number: 18201320031
Status: Excess
Directions: 22, 23, 24, 41, 44, 4, 5, 100, 101, 105
Comments: Public access denied & no alternative method to gain access w/out compromising nat'l security.
Reasons: Secured Area

Arizona

2 Buildings
Davis Monahan AFB
Tucson AZ 85707
Landholding Agency: Air Force
Property Number: 18201320027
Status: Underutilized
Directions: 206, 207
Comments: Located on a gated entry controlled military base, Public access denied & no alternative method to gain access w/out compromising nat'l security.
Reasons: Secured Area

3 Building
Davis Monahan AFB
Tucson AZ 85707
Landholding Agency: Air Force
Property Number: 18201320060
Status: Underutilized
Directions: 5315,206,207
Comments: Public access denied & no alternative method to gain access w/out compromising nat'l security.
Reasons: Secured Area

California

West Wing Education Center
144 Wyoming Ave.
Vandenberg CA 93437
Landholding Agency: Air Force
Property Number: 18201320061
Status: Underutilized
Directions: 10 Buildings; 14001–14010
Comments: Public access denied & no alternative method to gain access w/out compromising nat'l security.
Reasons: Secured Area

Colorado

Building 1615
1390 S. Chucara Street
Aurora CO 80011
Landholding Agency: Air Force
Property Number: 18201320028
Status: Unutilized
Comments: Public access denied & no alternative method to gain access w/out compromising nat'l security.
Reasons: Secured Area

Florida

Building 90911
3 Hume Drive
Hurlburt Field FL 32544
Landholding Agency: Air Force
Property Number: 18201320032
Status: Unutilized
Comments: Public access denied & no alternative method to gain access w/out compromising nat'l security.
Reasons: Secured Area

5 Building

MacDill AFB
MacDill AFB FL 33621
Landholding Agency: Air Force
Property Number: 18201320051
Status: Underutilized
Directions: 827, 826, 694, 550, 13
Comments: Not accessible to public; Public access denied & no alternative method to gain access w/out compromising nat'l security.
Reasons: Secured Area

3 Building
MacDill AFB
MacDill AFB FL 33621
Landholding Agency: Air Force
Property Number: 18201320052
Status: Underutilized
Directions: 1107, 65, 60
Comments: Not accessible to public; Public access denied & no alternative method to gain access w/out compromising nat'l security.
Reasons: Secured Area

Building 90716
415 Independence Rd.
Hurlburt Field FL 32544
Landholding Agency: Air Force
Property Number: 18201320063
Status: Underutilized
Comments:
Comments: Public access denied & no alternative method to gain access w/out compromising nat'l security.
Reasons: Secured Area

2 Buildings
MacDill AFB
MacDill AFB FL 33671
Landholding Agency: Air Force
Property Number: 18201320065
Status: Unutilized
Directions: 1153, 1271
Comments: Public access denied & no alternative method to gain access w/out compromising nat'l security.
Reasons: Secured Area

Georgia

Facility 123, XDQU
1401 Robert B. Miller Jr. Drive
Garden City GA 31408
Landholding Agency: Air Force
Property Number: 18201320050
Status: Unutilized
Directions: Savannah Hilton Head Intern 'l Airport
Comments: Public access denied & no alternative method to gain access w/out compromising nat'l security.
Reasons: Secured Area

Hawaii

3 Building
Malama Bay Drive
JBPHH HI 96853
Landholding Agency: Air Force
Property Number: 18201320053
Status: Unutilized
Directions: 3402, 3404, 3400
Comments: Restricted area, Comments: Public access denied & no alternative method to gain access w/out compromising nat'l security.
Reasons: Secured Area

Illinois

2 Buildings
Scott AFB
Scott AFB IL 62225
Landholding Agency: Air Force
Property Number: 18201320029
Status: Unutilized
Directions: 3270, 4900
Comments: High security active duty installation; Public access denied & no alternative method to gain access w/out compromising nat'l security.
Reasons: Secured Area

Louisiana

7 Buildings
Kenny Ave.
Barksdale AFB LA 71110
Landholding Agency: Air Force
Property Number: 18201320005
Status: Underutilized
Directions: 4421, 4423, 4427, 4431, 4432, 4433, 4434
Comments:
Comments: Public access denied & no alternative method to gain access w/out compromising nat'l security.
Reasons: Secured Area

4 Buildings
Kenny Ave.
Barksdale AFB LA 71110
Landholding Agency: Air Force
Property Number: 18201320006
Status: Underutilized
Directions: 4412, 4414, 4133, 4134
Comments:
Comments: Public access denied & no alternative method to gain access w/out compromising nat'l security.
Reasons: Secured Area

Building 4161
460 Billy Mitchell Ave.
Barksdale AFB LA 71110
Landholding Agency: Air Force
Property Number: 18201320034
Status: Underutilized
Comments:
Comments: Public access denied & no alternative method to gain access w/out compromising nat'l security.
Reasons: Secured Area

Building 4401
743 Kenny Ave.
Barksdale AFB LA 71110
Landholding Agency: Air Force
Property Number: 18201320035
Status: Excess
Comments:
Comments: Public access denied & no alternative method to gain access w/out compromising nat'l security.
Reasons: Secured Area

Building 4411
Kenny Ave.
Barksdale AFB LA 71110
Landholding Agency: Air Force
Property Number: 18201320036
Status: Unutilized
Comments:
Comments: Public access denied & no alternative method to gain access w/out compromising nat'l security.
Reasons: Secured Area

Maine

Building 421
Bangor Intern 'l Airport
Bangor ME 04401
Landholding Agency: Air Force
Property Number: 18201320057
Status: Excess
Comments:
Comments: Public access denied & no alternative method to gain access w/out compromising nat'l security.
Reasons: Secured Area

Building 495
104 Glenn Ave.
Bangor ME 04401
Landholding Agency: Air Force
Property Number: 18201320059
Status: Excess
Comments:
Comments: Public access denied & no alternative method to gain access w/out compromising nat'l security.
Reasons: Secured Area

Massachusetts

2 Building
50 Maple Street
Milford MA 01757
Landholding Agency: Air Force
Property Number: 18201320056
Status: Excess
Directions: 100 & 101
Comments:
Comments: Public access denied & no alternative method to gain access w/out compromising nat'l security.
Reasons: Secured Area

Nebraska

Building 113
null
Offutt AFB NE 68113
Landholding Agency: Air Force
Property Number: 18201320039
Status: Excess
Comments:
Comments: Public access denied & no alternative method to gain access w/out compromising nat'l security.
Reasons: Secured Area

5 Building
Offutt AFB
Omaha NE 68113
Landholding Agency: Air Force
Property Number: 18201320041
Status: Excess
Directions:
135,139,308,328,404
Comments:
Comments: Public access denied & no alternative method to gain access w/out compromising nat'l security.
Reasons: Secured Area

New Jersey

Bldg. 118 (Hanger 4)
118 Keller Road
JBMDL NJ 08733
Landholding Agency: Air Force
Property Number: 18201320022
Status: Excess
Comments:
Comments: Public access denied & no alternative method to gain access w/out compromising nat'l security.
Reasons: Secured Area

Hanger 4
118 Keller Road
JB MDL NJ 08733
Landholding Agency: Air Force

Property Number: 18201320047
Status: Excess
Comments: Secured military installation, Comments: Public access denied & no alternative method to gain access w/out compromising nat'l security.
Reasons: Secured Area

New Mexico

4 Buildings
Kirtland AFB
Kirtland AFB NM 87117
Landholding Agency: Air Force
Property Number: 18201320037
Status: Unutilized
Directions: 734, 1912, 37529, 37530
Comments: Within a military controlled under heightened security alter area, public access denied & no alternative method to gain access w/out compromising nat'l security.
Reasons: Secured Area

7 Building
Kirkland AFB
Kirkland AFB NM 87117
Landholding Agency: Air Force
Property Number: 18201320038
Status: Underutilized
Directions: 640, 639, 426, 1035, 1103, 954, 1103
Comments: Within a military controlled under heightened security alter area, public access denied & no alternative method to gain access w/out compromising nat'l security.
Reasons: Secured Area

North Dakota

28 Building
JFSD Grand Forks AFB
Grand Folks ND 58205
Landholding Agency: Air Force
Property Number: 18201320043
Status: Unutilized
Directions: 702,727,728,729,730,731,733, 726,725,724,723,722,720,719,718,717,715, 714,713,712,711,709,708,707, 706,705,703,704
Comments: Not accessible to public; public access denied & no alternative method to gain access w/out compromising nat'l security.
Reasons: Secured Area

Ohio

3 Building
Wright-Patterson AFB
WPAFB OH 45433
Landholding Agency: Air Force
Property Number: 18201320058
Status: Unutilized
Directions: 00841, 34020, 34065
Comments: w/insured gov't installation; public access denied & no alter. w/out compromising nat'l sec.
Reasons: Secured Area

Oregon

Building 188
6801 NE Cornfoot Road
Portland OR 97218
Landholding Agency: Air Force
Property Number: 18201320064
Status: Unutilized
Comments: public access denied & no alternative method to gain access w/out compromising nat'l security.
Reasons: Secured Area

Tennessee

Building 131
320 Post Ave. McGhee Tyson
Louisville TN 37777
Landholding Agency: Air Force
Property Number: 18201320045
Status: Unutilized
Comments: Secured military installation; public access denied & no alternative method to gain access w/out compromising nat'l security.
Reasons: Secured Area

Building 13
320 Post Ave. McGhee Tyson
Louisville TN 37777
Landholding Agency: Air Force
Property Number: 18201320046
Status: Excess
Comments: Secured military installation, public access denied & no alternative method to gain access w/out compromising nat'l security.
Reasons: Secured Area

Texas

Building 530
519 I Ave.
Sheppard AFB TX 76311
Landholding Agency: Air Force
Property Number: 18201320044
Status: Underutilized
Comments: Public access denied & no alternative method to gain access w/out compromising nat'l security.
Reasons: Secured Area

Land

New Jersey

7.0 Acres land for training
Rounds & Lansdowne Roads
JBMDL NJ 08733
Landholding Agency: Air Force
Property Number: 18201320023
Status: Excess
Comments: Public access denied & no alternative method to gain access w/out compromising nat'l security.
Reasons: Secured Area

7.0 Acres
Rounds & Lansdowne Roads
JBMDL NJ 08733
Landholding Agency: Air Force
Property Number: 18201320066
Status: Excess
Comments: Secured military installation; public access denied & no alternative method to gain access w/out compromising nat'l security.
Reasons: Secured Area

[FR Doc. 2013–15158 Filed 6–27–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO300000 L13200000.PP0000 13X]

Renewal of Approved Information Collection

AGENCY: Bureau of Land Management, Interior.

ACTION: 30-day notice and request for comments.

SUMMARY: The Bureau of Land Management (BLM) has submitted an information collection request to the Office of Management and Budget (OMB) to continue the collection of information that enables the BLM to manage Federal coal resources in accordance with applicable statutes. The Office of Management and Budget (OMB) has assigned control number 1004–0073 to this information collection.

DATES: The OMB is required to respond to this information collection request within 60 days but may respond after 30 days. For maximum consideration, written comments should be received on or before July 29, 2013.

ADDRESSES: Please submit comments directly to the Desk Officer for the Department of the Interior (OMB #1004–0073), Office of Management and Budget, Office of Information and Regulatory Affairs, fax 202–395–5806, or by electronic mail at *OIRA_submission@omb.eop.gov*. Please provide a copy of your comments to the BLM. You may do so via mail, fax, or electronic mail.

Mail: U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW., Room 2134LM, Attention: Jean Sonneman, Washington, DC 20240.

Fax: to Jean Sonneman at 202–245–0050.

Electronic mail: Jean_Sonneman@blm.gov.

Please indicate ''Attn: 1004–0073'' regardless of the form of your comments.

FOR FURTHER INFORMATION CONTACT: Bill Radden-Lesage, at 202–912–7116. Persons who use a telecommunication device for the deaf may call the Federal Information Relay Service at 1–800–877–8339, to leave a message for Mr. Radden-Lesage. You may also review the information collection request online at *http://www.reginfo.gov/public/do/PRAMain*.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act (44 U.S.C. 3501–3521) and OMB regulations at 5 CFR part 1320 provide that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond. In order to obtain and renew an OMB control number, Federal agencies are required to seek public comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d) and 1320.12(a)).

As required at 5 CFR 1320.8(d), the BLM published a 60-day notice in the **Federal Register** on January 24, 2013 (78 FR 5194), and the comment period ended March 25, 2013. The BLM received no comments.

The BLM now requests comments on the following subjects:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Please send comments as directed under **ADDRESSES** and **DATES**. Please refer to OMB control number 1004–0073 in your correspondence. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The following information is provided for the information collection:

Title: Coal Management (43 CFR Parts 3400 through 3480).

OMB Control Number: 1004–0073.

Summary: This collection enables the BLM to learn the extent and qualities of Federal coal resources; evaluate the environmental impacts of coal leasing and development; determine the qualifications of prospective lessees to acquire and hold Federal coal leases; and ensure lessee compliance with applicable statutes, regulations, and lease terms and conditions.

Frequency of Collection: On occasion.

Forms:

- Form 3440–1, Application and License to Mine Coal (Free Use); and
- Form 3400–12, Coal Lease.

Description of Respondents:

- Applicants for, and holders of, coal exploration licenses;
- Applicants for, bidders for, and holders of coal leases;
- Applicants for, and holders of licenses to mine coal; and
- Surface owners and State and tribal governments whose lands overlie coal deposits.

Estimated Annual Responses: 2,159.

Estimated Annual Burden Hours: 39,809.

Estimated Annual Non-Burden Cost: $625,883 in document processing fees.

Jean Sonneman,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 2013–15676 Filed 6–27–13; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDT03100.L17110000.DO0000.241A.00]

Notice of Intent To Amend the Management Plan for the Craters of the Moon National Monument and Preserve and To Prepare an Associated Environmental Impact Statement, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) Shoshone Field Office, Shoshone, Idaho, intends to prepare a Land Use Plan amendment (Plan amendment) with an associated Environmental Impact Statement (EIS) for the Craters of the Moon National Monument and Preserve (Craters of the Moon). This notice announces the beginning of the scoping process for the Plan amendment and associated EIS to solicit public comments and identify issues.

DATES: Comments on issues related to management of livestock grazing and conservation measures for sage-grouse in the Craters of the Moon may be submitted in writing until July 29, 2013. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local media, newspapers and the BLM Web site *http://www.blm.gov/id/st/en/prog/blm_special_areas/craters_of_the_moon.html.*

To be included in the analysis, all comments must be received prior to the close of the 30-day scoping period or 30 days after the last public meeting, whichever is later. We will provide additional opportunities for public participation as appropriate.

ADDRESSES: You may submit comments on issues and planning criteria related to the Craters of the Moon Plan amendment by any of the following methods:

- *Web site: http://www.blm.gov/id/st/en/prog/blm_special_areas/craters_of_the_moon.html.*
- *Email: BLM_ID_CRMO@blm.gov.*
- *Fax:* 208–732–7317.
- *Mail:* 400 West F Street, Shoshone, ID 83352.

Documents pertinent to this proposal may be examined at the Shoshone Field Office or online at *http://www.blm.gov/id/st/en/prog/planning.html.*

FOR FURTHER INFORMATION CONTACT: Holly Hampton, Monument Manager, telephone 208–732–7200; address 400 West F Street, Shoshone, ID 83352; email *BLM_ID_CRMO@blm.gov.* Contact Ms. Hampton if you wish to have your name added to our mailing list. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM Shoshone Field Office, Shoshone, Idaho, intends to prepare a Plan amendment with an associated EIS for the Craters of the Moon Management Plan. This notice announces the beginning of the scoping process and seeks public input on issues and planning criteria. The planning area is located in south central Idaho and encompasses approximately 750,000 acres of BLM and National Park Service (NPS) managed lands in the Craters of the Moon. The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the planning process.

In 2008, Western Watersheds Project (WWP) filed a complaint in the United States District Court for the District of Idaho (Court) alleging the Secretary of the Interior and the BLM violated NEPA and FLPMA when the BLM issued Records of Decision on 16 Resource Management Plans (RMP) between 2004 and 2008, including the Craters of the Moon Management Plan. After briefing and oral argument, the Court found that although livestock grazing was deemed by the agency to be a major contributing factor to the decline of sage-grouse habitat in the Craters of the Moon, the Management Plan/EIS failed to adequately address the best science and the agency's own policies designed to

protect that habitat. Moreover, the Management Plan/EIS failed to discuss alternatives to the status quo regarding livestock grazing in Craters of the Moon. Specifically, the Court found that the EIS supporting the Management Plan violated NEPA and FLPMA by failing to: (1) Consider a no-grazing alternative; (2) Consider the recommendations for sage-grouse conservation contained within a 2004 Nature Conservancy Report and the 2004 Western Association of Fish and Wildlife Agencies Conservation Assessment; (3) Fully discuss the agency's Special Status Species Policy and National Sage Grouse Habitat Conservation Strategy; and (4) Consider any alternative that would have reduced grazing levels. In November 2012, the Court remanded all issues concerning the Craters of the Moon Management Plan to the BLM, without vacatur, for the purpose of revising the Management Plan. Accordingly, through the amendment process announced in this Notice, the BLM will analyze a no-grazing alternative and reduced grazing alternative(s) for BLM-managed lands within the Craters of the Moon.

The BLM's ongoing Idaho and Southwestern Montana Sub-Regional EIS/RMP amendment process (Sub-Regional EIS/RMP amendment) will address measures for sage-grouse conservation and is expected to result in a plan amendment to the existing Craters of the Moon Management Plan. The BLM anticipates that the Sub-Regional EIS/RMP amendment effort will be completed in the fall of 2014. The amendment announced in this Notice is expected to primarily address issues related to management of livestock grazing in the Craters of the Moon planning area. However, the BLM may also address additional issues relating to the conservation measures for sage-grouse identified in the U.S. District Court's Orders that are not addressed in the Sub-Regional EIS/RMP amendment process.

The BLM has identified the following preliminary issues: The need to comply with the Idaho District Court's September 28, 2011, and November 20, 2012, Orders by analyzing Land Use Plan-level grazing allocations, including a no grazing alternative and a reduced grazing alternative in Craters of the Moon; and the need to develop conservation measures for sage-grouse in Craters of the Moon. Preliminary planning criteria include: Compliance with FLPMA, NEPA, and all other relevant Federal law, Executive orders, and management policies of the BLM; valid existing rights will be recognized; and Native American Tribal consultations will be conducted in accordance with policy and tribal concerns will be given due consideration.

You may submit comments to the BLM on issues and planning criteria for the plan amendment at any public scoping meeting, or you may submit them using one of the methods listed in the **ADDRESSES** section above. The public is encouraged to help identify concerns specifically related to livestock grazing and sage-grouse conservation that should be addressed during the plan amendment process. To be most helpful, you should submit comments by the close of the 30-day scoping period or within 30 days after the last public meeting, whichever is later.

The BLM will use the NEPA public participation requirements to assist the agency in satisfying the public involvement requirements under Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470(f)) pursuant to 36 CFR 800.2(d)(3). The information about historic and cultural resources within the area potentially affected by the proposed action will assist the BLM in identifying and evaluating impacts to such resources in the context of both NEPA and Section 106 of the NHPA.

The BLM will consult with Indian tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Federal, State, and local agencies, along with tribes and other stakeholders that may be interested in or affected by the proposed action that the BLM is evaluating, are invited to participate in the scoping process.

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. The BLM will evaluate all submissions and identify issues to be addressed in the Plan amendment.

The BLM will use an interdisciplinary approach to develop the Plan amendment. Specialists with expertise in the following disciplines will be involved in the planning process: rangeland management, outdoor recreation, archaeology, wildlife, botany, fire ecology, and soils.

Authority: 40 CFR 1501.7 and 43 CFR 1610.5–5(b).

Holly Hampton,

Monument Manager.

[FR Doc. 2013–15512 Filed 6–27–13; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWYP0700.L16100000. DP0000.LXSS041K0000]

Notice of Availability of the Draft Resource Management Plan and Associated Environmental Impact Statement for the Buffalo Resource Management Plan Revision, Buffalo Field Office, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA) of 1969, as amended, and the Federal Land Policy and Management Act (FLPMA) of 1976, as amended, the Bureau of Land Management (BLM) has prepared a Draft Resource Management Plan (RMP) and Draft Environmental Impact Statement (EIS) for the Buffalo Field Office and by this notice is announcing the opening of a 90-day comment period.

DATES: To ensure that comments will be considered, the BLM must receive written comments on the Draft RMP/EIS within 90 days following the date the Environmental Protection Agency publishes its Notice of Availability (NOA) of the Draft RMP/EIS in the **Federal Register.** The BLM will announce future meetings or hearings and any other public participation activities at least 15 days in advance through public notices, media releases, and/or the project Web site: *http://www.blm.gov/wy/st/en/programs/Planning/rmps/buffalo.html.*

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

- *Web site: http://www.blm.gov/wy/st/en/programs/Planning/rmps/buffalo.html.*
- *Email: BRMP_Rev_WYMail@blm.gov;*
- *Fax:* (307) 684–1122;
- *Mail:* Buffalo RMP, BLM Buffalo Field Office, 1425 Fort Street, Buffalo, WY 82834; or
- By personal delivery to the Buffalo Field Office or at a BLM-hosted public meeting.

Copies of the Draft RMP/EIS are available in the Buffalo Field Office at

the above address and at the following locations:

• Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, WY 82003

• Bureau of Land Management, High Plains District Office, 2987 Prospector Drive, Casper, WY 82604

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.

FOR FURTHER INFORMATION CONTACT: Thomas Bills, Buffalo RMP Team Leader, BLM Buffalo Field Office, 1425 Fort Street, Buffalo, WY 82834; telephone 307–684–1133; or email *BRMP_Rev_WYMail@blm.gov.*

SUPPLEMENTARY INFORMATION: The planning area includes lands within the BLM Buffalo Field Office's administrative boundaries, including all of Campbell, Johnson, and Sheridan counties in Wyoming. The planning area includes all lands, regardless of jurisdiction, totaling approximately 7.35 million acres; however, the BLM will only make decisions on lands that fall under the BLM's jurisdiction. BLM-administered surface, totaling approximately 782,000 acres, and Federal mineral estate, totaling approximately 4.8 million acres, make up the decision area. BLM issued a Notice of Intent (NOI) on November 14, 2008, for the Buffalo RMP Revision Project and associated EIS, which initiated public scoping. Public meetings were held December 1–5, 2008. Approximately 130 members of the public attended the public scoping meetings held in Wright, Buffalo, Gillette, Sheridan, and Kaycee. The revised RMP will replace the 1985 Buffalo RMP as amended. The Draft RMP/EIS includes a series of management actions, within four management alternatives, designed to address management challenges and issues raised during scoping. These include, but are not limited to, energy development (coal, oil and gas, renewable energy, and uranium), wildlife habitat management including that of the greater sage-grouse, livestock grazing, air quality, lands with wilderness characteristics, suitability for wild and scenic river designation, special management areas including Areas of Critical Environmental Concern (ACEC), and travel management. The four alternatives are:

A. *Alternative A:* (No Action): Continues existing management;

B. *Alternative B:* Emphasizes conservation of natural and cultural resources while providing for compatible development and use;

C. *Alternative C:* Emphasizes resource development and use while protecting natural and cultural resources; and

D. *Alternative D (Preferred):* Provides development opportunities while protecting sensitive resources.

The preferred alternative has been identified as described in 40 CFR 1502.14(e). However, identification of a preferred alternative does not represent the final agency decision. The proposed RMP and final EIS will reflect changes or adjustments based on information received during public comment, new information, or changes in BLM policies or priorities. The proposed RMP may include portions of alternatives analyzed in the draft RMP/EIS. For this reason, the BLM encourages comments on all alternatives and management actions described in the Draft RMP/EIS.

In accordance with 43 CFR 1610.7–2(b) and BLM Manual 1613, this NOA announces a concurrent public comment period on proposed Areas of Critical Environmental Concern (ACECs). There are no designated ACECs in the existing BFO land use plan (Alternative A) and Alternative C does not propose designating any ACECs. Alternative B proposes eight ACECs and Alternative D proposes three ACECs. The management restrictions which would occur if areas proposed for designation were formally designated are different in alternatives B and D. In Alternative B, management for all ACEC's would prohibit all surface-disturbing activities not compatible with the area's values, including closing to all forms of solid and fluid mineral leasing and development; recommending withdrawal of all ACECs from locatable mineral entry; excluding ROWs; and either closing or limiting motorized vehicles to designated roads and trails. ACECs would be managed as visual resource management (VRM) class II, retention, under Alternative B.

Alternative D proposes ACEC specific management for the values of concern. The values of concern and the acres that would be designated under Alternatives B and D are as follows:

• Burnt Hollow, (Alternative B 17,208 acres, Alternative D not designated) Values: Visual resources, geologic features, and fragile watersheds.

• Cantontment Reno, (Alternative B 523 acres, Alternative D not designated) Value: Historic resources.

• Dry Creek Petrified Tree, (Alternative B 2,567 acres, Alternative D not designated) Value: Geologic features.

• Fortification Creek, (Alternatives B & D 32,602 acres) Values: Visual resources, wildlife resources, and fragile watersheds. Alternative D management would prohibit all surface-disturbing activities not compatible with the area's values; close the area to all forms of mineral activity including solid and fluid mineral leasing; recommend withdrawal from locatable mineral entry; exclude Rights of Ways (ROWs); and limit motorized vehicles to designated roads and trails.

• Hole-in-the-Wall, (Alternative B 11,952 acres, Alternative D not designated) Values: Visual and cultural resources.

• Pumpkin Buttes, (Alternatives B & D 1,733 acres) Value: Cultural resources. Alternative D management would prohibit surface-disturbing activities not compatible with the area's values including a No Surface Occupancy stipulation for new fluid mineral leases; recommend withdrawal from locatable mineral entry; exclude ROWs; and close the area to motorized vehicles.

• Sagebrush Ecosystem, (Alternative B 467,897 acres, Alternative D not designated) Value: Sagebrush ecosystems with dependent rare and sensitive species.

• Welch Ranch, (Alternatives B 1,748 acres, Alternative D 1,116 acres) Values: Visual resources, wildlife resources, and presence of a natural hazard. Alternative D management would prohibit all surface-disturbing activities not compatible with the area's values including closing the area to all forms of mineral leasing and development including solid minerals; recommend withdrawal from locatable mineral entry and exclude ROWs. Travel would be limited to administrative use on designated routes.

You may submit comments in writing to the BLM at any public meeting, or you may submit them to the BLM using one of the methods listed in the **ADDRESSES** section above. In order to reduce the use of paper and control costs, the BLM strongly encourages the public to submit comments electronically at the project Web site or via email. Only comments submitted using the methods described in the **ADDRESSES** section above will be accepted. Comments submitted must include the commenter's name and street address. Whenever possible, please include reference to either the page or section in the Draft RMP/EIS to which the comment applies. 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.

All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, are available for public inspection in their entirety.

Authority: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2.

Donald A. Simpson,

State Director, Wyoming.

[FR Doc. 2013–15381 Filed 6–27–13; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDI00000.L54400000.EU0000. LVCLD09D0630 (IDI–35073)]

Public Land Order No. 7816; Partial Revocation of the Executive Order dated April 17, 1926; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes a withdrawal created by an Executive Order insofar as it affects 1,037.66 acres of public lands withdrawn from settlement, sale, location, or entry under the public land laws, including location for non-metaliferous minerals under the United States mining laws, for protection of springs and waterholes and designated as Public Water Reserve No. 107. This order also opens the lands to conveyance out of Federal ownership.

DATES: Effective Date: June 28, 2013.

FOR FURTHER INFORMATION CONTACT: Laura Underhill, BLM, Idaho State Office, 208–373–3866 or Jan Parmenter, BLM, Idaho Falls District Office, 208–524–7562 or John Sullivan, BLM Boise District Office, 208–384–3338. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to reach any of the contacts stated above. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with either of the above individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management has determined that portions of the withdrawal created by an Executive Order dated April 17, 1926, which established Public Water Reserve No. 107, encumber several parcels of land that are isolated from larger tracks of Federal land making management difficult, or are part of an Idaho State land exchange. The partial revocation of the withdrawal is needed to facilitate the land conveyances out of Federal ownership.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, (43 U.S.C. 1714), it is ordered as follows:

1. The withdrawal created by the Executive Order dated April 17, 1926, which established Public Water Reserve No. 107, is hereby revoked insofar as it affects the following described lands:

Boise Meridian

T. 6 S., R. 3 W.,
  Sec. 27, NE¼SE¼.
T. 7 S., R. 3 W.,
  Sec. 1, SE¼SW¼;
  Sec. 2, lot 4;
  Sec. 10, SW¼SW¼ and NW¼SE¼;
  Sec. 11, NW¼NE¼ and NE¼NW¼.
T. 9 S., R. 2 W.,
  Sec. 20, SE¼NE¼, NE¼SW¼, and SE¼SE¼;
  Sec. 21, NE¼NW¼;
  Sec. 28, SW¼NW¼;
  Sec. 34, NW¼SE¼.
T. 9 S., R. 3 W.,
  Sec. 11, NE¼SE¼, NW¼SE¼, and SE¼SE¼.
T. 9 S., R. 4 W.,
  Sec. 6, lot 7 and 12, and SE¼SW¼, NE¼SE¼, NW¼SE¼, and SW¼SE¼;
  Sec. 7, lot 1 and NW¼NE¼.
T. 9 S., R. 44 E.,
  Sec. 7, SE¼NE¼;
  Sec. 17, SW¼NE¼.
  The areas described aggregate 1,037.66 acres in Caribou and Owyhee Counties.

2. At 9 a.m., on July 29, 2013, the lands described in Paragraph 1 will be open to conveyance pursuant to the land disposal and conveyance authorities of the Federal Land Policy and Management Act of 1976, as amended, (43 U.S.C. 1713), subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

Dated: May 30, 2013.

Rhea S. Suh,

Assistant Secretary—Policy, Management and Budget.

[FR Doc. 2013–15511 Filed 6–27–13; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

Privacy Act of 1974; System of Records

AGENCY: Foreign Claims Settlement Commission of the United States, DOJ.

ACTION: Notice of a New System of Records.

SUMMARY: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the Foreign Claims Settlement Commission (Commission), Department of Justice, proposes to establish a new system of records to enable the Commission to carry out its statutory responsibility to receive, examine, adjudicate and render final decisions with respect to claims for compensation of U.S. nationals referred to the Commission by the Department of State under 22 U.S.C. 1623(a)(1)(C) (''Claims Referred by the Department of State''). The Claims Referred by the Department of State System will include documentation provided by the claimants as well as background material that will assist the Commission in the processing of their claims. The system will also include the final decision of the Commission regarding the claim.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment. Accordingly, please submit any comments by July 29, 2013. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to conclude its review of the system.

ADDRESSES: The public, OMB, and Congress are invited to submit any comments to the Foreign Claims Settlement Commission of the United States, 600 E Street NW., Suite 6002, Washington, DC 20579.

FOR FURTHER INFORMATION CONTACT: The Administrative Office, Foreign Claims Settlement Commission, U.S. Department of Justice, 600 E Street NW., Suite 6002, Washington, DC 20579, or by telephone at (202) 616–6975.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to

OMB and the Congress on the new system of records.

Brian M. Simkin,

Chief Counsel.

JUSTICE/FCSC–31

SYSTEM NAME:

Claims Referred by the Department of State.

SECURITY CLASSIFICATION:

Unclassified

SYSTEM LOCATION:

Offices of the Foreign Claims Settlement Commission, 600 E Street NW., Suite 6002, Washington, DC 20579.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who file claims against a foreign government that are included within a category claims referred by the Department of State to the Foreign Claims Settlement Commission pursuant to section 4(a)(1)(C) of the International Claims Settlement Act of 1949, as amended, 22 U.S.C. 1623(a)(1)(C).

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim information, including name and address of claimant and representative, if any; date and place of birth or naturalization; nature of claim; description of loss or injury including medical records; and other evidence establishing entitlement to compensation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority to establish and maintain this system is contained in 5 U.S.C. 301 and 44 U.S.C. 3101, which authorize the Chairman of the Commission to create and maintain federal records of agency activities, and is further described in 22 U.S.C. 1622e, which vests all non-adjudicatory functions, powers and duties in the Chairman of the Commission.

PURPOSE:

To enable the Commission to carry out its statutory responsibility to determine the validity and amount of certain claims of U.S. nationals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information contained in this system of records will be disclosed by the Commission under the following circumstances:

a. To the Department of State and the Department of the Treasury in connection with the negotiation, adjudication, settlement and payment of claims;

b. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the federal government, when necessary to accomplish a Commission function related to this system of records;

c. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record;

d. Where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate federal, state, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law;

e. In an appropriate proceeding before the Commission, or before a court, grand jury, or administrative or adjudicative body, when the Department of Justice and/or the Commission determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding;

f. To a former employee of the Commission for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Commission regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Commission requires information and/or consultation from the former employee regarding a matter within that person's former area of responsibility;

g. To the National Archives and Records Administration for purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

h. To appropriate agencies, entities, and persons when (1) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Commission has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Commission or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

i. To such recipients and under such circumstances and procedures as are mandated by federal statute or treaty.

STORAGE:

Paper records maintained in file folders at the Commission's office and electronic records located on the Commission's Server.

RETRIEVABILITY:

Information from this system of records will be retrieved by claim number and/or decision number. An alphabetical index may be used by the Commission for identification of a claim by claimants' name.

SAFEGUARDS:

Paper records are under security safeguards at the Commission's office. The electronic records are safeguarded by the DOJ JCON security procedures. Access to the Commission's data requires a password and is limited to Commission employees and contractors with appropriate security clearances.

RETENTION AND DISPOSAL:

Records are maintained under 5 U.S.C. 301. Disposal of records will be in accordance with the determination by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Foreign Claims Settlement Commission, 600 E Street NW., Suite 6002, Washington, DC 20579. Telephone: (202) 616–6975. Fax: (202) 616–6993.

NOTIFICATION PROCEDURE:

The Administrative Officer will inform any person or other agency about any correction or notation of dispute made in accordance with title 45 CFR 503.7 of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

RECORD ACCESS PROCEDURE:

(a) Upon request in person or by mail, any individual will be informed whether or not a system of records maintained by the Commission contains

a record or information pertaining to that individual. (b) Any individual requesting access to a record or information on himself or herself must appear in person at the offices of the Foreign Claims Settlement Commission, 600 E Street NW., Room 6002, Washington, DC, between the hours of 9 a.m. and 5:00 p.m., Monday through Friday, and (1) Provide information sufficient to identify the record, e.g., the individual's own name, claim and decision number, date and place of birth, etc.; (2) Provide identification sufficient to verify the individual's identity, e.g., driver's license, Medicare card, or other government issued identification; and (3) Any individual requesting access to records or information pertaining to himself or herself may be accompanied by a person of the individual's own choosing while reviewing the records or information. If an individual elects to be so accompanied, advance notification of the election will be required along with a written statement authorizing disclosure and discussion of the record in the presence of the accompanying person at any time, including the time access is granted. (c) Any individual making a request for access to records or information pertaining to himself or herself by mail must address the request to the Privacy Officer, Foreign Claims Settlement Commission, 600 E Street NW., Room 6002, Washington, DC 20579, and must provide information acceptable to the Commission to verify the individual's identity. (d) Responses to requests under this section normally will be made within ten (10) days of receipt (excluding Saturdays, Sundays, and legal holidays). If it is not possible to respond to requests within that period, an acknowledgment will be sent to the individual within ten (10) days of receipt of the request (excluding Saturdays, Sundays, and legal holidays).

CONTESTING RECORD PROCEDURES:

(a) Any individual may request amendment of a record pertaining to himself or herself according to the procedure in paragraph (b) of this section, except in the case of records described under paragraph (d) of this section. (b) After inspection by an individual of a record pertaining to himself or herself, the individual may file a written request, presented in person or by mail, with the Administrative Officer, for an amendment to a record. The request must specify the particular portions of the record to be amended, the desired amendments and the reasons therefor. (c) Not later than ten (10) days (excluding Saturdays, Sundays, and legal holidays) after the receipt of a request made in accordance with this section to amend a record in whole or in part, the Administrative Officer will: (1) Make any correction of any portion of the record which the individual believes is not accurate, relevant, timely or complete and thereafter inform the individual of such correction; or (2) Inform the individual, by certified mail return receipt requested, of the refusal to amend the record, setting forth the reasons therefor, and notify the individual of the right to appeal that determination as provided under 45 CFR 503.8. (d) The provisions for amending records do not apply to evidence presented in the course of Commission proceedings in the adjudication of claims, nor do they permit collateral attack upon what has already been subject to final agency action in the adjudication of claims in programs previously completed by the Commission pursuant to statutory time limitations.

RECORD SOURCE CATEGORIES:

Claimant on whom the record is maintained.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2013–15478 Filed 6–27–13; 8:45 am]

BILLING CODE 4410–BA–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Claim for Compensation by a Dependent Information Reports

AGENCY: Office of the Secretary, DOL.

ACTION: Notice.

SUMMARY: On July 1, 2013, the Department of Labor (DOL) will submit the Office of Workers' Compensation Programs (OWCP) sponsored information collection request (ICR) revision titled, ''Claim for Compensation by a Dependent Information Reports,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995.

DATES: Submit comments on or before July 31, 2013.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201302-1240-001* (this link will only become active on July 2, 2013) or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OWCP, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: 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*.

SUPPLEMENTARY INFORMATION: *Authority:* 44 U.S.C. 3507(a)(1)(D).

This ICR covers forms a dependent of a deceased Federal employee, whose death is work-related, uses to prove continued eligibility for benefits, to show entitlement to remaining compensation payments of the deceased employee, and to show dependency. The collection of this information is required by 5 U.S.C. 8110 and regulations 20 CFR 10.7, 10.105, 10.410, 10.413, 10.417, 10.535, and 10.537. Specifically, this ICR covers Forms CA–5, CA–5b, CA–1031, and CA–1074, as well as related form letters used to obtain follow-up information commonly needed to clarify an initial benefit claim.

This ICR seeks to revise Forms CA–5 and CA–5b, in order to collect information that will allow for the direct deposit of benefit payments into a beneficiary's account with a financial institution. In addition, the OWCP is adding information about how a respondent with a disability may obtain further assistance in responding to the forms and letters covered by this ICR. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 12, 2013 (78 FR 15742).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not

display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1240–0013. The current approval is scheduled to expire on July 31, 2013; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements would only take effect upon OMB approval.

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section by July 31, 2013. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1240–0013. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–OWCP.

Title of Collection: Claim for Compensation by a Dependent Information Reports.

OMB Control Number: 1240–0013.

Affected Public: Individuals or households.

Total Estimated Number of Respondents: 2,920.

Total Estimated Number of Responses: 2,920.

Total Estimated Annual Burden Hours: 1,571.

Total Estimated Annual Other Costs Burden: $1,431.

Dated: June 24, 2013.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2013–15540 Filed 6–27–13; 8:45 am]

BILLING CODE 4510–CH–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Work Application and Job Order Recordkeeping

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, ''Work Application and Job Order Recordkeeping,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

DATES: Submit comments on or before July 29, 2013.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201212–1205–007* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, 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 OMB approval under the PRA for the information collections associated with the regulatory requirement at 20 CFR 652.8(d)(5) for States to maintain work applications and job orders for one year. A work application is used in an American Job Center for individuals seeking assistance in finding employment or employability development services. A work application is used to collect information such as an applicant's identification, qualifications, work experience, and desired pay. A work application also includes services provided to the applicant, such as job development, and referral to supportive service. A job order is used in an American Job Center to obtain information on employer job vacancies. Information in a job order includes employer identification, job requirements, pay information, as well as identification of persons referred, hired, or refused. The information is collected at the employer's request in order to publicize job vacancies. American Job Centers collect the information and post it on electronic job banks. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on February 6, 2013 (78 FR 8584).

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 1205–0001.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on June 30, 2013. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. It should also be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review.

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 1205–0001. 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–ETA.

Title of Collection: Work Application and Job Order Recordkeeping.

OMB Control Number: 1205–0001.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 52.

Total Estimated Number of Responses: 52.

Total Estimated Annual Burden Hours: 416.

Total Estimated Annual Other Costs Burden: $0.

Dated: June 20, 2013.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2013–15522 Filed 6–27–13; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–13–0031]

Office of Presidential Libraries; Proposed Disposal of George H.W. Bush and Clinton Administration Electronic Backup Tapes

AGENCY: National Archives and Records Administration (NARA).

ACTION: Presidential Records Act Notice of Proposed Disposal of George H.W. Bush and Clinton Administration Disaster Recovery Backup Tapes. The Electronic Mail Records on These Tapes Have Been Separately Restored and Permanently Preserved at NARA; Request for Public Comment.

SUMMARY: The National Archives and Records Administration (NARA) has identified a collection of disaster recovery backup tapes from the George H.W. Bush and Clinton Administrations, as appropriate for disposal under the provisions of 44 U.S.C. 2203(f)(3). This notice describes our reasons for determining that further retention of these disaster recovery backup tapes is not warranted, given that the Presidential and Federal electronic mail with attachments, pager and calendar records residing on these backup tapes were previously restored, and that NARA will permanently retain these Presidential and Federal records on a different set of electronic media. Because the backup tapes proposed for disposal were made for disaster recovery purposes, NARA is following a procedure similar to that in GRS 24 for Federal record backup tapes.

This notice does not constitute a final agency action, as described in 44 U.S.C. 2203(f)(3), and no Presidential records will be disposed of following this notice. NARA will publish a second notice only after it has reviewed any comments received during this 45-day notice period. The second, 60-day notice will constitute a final agency action, in the event that NARA proceeds with disposal.

DATES: Comments are due by August 12, 2013.

ADDRESSES: Comments regarding the proposed disposal of these Presidential records must be sent in writing to Susan Donius, National Archives and Records Administration, Suite 2200, 8601 Adelphi Road, College Park, Maryland 20740–6001; or by fax to 301–837–3199; or by email to *beth.fidler@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Susan Donius at 301–837–3250.

SUPPLEMENTARY INFORMATION: NARA proposes the disposal of 22,907 disaster recovery backup tapes created during the George H.W. Bush and Clinton Administrations. The backup tapes, consisting of what are known as ''3480 cartridges,'' were originally created from November 6, 1992 through July 15, 1994 by staff in the Executive Office of the President (EOP) during the George H.W. Bush and Clinton Administrations, with duplicative preservation copy sets created subsequently. The backup tapes covered by this notice were originally preserved under Court orders entered in the case of *Armstrong v. Executive Office of the President,* Civ. No. 89–0142 (D.D.C.). As set out below, email with attachments, calendars, pager notes, and certain other ''email enabled'' applications residing on the backup tapes, subsequently were restored to other electronic media as part of a Tape Restoration Project carried out in 1996 (''1996 Tape Restoration Project'') by staff in EOP's Office of Administration. NARA will continue to retain these restored Presidential and Federal records in an electronic format as part of the permanent record collections of the George H.W. Bush and Clinton Administrations.

During the George H.W. Bush and Clinton Administrations, staff in EOP's Office of Administration maintained what was known as the ''VAX All-in-1'' system for email communications. The email system was operated on behalf of numerous components of the EOP, including the Office of the President, the Office of the Vice President, the Office of Management and Budget, the Office of National Drug Control Policy, the Office of Science and Technology Policy, and the Council of Environmental Quality, One or more other offices also had users with email accounts on the system (e.g., staff in the National Security Council could send unclassified email communications to individuals on the All-in-1 system).

The software configuration for the VAX Cluster consisted of two main elements: The VAX Operating System, and the Office of Administration System for Information Services (OASIS) All-in-1 system (also known as the ''All-in-1 software suite'' or ''software package''), a proprietary product made by the Digital Equipment Corporation (DEC) and further customized by OA staff. The DEC All-in-1 commercial ''off the shelf'' software package allowed for the creation of email and calendars. In addition to these standard features, EOP staff developed additional customized applications for All-in-1 users.

The tape restoration project carried out by EOP staff consisted of the recovery of email messages and calendars residing on the backups, as well as the recovery of the following additional ''email enabled'' and other applications'' contained within the All-in-1 software suite: (a) Directory Change Requests (changes to profiles in the EOP on-line phone directory); (b) WAVES (Workers and Visitor Entry System) requests; (c) Suggestion Box (routing suggestions from staff to EOP Management); (d) Phone Messages (advising users of telephone calls received); and (e) Pager requests (routing electronic messages to pager devices). As stated above, NARA will retain these records on a permanent basis.

Backup tapes made for emergency purposes are not record keeping media; rather, their sole purpose is to be available for restoration in the event that electronic records are corrupted or destroyed. Given that these backup tapes have already served that purpose and NARA has no need to conduct any further restoration from them, they no longer need to be preserved. In the normal course, the disaster recovery backup tapes at issue in this notice

would have been subject to recycling or otherwise disposed of under then-existing authorities, including under General Records Schedule 20, Item 8 (1982), and are otherwise equivalent to backup tapes currently disposable under General Records Schedule 24, Item 4 (covering ''system backup tapes'' created in Information Technology Operations).

As of November 1995, subsequent disaster recovery backup tapes created for the same VAX/All-in-1 System operated by the Office of Administration of EOP were specifically designated as temporary records with a 90 day maximum retention period for weekly backups. See records schedule approved by Archivist John Carlin, dated November 1995, re ''OASIS All-in-1 Applications and other VAX Cluster Applications, Job. No. N1–429–95–2, Item 8), These authorities are consistent with the widely accepted principle that records appropriate for preservation should be maintained in recordkeeping systems rather than on disaster recovery backups. *Cf.* 36 CFR 1236.20(c) (''System and file backup processes and media do not provide the appropriate recordkeeping functionalities and must not be used as the agency electronic recordkeeping system.'').

The sub-collections of backup tapes that have been retained and are now covered by this disposition notice consist of: (a) 2,835 ''3480 cartridges'' created by EOP staff between November 6, 1992 through January 20, 1993, during the George H.W. Bush Administration; (b) a preservation copy set of 2,835 media created by NARA staff in 1993 on receipt of the originals; (c) a second generation preservation copy set of 2,835 media created by NARA staff in 2003; (d) 2,156 ''daily'' and 6,514 ''weekly'' backups created by EOP staff between January 20, 1993 and July 15, 1994 during the Clinton Administration; and (e) a preservation copy set of 5,732 backups of Clinton daily and weekly backups created by EOP staff in 1996 and used for the 1996 Tape Restoration Project. A Stipulation and Order entered in the *Armstrong* case on January 27, 1994, allows for disposition of the preserved backups provided that NARA issues this form of public notice in the **Federal Register**.

Additional information. The above-referenced November 1995 records schedule for records created or received on the VAX/All-in-1 system covered additional software applications that generated user-created data during some or all of the time period between November 1992 and July 1994, but that were not made subject to the Tape Restoration Project as either Presidential or Federal records. For the reasons stated above, NARA does not believe that additional recovery actions are warranted for the purpose of obtaining additional user-created data on the preserved backup tapes.

The additional temporary record and non-record applications on the VAX/All-in-1 system consisted of: (a) Indices (lists maintained on the system of the contents of electronic folders of OASIS All-in-1 users); (b) Distribution Lists (mailing lists created by users when sending email messages); (c) EOP Directory (names of individuals, with room and telephone numbers); (d) User Directory (provided users with short-cut to enter names of intended recipients); (e) Bulletin Board (notification of scheduled events, such as blood drives, classroom training and insurance open seasons); (f) User Set-up (passwords, locations, work hours, calendar and date formats, and log-in/log-out data); (g) System Distribution Lists (mailing lists created by system managers); (h) DB/2 Services Request Form (database administration requests); (i) Security Files (system generated data to monitor requests to access); (j) Supply Order Form; (k) Training Schedules; (l) Weekly Usage Reports; (m) Calculator; (n) Information Management (news and weather displays); (o) Lock Keyboard; (p) Personal Rolodex; (q) Training Routines and HELP files; (r) World Wide Time; (s) Personnel Vacancy Search Request (government wide vacancies); (t) Presidential Remarks On-Line (Library application providing access to public statements and speeches).

As stated, copies of Presidential and Federal email with attachments, calendars, pager notes, and related records recovered as part of the 1996 Tape Restoration Project are being retained by NARA in separate electronic databases covering the George H.W. Bush and Clinton Administrations, respectively. However, NARA has no further need or use for the remaining original disaster recovery backup tapes.

Dated: June 25, 2013.

Susan K. Donius,

Director, Office of Presidential Libraries.

[FR Doc. 2013–15564 Filed 6–27–13; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research, Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Site visit review of the Materials Research Science and Engineering Center (MRSEC) at the University of Utah by the Division of Materials Research (DMR) #1203.

Dates & Times: July 9, 2013, 7:15 a.m.–6:45 p.m.

Place: University of Utah, Salt Lake City, UT.

Type of Meeting: Part open.

Contact Person: Dr. Chuck Bouldin, Program Director, Materials Research Science and Engineering Centers Program, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–4920.

Purpose of Meeting: To provide advice and recommendations concerning further support of the MRSEC at the University of Utah.

Agenda:

7:15 a.m.–9:00 a.m. Closed—Executive Session

9:00 a.m.–3:00 p.m. Open—Review of the Utah MRSEC

3:00 p.m.–6:45 p.m. Closed—Executive Session

Reason for Closing: The work being reviewed may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the MRSEC. These matters are exempt under 5 U.S.C. 552 b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 25, 2013.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2013–15519 Filed 6–27–13; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Investigative Hearing

On November 30, 2012, at 6:59 a.m. eastern standard time, southbound Consolidated Rail Corporation (Conrail) freight train FC4230, consisting of 2 locomotives and 82 cars, derailed 7 cars near milepost 13.7 on the Conrail Penn's Grove secondary track in Paulsboro, New Jersey. The derailment occurred while the train crossed a movable bridge over Mantua Creek, resulting in 4 tank cars leaving the bridge and coming to rest partially submerged in Mantua Creek. As a result of the derailment, the coupler on one tank car punctured another tank car, releasing an estimated

180,000 pounds of liquid vinyl chloride into Mantua Creek; the vinyl chloride vaporized and dispersed with the prevailing winds. Primarily used to make polyvinyl chloride (PVC), vinyl chloride is a highly flammable, colorless gas and a known carcinogen that may have an effect on the nervous system, eyes, liver, and respiratory tract through airborne exposure. The weather at the time was cloudy skies and calm winds with a temperature of 34°F.

The 911 communications center was notified of the release at 7:01 a.m., and the first responders to the accident were members of the Paulsboro Fire and Police departments, assisted by hazardous materials specialists from a nearby refinery and the Gloucester County hazardous materials team. The first incident command was established about 50 yards from the bridge but was later moved a half mile away. Evacuation orders were imposed by local authorities shortly after the release, but subsequently were replaced with shelter-in-place recommendations. About 8 hours into the release, a unified command was established among the United States Coast Guard, New Jersey Department of Environmental Protection, Paulsboro Fire Department, and Conrail. On the morning of the accident, 23 local residents were treated at a nearby hospital for possible vinyl chloride exposure. The train conductor and numerous emergency responders were also tested for vinyl chloride exposure.

The investigative hearing will discuss Conrail operations and the emergency response to the hazardous materials release. Specific areas being discussed include Conrail bridge operations, Conrail procedures, incident command actions and emergency response decisions in the first day, hazardous materials emergency response operations, roles of the response teams, evacuations and communications, incident response protocols, hazmat training, oversight of Paulsboro emergency preparedness, roles of local, state and Federal agencies in emergency hazmat response, and interaction between state and Federal agencies in establishing a unified command. The goals of this hearing are to gather additional factual information regarding the actions of the first responders in Paulsboro, to explore the hierarchy of New Jersey State and local emergency management, training, regulations and standards applicable to emergency response personnel, and to examine the oversight of the Paulsboro emergency operations.

Parties to the hearing include the Federal Railroad Administration, Pipeline and Hazardous Materials Safety Administration, United States Coast Guard, Conrail, Borough of Paulsboro, State of New Jersey, Brotherhood of Locomotive Engineers and Trainmen, and the United Transportation Union.

At the start of the hearing, the public docket will be opened. Included in the docket are photographs, interview transcripts, and numerous other documents.

Order of Proceedings

1. Opening Statement by the Chairman of the Board of Inquiry
2. Introduction of the Board of Inquiry and Technical Panel
3. Introduction of the Parties to the Hearing
4. Introduction of Exhibits by Hearing Officer
5. Overview of the incident and the investigation by Investigator-In-Charge
6. Calling of Witnesses by Hearing Officer and Examination of Witness by Board of Inquiry, Technical Panel, and Parties
7. Closing Statement by the Chairman of the Board of Inquiry

The accident docket is DCA13MR002.

The Investigative Hearing will be held in the NTSB Board Room and Conference Center, located at 429 L'Enfant Plaza E. SW., Washington, DC, Tuesday, July 9, and Wednesday, July 10, 2013, beginning at 9:00 a.m. The public can view the hearing in person or by live webcast at *www.ntsb.gov.* Webcast archives are generally available by the end of the next day following the hearing, and webcasts are archived for a period of 3 months from after the date of the event.

Individuals requesting specific accommodations should contact Ms. Rochelle Hall at (202) 314–6305 or by email at *Rochelle.Hall@ntsb.gov* by Friday, July 5, 2013.

NTSB Media Contact: Mr. Terry Williams—*terry.williams@ntsb.gov*.

NTSB Investigative Hearing Officer: Mr. Matthew Nicholson—*matthew.nicholson@ntsb.gov*.

Dated: June 24, 2013.

Candi R. Bing,

Federal Register Liaison Officer.

[FR Doc. 2013–15495 Filed 6–27–13; 8:45 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–247 and 50–286; NRC–2008–0672]

Entergy Nuclear Operations, Inc.; Indian Point Nuclear Generating Unit Nos. 2 and 3

AGENCY: Nuclear Regulatory Commission.

ACTION: Supplement to Final Supplement 38 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants; issuance.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has published a supplement (Volume 4) to the final plant-specific supplement 38 to the ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants (GEIS),'' NUREG–1437, regarding the renewal of operating licenses DPR–26 and DPR–64 for an additional 20 years of operation for Indian Point Nuclear Generating Unit Nos. 2 and 3 (IP2 and IP3). This supplement revises specific sections of the final plant-specific Supplement 38 to the GEIS, as indicated in the supplement. The IP2 and IP3 site is located approximately 24 miles north of New York, NY. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative.

ADDRESSES: Please refer to Docket ID NRC–2008–0672 when contacting the NRC about the availability of information regarding this document. You may access information related to this document using the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0672. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by

email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. Additional information regarding accessing materials related to this action is under the Document Availability heading in the **SUPPLEMENTARY INFORMATION** section of this document.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: For information about the final supplemental environmental impact statement (FSEIS), this supplement to the FSEIS, or the environmental review process, please contact Lois James, telephone: 301–415–3306; email: *Lois.James@nrc.gov;* or address: Projects Branch 2, Division of License Renewal, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Discussion

The NRC received an application, dated April 23, 2007, from Entergy Nuclear Operations, Inc. (Entergy), filed pursuant to Section 103 of the Atomic Energy Act of 1954, as amended, and Title 10 of the *Code of Federal Regulations,* Part 54 (10 CFR Part 54), to renew the operating license for IP2 and IP3. Renewal of the license would authorize the applicant to operate the facilities for an additional 20-year period beyond the period specified in the current operating licenses. The current operating license for IP2 expires on September 28, 2013, and the current operating license for IP3 expires on December 12, 2015.

This supplement (Volume 4) to the FSEIS is being issued as part of the NRC's process to decide whether to issue a renewed license to IP2 and IP3, pursuant to 10 CFR Part 54. This supplement to the FSEIS was prepared in compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the NRC's regulations for implementing NEPA in 10 CFR Part 51.

In December 2010, the NRC published its FSEIS related to the license renewal of IP2 and IP3, NUREG–1437, Supplement 38, Volumes 1–3. After publication, the staff identified new information that necessitated changes to its assessments in the FSEIS. In addition to supplementing the FSEIS to address the new information, the NRC is also documenting the completion of the consultation process under Section 7 of the Endangered Species Act of 1973, as amended (ESA), with the National Marine Fisheries Service (NMFS) regarding the shortnose sturgeon (*Acipenser brevirostrum*) and the Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*) population in the vicinity of IP and IP3. This supplement to the FSEIS does not alter the conclusion stated in Section 9.3 of the December 2010 FSEIS:

Based on (1) the analysis and findings in the GEIS, (2) the ER and other information submitted by Entergy, (3) consultation with Federal, State, Tribal, and local agencies, (4) the NRC staff's consideration of public scoping comments received, and comments on the draft SEIS, and (5) the NRC staff's independent review, the recommendation of the NRC staff is that the Commission determine that the adverse environmental impacts of license renewal for IP2 and IP3 are not so great that preserving the option of license renewal for energy planning decision makers would be unreasonable.

In preparing this supplement (Volume 4) to the final SEIS, the NRC staff also reviewed, considered, evaluated, and addressed the public comments received during the comment process on the draft supplement to the final SEIS.

Document Availability

Documents related to this notice are available on the NRC's plant application for license renewal Web site at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications/columbia.html.* The FSEIS for the IP2 and IP3 projects may also be accessed on the internet at *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1437/* by selecting ''Supplement-38.''

The IP2s and IP3s license application, the IP2s and IP3s Environmental Report, and Volumes 1, 2, 3, and 4 of the NRC's FSEIS are available in ADAMS under the following Accession Numbers:

• IP2s and IP3's license application—ML071210507
• IP2s and IP3s Environmental Report—ML071210530
• Volumes of final SEIS
  Volume 1—ML103350405
  Volume 2—ML103350438, ML103360209, ML103360212,
  Volume 3—ML103350442
  Volume 4—ML13162A616

A copy of this supplement to the FSEIS and the FSEIS will be available at the the White Plains Public Library (White Plains, NY), Hendrick Hudson Free Library (Montrose, NY), and the Field Library (Peekskill, NY).

Dated at Rockville, Maryland, this 20th day of June, 2012.

For the Nuclear Regulatory Commission.

Anneliese Simmons,

Acting Chief, Projects Branch 2, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2013–15527 Filed 6–27–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–285, NRC–2013–0111]

Omaha Public Power District, Fort Calhoun Station, Unit 1

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for action; receipt.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is giving notice that by petition dated June 21, 2012, Mr. Wallace Taylor (the petitioner) has requested that the NRC take enforcement action against Fort Calhoun Station, Unit 1 (FCS). The petitioner's requests are included in the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: Please refer to Docket ID NRC–2013–0111 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, using any of the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0111. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

SUPPLEMENTARY INFORMATION: On June 21, 2012 (ADAMS Accession No. ML11174A228), the petitioner requested that the NRC take enforcement action with regard to FCS. The petitioner also met with the Petition Review Board (PRB) and supplemented its petition during a teleconference on August 27 and November 19, 2012 (ADAMS Accession Nos. ML12250A714, and ML12352A279, respectively). As a basis for the request, the petitioner states that the NRC's own guidelines regarding enforcement sanctions would categorize the events at FCS over the past 20 years at Severity Level I, the highest level, because those events involve (1) Situations involving particularly poor licensee performance, or involving willfulness; (2) situations when the violation results in a substantial increase in risk, including cases in which the duration of the violation has contributed to the substantial increase; and (3) situations in which the licensee made a conscious decision to be in noncompliance to obtain an economic benefit (63 FR 26630–01, 26642; May 13, 1998). The petitioner states that the NRC considers these violations to be of significant concern, and it may apply its full enforcement action to remedy these violations, including issuing appropriate orders. *Id.* The petitioner provided supplemental information in support of the petition and states that (1) A support beam was found that was not within allowable limits for stress and loading; (2) given Exelon's long history of deliberate misconduct and willful violations at its various nuclear plants around the United States, day-to-day management of FCS by Exelon is likely to worsen FCS' performance rather than improve it; (3) the flooding hazard at Fort Calhoun greatly exceeds its flooding protection measures at this time; (4) FCS' risk of flooding from each of the six upstream dams has not been evaluated or resolved; and (5) the identification of 614 primary reactor containment electrical penetration seals containing Teflon that could degrade during design-basis accident conditions.

The request is being treated pursuant to § 2.206 of Title 10 of the *Code of Federal Regulations,* ''Requests for Action under This Subpart,'' of the Commission's regulations. The request has been referred to the Director of the Office of Nuclear Reactor Regulation (NRR). As provided by § 2.206, appropriate action will be taken on this petition within a reasonable time. The petitioner requested an opportunity to address the NRR Petition Review Board (PRB). The PRB held recorded teleconferences with the petitioner during which the petitioner supplemented and clarified the petition. The PRB considered results of those discussions in its determination regarding the petitioner's request. As a result, the PRB acknowledged the petitioner's concerns about containment internal structures, electrical penetrations, and upstream dam failures. The NRC is currently reviewing the issues above related to containment internal structures, electrical penetrations, and upstream dam failures. Both the containment internal structures and electrical penetrations issues have been identified as issues that must be resolved before restart of the facility and have been added to the confirmatory action letter (ADAMS Accession No. ML13057A287). Additionally, the PRB noted that natural disasters, such as flooding, are undergoing NRC review as part of the lessons learned from the Fukushima Dai-ichi event in Japan. The NRC staff is evaluating the effect of multiple upstream dam failures as a part of the Fukushima Dai-ichi reviews, as well as other processes. The PRB intends to use the results of the aforementioned reviews to inform its final decision on whether to implement the requested actions.

Dated at Rockville, Maryland, this 19th day of June 2013.

For the Nuclear Regulatory Commission.

Jennifer L. Uhle,

Deputy Director, Reactor Safety Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 2013–15524 Filed 6–27–13; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. MT2011–2; Order No. 1755]

Market Test on Gift Cards

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing requesting a temporary extension of a market test on gift cards. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* July 8, 2013.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION: On June 18, 2013, the United States Postal Service moved to temporarily extend its Gift Card market test under 39 U.S.C. 3641(d).[1] The market test is set to expire June 27, 2013. Motion at 1. The impending expiration date prompts the Postal Service to request an extension of the market test until January 31, 2014. *Id.* at 2. In addition, the Postal Service requests a waiver of 39 U.S.C. 3641(d)(2), which requires that requests to extend market tests be submitted not later than 60 days before the date on which the market test would otherwise expire. *Id.*

In support of its Motion, the Postal Service states it ''needs more time to determine the impact of its efforts to improve sales, as well as the demand for closed loop cards.'' *Id.* It contends an extension would not prejudice any party. *Id.* at 3.

The Commission will grant a 1-month extension of the Gift Card market test, through July 27, 2013. Given the short deadline before the market test would otherwise terminate, the extension will afford interested persons an opportunity to comment on the Motion. Such comments are due no later than July 8, 2013.

Robert N. Sidman, previously designated to serve as Public Representative in this proceeding, will continue to serve in that capacity.

Dissenting Opinion of Commissioner Langley

I support the Postal Service seeking new revenue streams. However, as I indicated initially, in Order No. 721, section 404(e)(2) prohibits the Postal Service from offering any new nonpostal services and this prohibition applies to experimental offerings. *See* Order No. 721, Order Authorizing Gift Card Market Test, Dissenting Opinion of Commissioner Blair and Commissioner Langley, April 28, 2011.

[Signed] Commissioner Nanci E. Langley

It is ordered:

1. The Commission grants an extension until July 27, 2013 to the expiration date of the market test of Gift Cards.

2. Comments by interested persons are due no later than July 8, 2013.

[1] Motion of the United States Postal Service for Temporary Extension of Gift Cards Market Test, June 18, 2013 (Motion). *See also* Order No. 721, Order Authorizing Gift Card Market Test, April 28, 2011.

3. Robert N. Sidman, previously designated pursuant to 39 U.S.C. 505 as an officer of the Commission (Public Representative), will continue to serve in that capacity.

4. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2013–15449 Filed 6–27–13; 8:45 am]

BILLING CODE 7710–FW–P

PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD

[Notice-PCLOB–2013–04; Docket No. 2013–0004; Sequence No. 4]

Notice of Meeting

AGENCY: Privacy and Civil Liberties Oversight Board.

ACTION: Notice of a meeting.

SUMMARY: The Privacy and Civil Liberties Oversight Board will conduct a public workshop with invited experts, academics and advocacy organizations regarding surveillance programs operated pursuant to Section 215 of the USA PATRIOT Act and Section 702 of Foreign Intelligence Surveillance Act.

DATES: July 9, 2013 at 9:30 a.m.–4:30 p.m. (Eastern Time).

Comments: You may submit comments, identified by the docket number in the heading of this document by the following method:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- Written comments may be submitted at any time prior to the closing of the docket at 12:00 p.m. Eastern Time on August 1, 2013.

All comments will be made publicly available and posted without change. Do not include personal or confidential information.

ADDRESSES: The location in Washington DC is still being determined. A notice will be published in the **Federal Register** with the location.

FOR FURTHER INFORMATION CONTACT: Susan Reingold, Chief Administrative Officer, 202–331–1986.

SUPPLEMENTARY INFORMATION:

Procedures for Public Participation

The workshop will be open to the public. The Board is contemplating moderated panel discussions with invited experts, academics, and advocacy organizations. Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Susan Reingold, Chief Administrative Officer, 202–331–1986, at least 72 hours prior to the meeting date.

Dated: June 24, 2013.

Diane Janosek,

Chief Legal Counsel, Privacy and Civil Liberties Oversight Board.

[FR Doc. 2013–15537 Filed 6–27–13; 8:45 am]

BILLING CODE 6820–B3–P

PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD

[Notice-PCLOB–2013–05; Docket No 2013–0005; Sequence No. 5]

Privacy Act of 1974; Privacy and Civil Liberties Oversight Board; System of Records Notice

AGENCY: Privacy and Civil Liberties Oversight Board.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Privacy and Civil Liberties Oversight Board proposes to create a new system of records titled, ''PCLOB–1, Freedom of Information Act and Privacy Act Request Files''.

DATES: Written comments should be submitted on or before July 29, 2013. This new system will be effective July 29, 2013.

ADDRESSES: You may submit comments, identified by the docket number in the heading of this document, by the following methods:

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

Mail: Written comments may be submitted by mail to: Privacy and Civil Liberties Oversight Board, c/o General Services Administration, Agency Liaison Division, 1275 First Street NE., ATTN: 849C, Washington, DC 20417.

To ensure proper handling, please include the docket number on your correspondence. See **SUPPLEMENTARY INFORMATION** for further information about submitting comments.

FOR FURTHER INFORMATION CONTACT: Diane Janosek, Chief Legal Counsel, Privacy and Civil Liberties Oversight Board, at 202–366–0365.

SUPPLEMENTARY INFORMATION: Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov.* Information made available to the public includes personally identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. Additional information about the handling of personally identifiable information submitted for the public record is available in the system of records notice for the federal dockets management system, EPA–GOVT–2, published in the **Federal Register** at 70 FR 15086 on March 24, 2005.

The Privacy and Civil Liberties Oversight Board (Board) was created as an independent agency within the executive branch by the Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110–53. As a federal agency, the Board is subject to the Freedom of Information Act (FOIA), 5 U.S.C. 552, and Privacy Act of 1974 (Privacy Act), 5 U.S.C. 552a. The Board has published its notice of proposed rulemaking to establish administrative procedures for compliance with these statutes. As part of our compliance requirements, the Board must maintain certain information about FOIA and Privacy Act requests and requesters. As a result, the Board also is publishing this system of records notice to notify the public of and solicit comments about our proposed creation of a system of records for FOIA and Privacy Act case files.

SYSTEM OF RECORDS

PCLOB—1, Freedom of Information Act and Privacy Act Files.

SYSTEM NAME:

Privacy and Civil Liberties Oversight Board—1, Freedom of Information Act and Privacy Act Files

SECURITY CLASSIFICATION:

This system will contain classified and unclassified records.

SYSTEM LOCATION:

Records are maintained at the Privacy and Civil Liberties Oversight Board's office in Washington, DC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who submit Freedom of Information Act (FOIA) and Privacy Act (PA) requests and administrative appeals to the Privacy and Civil Liberties Oversight Board, including individuals who make requests or appeals on behalf of other persons or entities; individuals who are the subjects of FOIA or PA requests or appeals; Board employees or Department of Justice litigators assigned to handle requests or appeals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in the system include: FOIA and PA requests or appeals, including requesters' names, contact (email, street address, telephone number) information, and proof of identification; names and other information about persons who are the subject of FOIA or PA requests; records received, created, or compiled in processing FOIA and PA requests or appeals, including correspondence, intra or inter agency memoranda, notes, and other documentation; copies of requested records; requesters names, contact (email, street address, telephone number) information, and proof of identification; names, addresses, and telephone numbers of submitters of requested records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552; 5 U.S.C. 552a; 44 U.S.C. 3101

PURPOSE:

The purpose of this system is to process FOIA and PA requests and appeals, and to carry out other Board obligations under the FOIA and PA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed by the Board as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (including U.S. Attorney Offices) or other federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when it is necessary to the litigation and one of the following is a party to or has an interest in the litigation:

1. The Board;

2. Any Board member or employee in his/her official capacity;

3. Any Board member or employee in his/her individual capacity if DOJ or the Board has agreed to represent the member or employee;

4. The United States or any agency thereof if the Board determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which the Board collected the records.

B. To a congressional office, provided that the individual who is the subject of the record at issue authorized the congressional office to request the record on his or her behalf.

C. To the National Archives and Record Administration or other federal agency pursuant to records management inspections conducted under 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations authorized by law, but only to the extent necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. The Board suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. The Board determines that because of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Board or other agency or entity), or harm to individuals that rely on compromised information; and

3. Disclosure is necessary to assist with the Board's efforts to respond to the suspected or confirmed compromise, and prevent, minimize, or remedy such harm.

F. To contractors and their agents; grantees; experts; consultants; and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Board, when necessary to accomplish a Board function related to this system of records.

G. To an appropriate federal, state, tribal, local, international, or foreign agency, including law enforcement, or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the individual making the disclosure.

H. To a federal, state, territorial, tribal, local, international, or foreign agency or other entity for the purpose of consulting with that agency or entity:

1. To assist in making a determination regarding the disclosure of, access to, or amendment of information; or

2. To verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment of information.

I. To a federal agency for the purpose of referring the request to that agency for processing or consulting with that agency regarding the appropriate handling of the request.

J. To the Office of Government Information Services (OGIS) for the purposes of resolving disputes between the Board and FOIA requesters or for OGIS' review of Board policies, procedures, and compliance in order to recommend policy changes to Congress and the President.

K. To the Office of Management and Budget or the Department of Justice when necessary to obtain advice regarding statutory or other requirements under the FOIA or PA.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

No.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically and/or on paper in secure facilities. Electronic records may be stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Records may be retrieved by individual's name or by case tracking or control number.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including automated systems security and access policies. Access to records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

FOIA and PA records are retained in accordance with National Archives and Records Administration's General Records Schedule 14.

SYSTEM MANAGER AND ADDRESS:

Chief FOIA Officer and Chief Privacy Officer, Privacy and Civil Liberties Oversight Board, c/o General Services Administration, Agency Liaison Division, 1275 First Street NE., ATTN: 849C, Washington, DC 20417.

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Privacy Officer

at the address provided for the System Manager, above. When seeking records about yourself from this system of records your request must comply with the Board's Privacy Act regulations and must include sufficient information to permit us to identify potentially responsive records. In addition, you must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. § 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her consent to your access to his/her records. Without this information, we may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Records are obtained from individuals who submit FOIA and PA requests or appeals; the records searched and identified as responsive in the process of responding to such requests and appeals; Board personnel assigned to handle such requests and appeals; other agencies that have referred FOIA or PA requests to the Board for consultation or response; submitters or subjects of records or information that have provided assistance to the Board in making access or amendment determinations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: June 24, 2013.

Diane Janosek,

Chief Legal Counsel, Privacy and Civil Liberties Oversight Board.

[FR Doc. 2013–15536 Filed 6–27–13; 8:45 am]

BILLING CODE 6820–B3–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 10b–10; SEC File No. 270–389, OMB Control No. 3235–0444.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 10b–10 (17 CFR 240.10b–10) under the Securities and Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 10b–10 requires broker-dealers to convey basic trade information to customers regarding their securities transactions. This information includes: the date and time of the transaction, the identity and number of shares bought or sold, and the trading capacity of the broker-dealer. Depending on the trading capacity of the broker-dealer, Rule 10b–10 requires the disclosure of commissions as well as mark-up and mark-down information. For transactions in debt securities, Rule 10b–10 requires the disclosure of redemption and yield information. Rule 10b–10 potentially applies to all of the approximately 5,178 firms registered with the Commission that effect transactions on behalf of customers.

Based on information provided by registered broker-dealers to the Commission in FOCUS Reports, the Commission staff estimates that on average, registered broker-dealers process approximately 1.4 billion order tickets per month for transactions on behalf of customers. Each order ticket representing a transaction effected on behalf of a customer results in one confirmation. Therefore, the Commission staff estimates that approximately 16.8 billion confirmations are sent to customers annually. The confirmations required by Rule 10b–10 are generally processed through automated systems. It takes approximately 30 seconds to generate and send a confirmation. Accordingly, the Commission estimates that broker-dealers spend 140 million hours per year complying with Rule 10b–10.

The amount of confirmations sent and the cost of sending each confirmation varies from firm to firm. Smaller firms generally send fewer confirmations than larger firms because they effect fewer transactions. The Commission staff estimates the costs of producing and sending a paper confirmation, including postage to be approximately 54 cents. The Commission staff also estimates that the cost of producing and sending a wholly electronic confirmation is approximately 39 cents. Based on informal discussions with industry participants as well as no-action positions taken in this area, the staff estimates that broker-dealers used electronic confirmations for approximately 35 percent of transactions. Based on these calculations, Commission staff estimates that 10,920,000,000 paper confirmations are mailed each year at a cost of $5,896,800,000. Commission staff also estimates that 5,880,000,000 wholly electronic confirmations are sent each year at a cost of $2,293,200,000. Accordingly, Commission staff estimates that total annual cost associated with generating and delivering to investors the information required under Rule 10b–10 would be $8,190,000,000.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information subject to the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following Web site: *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: June 24, 2013.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–15491 Filed 6–27–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30566; File No. 812–14111]

ING Investments, LLC, *et al.;* Notice of Application

June 24, 2013.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act and rule

18f–2 under the Act, as well as from certain disclosure requirements.

Summary of Application: Applicants request an order that would amend and supersede a prior order (the ''Non-Affiliated Sub-Adviser Order'') [1] that permits them to enter into and materially amend subadvisory agreements for certain multi-managed funds with non-affiliated sub-advisers without shareholder approval and grants relief from certain disclosure requirements. The requested order would permit applicants to enter into, and amend, such agreements with Wholly-Owned Sub-Advisers (as defined below) and non-affiliated sub-advisers without shareholder approval.

Applicants: ING Balanced Portfolio, Inc., ING Equity Trust, ING Funds Trust, ING Intermediate Bond Portfolio, ING Investors Trust, ING Mayflower Trust, ING Money Market Portfolio, ING Mutual Funds, ING Partners, Inc., ING Separate Portfolios Trust, ING Series Fund, Inc., ING Strategic Allocation Portfolios, Inc., ING Variable Funds, ING Variable Insurance Trust, ING Variable Portfolios Inc., and ING Variable Products Trust (each an ''ING Investment Company'' and collectively, the ''ING Investment Companies''), and Directed Services LLC (''DSL''), ING Investments, LLC (''IIL''), and ING Investment Management Co. LLC (''IIM'').

Filing Dates: The application was filed on January 11, 2013, and amended on April 15, 2013, and June 21, 2013.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 19, 2013, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants, c/o Huey P. Falgout, Jr., Chief Counsel, ING Funds, 7337 East Doubletree Ranch Road, Suite 100, Scottsdale, AZ 85255.

FOR FURTHER INFORMATION CONTACT: Laura L. Solomon, Senior Attorney, at (202) 551–6915, or Daniele Marchesani, Branch Chief, at (202) 551–6821 (Division of Investment Management, Exemptive Applications Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. Each ING Investment Company is organized as a Massachusetts business trust, a Delaware statutory trust, or a Maryland corporation and is registered with the Commission as an open-end management investment company under the Act. Each ING Investment Company may offer one or more series of shares (each a ''Series'' and collectively, ''Series'') with its own distinct investment objectives, policies and restrictions.[2] Each Series has, or will have, as its investment adviser, Directed Services LLC (''DSL''), ING Investments, LLC (''IIL'') or ING Investment Management Co. LLC (''IIM''), or another investment adviser controlling, controlled by or under common control with IIL, DSL, or IIM or their successors (each, an ''Adviser'' and, collectively with the Series and the ING Investment Companies, the ''Applicants'').[3] The Advisers are each an indirect, wholly-owned subsidiary of ING U.S. Inc., which in turn, is a wholly owned subsidiary of ING Groep N.V. (''ING Groep''). ING Groep is a global financial institution of Dutch origin offering banking, investments, life insurance and retirement services.[4]

2. An Adviser serves as the investment adviser to each Series that it manages pursuant to an investment advisory agreement with the applicable ING Investment Company (''Investment Management Agreement''). The Investment Management Agreement for each existing Series was approved by the board of trustees/directors of the applicable ING Investment Company (the ''Board''), including a majority of the members of the Board who are not ''interested persons'', as defined in section 2(a)(19) of the Act, of the Series or the Adviser (''Independent Board Members'') and by the shareholders of that Series as required by sections 15(a) and 15(c) of the Act and rule 18f–2 thereunder. The terms of these Investment Management Agreements comply with section 15(a) of the Act. Each Investment Management Agreement will comply with section 15(a) of the Act and will be similarly approved.

3. Under the terms of each Investment Management Agreement, the relevant Adviser, subject to the supervision of the Board, provides continuous investment management of the assets of the relevant Series. The Adviser periodically reviews a Series' investment policies and strategies and based on the need of a particular Series may recommend changes to the investment policies and strategies of the Series for consideration by the Board. For its services to each Series under the applicable Investment Management Agreement, the Adviser receives an investment management fee from that Series based on the average net assets of that Series. Certain Series of IIT operate under a ''unified'' fee arrangement as further described in the application. The terms of each Investment Management Agreement permit the Adviser, subject to the approval of the Board, including a majority of the Independent Board Members, and the shareholders of the applicable Sub-Advised Series (if required), to delegate portfolio management responsibilities of all or a portion of the assets of a Sub-Advised Series to one or more Sub-Advisers.[5]

[1] *Portfolio Partners, Inc., et al.,* Investment Company Act Release Nos. 25558 (Apr. 30, 2002) (notice) and 25592 (May 24, 2002) (order).

[2] The term ''Series'' also includes the ING Investment Companies listed above that do not offer multiple series.

[3] Each Adviser is or will be registered with the Commission as an investment adviser under the Investment Advisers Act of 1940, as amended (''Advisers Act''). For purposes of the requested order, ''successor'' is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

[4] Applicants request that the relief apply to the Applicants, as well as to any future Series and any other existing or future registered open-end management investment company or series thereof that is advised by an Adviser, uses the multi-manager structure described in the application, and complies with the terms and conditions of the application (''Sub-Advised Series''). All registered open-end investment companies that currently intend to rely on the requested order are named as Applicants. All Series that currently are, or that currently intend to be, Sub-Advised Series are identified in the application. Any entity that relies on the requested order will do so only in accordance with the terms and conditions contained the application. The requested relief will not extend to any sub-adviser, other than a Wholly-Owned Sub-Adviser (as defined below), who is an affiliated person, as defined in section 2(a)(3) of the Act, of the Sub-Advised Series, or of the Adviser, other than by reason of serving as a sub-adviser to one or more of the Sub-Advised Series (''Affiliated Sub-Adviser'').

[5] As used herein, a ''Sub-Adviser'' is (1) an indirect or direct ''wholly-owned subsidiary'' (as

4. Applicants request an order to permit an Adviser, subject to the approval of the Board, including a majority of the Independent Board Members, to, without obtaining shareholder approval: (i) Select Sub-Advisers to manage all or a portion of the assets of a Series and enter into Sub-Advisory Agreements (as defined below) with the Sub-Advisers, and (ii) materially amend Sub-Advisory Agreements with the Sub-Advisers.[6]

5. Pursuant to each Investment Management Agreement, the Adviser has overall responsibility for the management and investment of the assets of each Sub-Advised Series; these responsibilities include recommending the removal or replacement of Sub-Advisers, determining the portion of that Sub-Advised Series' assets to be managed by any given Sub-Adviser and reallocating those assets as necessary from time to time. In accordance with each Investment Management Agreement, the Adviser will supervise each Sub-Adviser in its performance of its duties with a view to preventing violations of the federal securities laws.

6. The Advisers have entered into sub-advisory agreements with Sub-Advisers (''Sub-Advisory Agreements'') to provide investment management services to the Subadvised Series.[7] The terms of each Sub-Advisory Agreement comply fully with the requirements of section 15(a) of the Act and were approved by the applicable Board, including a majority of the Independent Board Members, and, to the extent that the Non-Affiliated Sub-Adviser Order did not apply (or was not relied upon), the shareholders of the Sub-Advised Series in accordance with sections 15(a) and 15(c) of the Act and rule 18f–2 thereunder. The Sub-Advisers, subject to the supervision of the Advisers and oversight of the Board, determine the securities and other instruments to be purchased or sold or entered into by a Sub-Advised Series and place orders with brokers or dealers that they select. Each Adviser will compensate each Sub-Adviser out of the fee paid to the Adviser under the relevant Investment Management Agreement.

7. Sub-Advised Series will inform shareholders of the hiring of a new Sub-Adviser pursuant to the following procedures (''Modified Notice and Access Procedures''): (a) Within 90 days after a new Sub-Adviser is hired for any Sub-Advised Series, that Sub-Advised Series will send its shareholders[8] either a Multi-Manager Notice or a Multi-Manager Notice and Multi-Manager Information Statement;[9] and (b) the Sub-Advised Series will make the Multi-Manager Information Statement available on the Web site identified in the Multi-Manager Notice no later than when the Multi-Manager Notice (or Multi-Manager Notice and Multi-Manager Information Statement) is first sent to shareholders, and will maintain it on that Web site for at least 90 days. In the circumstances described in the application, a proxy solicitation to approve the appointment of new Sub-Advisers provides no more meaningful information to shareholders than the proposed Multi-Manager Information Statement. Applicants state that each Board would comply with the requirements of sections 15(a) and 15(c) of the Act before entering into or amending Sub-Advisory Agreements.

8. Applicants also request an order exempting the Sub-Advised Series from certain disclosure obligations that may require the Applicants to disclose fees paid by the Adviser to each Sub-Adviser. Applicants seek relief to permit each Sub-Advised Series to disclose (as a dollar amount and a percentage of the Sub-Advised Series' net assets): (a) The aggregate fees paid to the Adviser and any Wholly-Owned Sub-Adviser; (b) the aggregate fees paid to Non-Affiliated Sub-Advisers; and (c) the fee paid to each Affiliated Sub-Adviser (collectively, the ''Aggregate Fee Disclosure'').

Applicants' Legal Analysis

1. Section 15(a) of the Act states, in part, that it is unlawful for any person to act as an investment adviser to a registered investment company ''except pursuant to a written contract, which contract, whether with such registered company or with an investment adviser of such registered company, has been approved by the vote of a majority of the outstanding voting securities of such registered company.'' Rule 18f–2 under the Act states that any ''matter required to be submitted . . . to the holders of the outstanding voting securities of a series company shall not be deemed to have been effectively acted upon unless approved by the holders of a majority of the outstanding voting securities of each class or series of stock affected by such matter.'' Further, rule 18(f)–2(c)(1) under the Act provides that a vote to approve an investment advisory contract required by section 15(a) of the Act ''shall be deemed to be effectively acted upon with respect to any class or series of securities of such [registered investment] company if a majority of the outstanding voting securities of such class or series vote for the approval of such matter.''

2. Form N–1A is the registration statement used by open-end investment companies. Item 19(a)(3) of Form N–1A requires a registered investment company to disclose in its statement of additional information the method of computing the ''advisory fee payable'' by the investment company, including the total dollar amounts that the investment company ''paid to the adviser (aggregated with amounts paid to affiliated advisers, if any), and any advisers who are not affiliated persons of the adviser, under the investment advisory contract for the last three fiscal years.''

3. Rule 20a–1 under the Act requires proxies solicited with respect to a registered investment company to

such term is defined in the Act) of the Adviser for that Series, or (2) a sister company of the Adviser for that Series that is an indirect or direct ''wholly-owned subsidiary'' (as such term is defined in the Act) of the same company that, indirectly or directly, wholly owns the Adviser (each of (1) and (2) a ''Wholly-Owned Sub-Adviser'' and collectively, the ''Wholly-Owned Sub-Advisers''), or (3) not an ''affiliated person'' (as such term is defined in section 2(a)(3) of the Act) of the Series, the applicable ING Investment Company, or an Adviser, except to the extent that an affiliation arises solely because the Sub-Adviser serves as a Sub-Adviser to a Series (each a ''Non-Affiliated Sub-Adviser'').

[6] Shareholder approval will continue to be required for any other sub-adviser change (not otherwise permitted by rule or other action of the Commission or staff) and material amendments to an existing sub-advisory agreement with any sub-adviser other than a Non-Affiliated Sub-Adviser or a Wholly-Owned Sub-Adviser (all such changes referred to as ''Ineligible Affiliated Sub-Adviser Changes'').

[7] If the name of any Sub-Advised Series contains the name of a Sub-Adviser, the name of the Adviser that serves as the primary adviser to the Sub-Advised Series, or a trademark or trade name that is owned by or publicly used to identity that Adviser, will precede the name of the Sub-Adviser.

[8] The term ''shareholders'' as used in the application includes variable contract holders, insurance companies, plan participants, or plan trustees entitled to give voting instructions with respect to a fund.

[9] A ''Multi-Manager Notice'' will be modeled on a Notice of Internet Availability as defined in rule 14a–16 under the Securities Exchange Act of 1934 (''Exchange Act''), and specifically will, among other things: (a) Summarize the relevant information regarding the new Sub-Adviser; (b) inform shareholders that the Multi-Manager Information Statement is available on a Web site; (c) provide the Web site address; (d) state the time period during which the Multi-Manager Information Statement will remain available on that Web site; (e) provide instructions for accessing and printing the Multi-Manager Information Statement; and (f) instruct the shareholder that a paper or email copy of the Multi-Manager Information Statement may be obtained, without charge, by contacting the Sub-Advised Series.

A ''Multi-Manager Information Statement'' will meet the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Exchange Act for an information statement, except as modified by the order to permit Aggregate Fee Disclosure, as defined below. Multi-Manager Information Statements will be filed with the Commission via the EDGAR system.

comply with Schedule 14A under the Exchange Act. Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's fee,'' a description of the ''terms of the contract to be acted upon,'' and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Regulation S–X sets forth the requirements for financial statements required to be included as part of a registered investment company's registration statement and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require a registered investment company to include in its financial statement information about the investment advisory fees.

5. Section 6(c) of the Act provides that the Commission by order upon application may conditionally or unconditionally exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that their requested relief meets this standard for the reasons discussed below.

6. Applicants assert that the shareholders expect the Advisers, subject to review and approval of the Board, to select Sub-Advisers who the Advisers believe can achieve the Sub-Advised Series' investment objectives. Applicants assert that, from the perspective of the shareholder, the role of the Sub-Advisers is substantially equivalent to the role of the individual portfolio managers employed by an investment adviser to a traditional investment company. Applicants believe that permitting the Adviser to perform the duties for which the shareholders of the Sub-Advised Series are paying the Adviser—the selection, supervision and evaluation of the Sub-Advisers, including Wholly-Owned Sub-Advisers—without incurring unnecessary delays or expenses is appropriate in the interest of the Sub-Advised Series' shareholders and will allow such Sub-Advised Series to operate more efficiently. Applicants state that each Investment Management Agreement will continue to be fully subject to section 15(a) of the Act and rule 18f–2 under the Act and approved by the Board, including a majority of the Independent Board Members, in the manner required by sections 15(a) and 15(c) of the Act. Applicants are not seeking an exemption with respect to the Investment Management Agreements.

7. Applicants assert that disclosure of the individual fees that the Adviser would pay to the Sub-Advisers that operate under the multi-manager structure described in the application would not serve any meaningful purpose. Applicants contend that the primary reasons for requiring disclosure of individual fees paid to Sub-Advisers are to inform shareholders of expenses to be charged by a particular Sub-Advised Series and to enable shareholders to compare the fees to those of other comparable investment companies. Applicants believe that the requested relief satisfies these objectives because the advisory fee paid to the Adviser will be fully disclosed and, therefore, shareholders will know what the Sub-Advised Series' fees and expenses are and will be able to compare the advisory fees a Sub-Advised Series is charged to those of other investment companies. Applicants assert that the requested disclosure relief would benefit shareholders of the Sub-Advised Series because it would improve the Adviser's ability to negotiate the fees paid to Sub-Advisers. Applicants state that the Adviser may be able to negotiate rates that are below a Sub-Adviser's ''posted'' amounts if the Adviser is not required to disclose the Sub-Advisers' fees to the public. Applicants submit that the relief requested to use Aggregate Fee Disclosure will encourage Sub-Advisers to negotiate lower subadvisory fees with the Adviser if the lower fees are not required to be made public.

8. For the reasons discussed above, Applicants submit that the requested relief meets the standards for relief under section 6(c) of the Act. Applicants state that the operation of the Sub-Advised Series in the manner described in the application must be approved by shareholders of a Sub-Advised Series before that Sub-Advised Series may rely on the requested relief. In addition, Applicants state that the proposed conditions to the requested relief are designed to address any potential conflicts of interest, including any posed by the use of Wholly-Owned Sub-Advisers, and provide that shareholders are informed when new Sub-Advisers are hired. Applicants assert that conditions 6, 7, 10 and 11 are designed to provide the Board with sufficient independence and the resources and information it needs to monitor and address any conflicts of interest with affiliated person of the Adviser, including Wholly-Owned Sub-Advisers. Applicants state that, accordingly, they believe the requested relief is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions: [10]

1. Before a Sub-Advised Series may rely on the order requested in the application, the operation of the Sub-Advised Series in the manner described in the application, including the hiring of Wholly-Owned Sub-Advisers, will be, or has been, approved by a majority of the Sub-Advised Series' outstanding voting securities (or if the Sub-Advised Series serves as a funding medium for any sub-account of a registered separate account, pursuant to voting instructions provided by the unitholders of the sub-account), as defined in the Act, which in the case of a new Sub-Advised Series whose public shareholders (or variable contract owners through a registered separate account) purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder before offering the Sub-Advised Series' shares to the public (or the variable contract owners through a separate account).

2. The prospectus for each Sub-Advised Series, will disclose the existence, substance, and effect of any order granted pursuant to the application. Each Sub-Advised Series will hold itself out to the public as employing the multi-manager structure described in the application. A Sub-Advised Series' prospectus will prominently disclose that the Adviser has the ultimate responsibility, subject to oversight by the Board, to oversee the Sub-Advisers and recommend their hiring, termination and replacement.

3. The Adviser will provide general management services to a Sub-Advised Series, including overall supervisory responsibility for the general management and investment of the Sub-Advised Series' assets. Subject to review and approval of the Board, the Advisor will (a) set a Sub-Advised Series' overall investment strategies, (b) evaluate,

[10] Applicants will only comply with conditions 8 and 12 if they rely on the relief that would allow them to provide Aggregate Fee Disclosure.

select, and recommend Sub-Advisers to manage all or a portion of a Sub-Advised Series' assets, and (c) implement procedures reasonably designed to ensure that Sub-Advisers comply with a Sub-Advised Series' investment objective, policies and restrictions. Subject to review by the Board, the Adviser will (a) when appropriate, allocate and reallocate a Sub-Advised Series' assets among multiple Sub-Advisers; and (b) monitor and evaluate the performance of Sub-Advisers.

4. A Sub-Advised Series will not make any Ineligible Sub-Adviser Changes without the approval of the shareholders of the applicable Sub-Advised Series.

5. A Sub-Advised Series will inform shareholders (or, if the Sub-Advised Series serves as a funding medium for any sub-account of a registered separate account, the Adviser will inform the unitholders of the sub-account) of the hiring of a new Sub-Adviser within 90 days after the hiring of the new Sub-Adviser pursuant to the Modified Notice and Access Procedures.

6. At all times, at least a majority of the Board will be Independent Board Members, and the selection and nomination of new or additional Independent Board Members will be placed within the discretion of the then-existing Independent Board Members.

7. Independent Legal Counsel, as defined in rule 0–1(a)(6) under the Act, will be engaged to represent the Independent Board Members. The selection of such counsel will be within the discretion of the then-existing Independent Board Members.

8. The Adviser will provide the Board, no less frequently than quarterly, with information about the profitability of the Adviser on a per Sub-Advised Series basis. The information will reflect the impact on profitability of the hiring or termination of any sub-adviser during the applicable quarter.

9. Whenever a sub-adviser is hired or terminated, the Adviser will provide the Board with information showing the expected impact on the profitability of the Adviser.

10. Whenever a sub-adviser change is proposed for a Sub-Advised Series with an Affiliated Sub-Adviser or a Wholly-Owned Sub-Adviser, the Board, including a majority of the Independent Board Members, will make a separate finding, reflected in the Board minutes, that such change is in the best interests of the Sub-Advised Series and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Sub-Adviser or Wholly-Owned Sub-Adviser derives an inappropriate advantage.

11. No Board member or officer of a Sub-Advised Series, or director or officer of the Adviser, will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person), any interest in a Sub-Adviser, except: (1) For ownership of interests in the Adviser or any entity, except a Wholly-Owned Sub-Adviser, that controls, is controlled by, or is under common control with the Adviser; or (2) for the ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Sub-Adviser or an entity that controls, is controlled by, or is under common control with a Sub-Adviser.

12. Each Sub-Advised Series will disclose the Aggregate Fee Disclosure in its registration statement.

13. In the event the Commission adopts a rule under the Act providing substantially similar relief to that requested in the application, the requested order will expire on the effective date of that rule.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–15506 Filed 6–27–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Tuesday, July 2, 2013 at 11:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), 9(B) and (10) and 17 CFR 200.402(a)(5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Paredes, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Tuesday, July 2, 2013 will be:

Institution and settlement of injunctive actions;

institution and settlement of administrative proceedings;

adjudicatory matters; and

other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: June 25, 2013.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–15580 Filed 6–26–13; 11:15 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69838; File No. 600–23]

Order Granting the Fixed Income Clearing Corporation's Amended Application for Permanent Registration as a Clearing Agency

June 24, 2013.

I. Introduction

On April 5, 2013, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') an amended application on Form CA–1 [1] seeking permanent registration as a clearing agency under Sections 17A and 19(a) of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 17Ab2–1 thereunder.[3] Notice of the amended application was published in the **Federal Register** on April 17, 2013.[4] The Commission received no comments on the notice. This Order grants FICC

[1] *See* Letter from Donaldine Temple, Senior Associate Counsel and Corporate Secretary, FICC, to Joseph P. Kamnik, Assistant Director, Division of Trading and Markets, Securities and Exchange Commission (April 4, 2013). The amendment filed by FICC updates all of the information required by Form CA–1, and incorporates by reference all information submitted in connection with FICC's prior application and amendments thereto, to the extent not otherwise superseded by proposed rule changes filed pursuant to Section 19(b) of the Act or by FICC's amended Form CA–1.

[2] 15 U.S.C. 78q–1; 15 U.S.C. 78s(a).

[3] 17 CFR 240.17Ab2–1.

[4] *See* Securities Exchange Act Release No. 69362 (April 11, 2013), 78 FR 22923–01 (April 17, 2013) (File No. 600–23).

permanent registration as a clearing agency.

II. Background

On December 13, 1986, the Mortgage-Backed Securities Clearing Corporation (''MBSCC'') filed with the Commission a Form CA–1 [5] seeking registration as a clearing agency. The Commission granted MBSCC a temporary registration on February 2, 1987 [6] and extended this temporary registration on several occasions thereafter.[7] On October 16, 1987, the Government Securities Clearing Corporation (''GSCC'') filed with the Commission a Form CA–1 [8] seeking registration as a clearing agency. The Commission granted GSCC a temporary registration on May 24, 1988 [9] and extended this temporary registration on several occasions thereafter.[10] On January 1, 2003, GSCC acquired MBSCC and named the resulting entity FICC,[11] which has operated under a temporary registration since that time.

The temporary registrations granted to MBSCC and GSCC exempted them from certain requirements imposed by Section 17A of the Act.[12] Specifically, both MBSCC and GSCC were exempted from compliance with the Act's fair representation requirement,[13] and GSCC was further exempted from the Act's participation requirements.[14] The Commission has since determined that MBSCC and GSCC met the statutory requirements from which they were exempted and consequently lifted the exemptions.[15] As a result, FICC is currently subject to all requirements of the Act applicable to registered clearing agencies, including the requirement to submit rule change proposals to the Commission for approval [16] and to make its records available for periodic, special, or other examinations by Commission staff.[17]

The Commission extended FICC's temporary registration on several occasions,[18] most recently on June 20, 2011.[19] At that time, the Commission explained that it would consider whether to grant FICC permanent registration after the Commission acted upon FICC's proposal to introduce central counterparty and guaranteed settlement services to FICC's Mortgage-Backed Securities Division (''FICC/MBSD''). The Commission approved FICC's request to provide central counterparty services at FICC/MBSD on March 9, 2012.[20] FICC's temporary registration expires on June 30, 2013.[21]

III. Overview of FICC

FICC, a wholly owned subsidiary of the Depository Trust & Clearing Corporation (''DTCC''), is the sole clearing agency in the United States acting as a central counterparty and provider of significant clearance and settlement services for cash-settled U.S. Treasury and agency securities and the non-private label mortgage-backed securities markets.[22] FICC is comprised

[5] *See* Securities Exchange Act Release No. 23929 (December 23, 1986), 52 FR 373–01 (January 5, 1987) (File No. 600–22).

[6] *See* Securities Exchange Act Release No. 24046 (February 2, 1987), 52 FR 4218–01 (February 10, 1987) (File No. 600–22).

[7] *See* Securities Exchange Act Release No. 25957 (August 2, 1988), 53 FR 29537–01 (August 2, 1988) (File No. 600–19); Securities Exchange Act Release No. 27079 (July 31, 1989), 54 FR 32412–01 (August 7, 1989) (File No. 600–22); Securities Exchange Act Release No. 28492 (September 28, 1990), 55 FR 41148–03 (October 9, 1990) (File No. 600–19); Securities Exchange Act Release No. 29751 (September 27, 1991), 56 FR 50602–01 (October 7, 1991) (File Nos. 600–19 and 600–22); Securities Exchange Act Release No. 31750 (January 21, 1993), 58 FR 6424–02 (January 28, 1993) (File Nos. 600–19 and 600–22) (noting that, ''[d]ue to an inadvertent administrative error by MBSCC,'' MBSCC failed to request an extension of its temporary registration prior to the expiration of its last extension on September 30, 1992); Securities Exchange Act Release No. 33348 (December 15, 1993), 58 FR 68183–01 (December 23, 1993) (File Nos. 600–19 and 600–22); Securities Exchange Act Release No. 35132 (December 21, 1994), 59 FR 67743–01 (December 30, 1994) (File Nos. 600–19 and 600–22); Securities Exchange Act Release No. 37372 (June 26, 1996), 61 FR 35281–02 (July 5, 1996) (File No. 600–22); Securities Exchange Act Release No. 38784 (June 27, 1997), 62 FR 36587–01 (July 8, 1997) (File No. 600–22); Securities Exchange Act Release No. 39776 (March 20, 1998), 63 FR 14740–02 (March 26, 1998) (File No. 600–22); Securities Exchange Act Release No. 42568 (March 23, 2000), 65 FR 16980–01 (March 30, 2000) (File No. 600–22); Securities Exchange Act Release No. 44089 (March 21, 2001), 66 FR 16961–02 (March 28, 2001) (File No. 600–22); Securities Exchange Act Release No. 44831 (September 21, 2001), 66 FR 49728–01 (September 28, 2001) (File No. 600–22); Securities Exchange Act Release No. 45607 (March 20, 2002), 67 FR 14755–01 (March 27, 2002) (File No. 600–22); Securities Exchange Act Release No. 46136 (June 27, 2002), 67 FR 44655–01 (July 3, 2002) (File No. 600–22).

[8] *See* Securities Exchange Act Release No. 25129 (November 16, 1987), 52 FR 44659–01 (November 20, 1987) (File No. 600–23).

[9] *See* Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19839–01 (May 31, 1988) (File No. 600–23).

[10] *See* Securities Exchange Act Release No. 29236 (May 24, 1991), 56 FR 24852 (May 31, 1991) (File No. 600–23); Securities Exchange Act Release No. 32385 (June 3, 1993), 58 FR 32405 (June 9, 1993) (File No. 600–23); Securities Exchange Act Release No. 35787 (May 31, 1995), 60 FR 30324 (June 8, 1995) (File No. 600–23); Securities Exchange Act Release No. 36508 (November 27, 1995), 60 FR 61719 (December 1, 1995) (File No. 600–23); Securities Exchange Act Release No. 37983 (November 25, 1996), 61 FR 64183 (December 3, 1996) (File No. 600–23); Securities Exchange Act Release No. 38698 (May 30, 1997), 62 FR 30911 (June 5, 1997) (File No. 600–23); Securities Exchange Act Release No. 39696 (February 24, 1998), 63 FR 10253 (March 2, 1998) (File No. 600–23); Securities Exchange Act Release No. 41104 (February 24, 1999), 64 FR 10510 (March 4, 1999) (File No. 600–23); Securities Exchange Act Release No. 41805 (August 27, 1999), 64 FR 48682 (September 7, 1999) (File No. 600–23); Securities Exchange Act Release No. 42335 (January 12, 2000), 65 FR 3509 (January 21, 2000) (File No. 600–23); Securities Exchange Act Release No. 43089 (July 28, 2000), 65 FR 48032 (August 4, 2000) (File No. 600–23); Securities Exchange Act Release No. 43900 (January 29, 2001), 66 FR 8988 (February 5, 2001) (File No. 600–23); Securities Exchange Act Release No. 44553 (July 13, 2001), 66 FR 37714 (July 19, 2001) (File No. 600–23); Securities Exchange Act Release No. 45164 (December 18, 2001), 66 FR 66957 (December 27, 2001) (File No. 600–23); and Securities Exchange Act Release No. 46135 (June 27, 2002), 67 FR 44655 (July 3, 2002) (File No. 600–23).

[11] *See* Securities Exchange Act Release No. 47015 (December 17, 2002), 67 FR 78531 (December 24, 2002) (SR–GSCC–2002–07 and SR–MBSCC–2002–01).

[12] Pursuant to Rule 17Ab2–1(c)(1), the Commission may grant registration to a clearing agency while exempting it from one or more of the requirements of paragraphs (A) through (I) of section 17A(b)(3) of the Act. *See* 17 CFR 240.17Ab2–1(c)(1).

[13] *See* Securities Exchange Act Release No. 24046 (February 2, 1987), 52 FR 4218–01 (February 10, 1987) (File No. 600–22); Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19839–01 (May 31, 1988) (File No. 600–23).

[14] *See* Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19839–01 (May 31, 1988) (File No. 600–23).

[15] *See* Securities Exchange Act Release No. 26729 (April 14, 1989), 54 FR 16438–G–01 (April 24, 1989) (SR–MBSS–89–2) (lifting MBSCC's exemption from the Act's fair representation requirements); Securities Exchange Act Release No. 36508 (November 27, 1995), 60 FR 61719–02 (December 1, 1995) (File No. 600–23) (lifting GSCC's exemption from the Act's participation requirements); Securities Exchange Act Release No. 39372 (November 28, 1997), 62 FR 64415 (December 5, 1997) (SR–GSCC–97–01) (lifting GSCC's exemption from the Act's fair representation requirements).

[16] *See* 15 U.S.C. 78s(b)(1).

[17] *See* 15 U.S.C. 78q(b); *see also* Section 807 of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010) (mandating that supervisory agencies examine financial market utilities at least once each year) *and* n.26, *infra* (noting that FICC has been designated a financial market utility).

[18] *See* Securities Exchange Act Release No. 48116 (July 1, 2003), 68 FR 41031 (July 9, 2003) (File No. 600–23); Securities Exchange Act Release No. 49940 (June 29, 2004), 69 FR 40695 (July 5, 2004) (File No. 600–23); Securities Exchange Act Release No. 51911 (June 23, 2005), 70 FR 37878 (June 30, 2005) (File No. 600–23); Securities Exchange Act Release No. 54056 (June 28, 2006), 71 FR 38193 (July 5, 2006) (File No. 600–23); Securities Exchange Act Release No. 55920 (June 18, 2007), 72 FR 35270 (June 27, 2007) (File No. 600–23); and Securities Exchange Act Release No. 57949 (June 11, 2008), 73 FR 34808 (June 18, 2008) (File No. 600–23).

[19] *See* Securities Exchange Act Release No. 64707 (June 20, 2011), 76 FR 37165 (June 24, 2011) (File No. 600–23).

[20] *See* Securities Exchange Act Release No. 66550 (March 9, 2012), 77 FR 15155 (March 14, 2012) (File No. 600–23).

[21] *See* Securities Exchange Act Release No. 64707 (June 20, 2011), 76 FR 37165 (June 24, 2011) (File No. 600–23).

[22] *See* Financial Stability Oversight Council, 2012 Annual Report, Appendix A, p.167, *available at http://www.treasury.gov/initiatives/fsoc/Documents/2012%20Annual%20Report.pdf*. In the absence of FICC, trades in the U.S. government securities market and the mortgage-backed

of two divisions, the Government Securities Division (''FICC/GSD'') and FICC/MBSD (collectively, the ''Divisions''), each of which has its own membership and rules.[23] The rules are similar in most aspects and differ primarily where the clearance and settlement of specific products requires distinctions.[24] In 2011, the FICC/GSD and FICC/MBSD cleared transactions valued at $1.1 quadrillion on a gross basis and $64.8 trillion on a gross basis, respectively.[25] On July 18, 2012, the Financial Stability Oversight Council (''FSOC'') designated FICC systemically important under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'').[26]

As the sole central counterparty in the United States for cash-settled U.S. government and agency securities, FICC/GSD provides clearing, netting, settlement, risk management, and a guarantee of trade completion for the following securities: (i) U.S. Treasury bills, notes, bonds, Treasury inflation-protected securities (TIPS), and Separate Trading of Registered Interest and Principal Securities (STRIPS), and (ii) Federal agency notes, bonds and zero-coupon securities that are book-entry, Fedwire eligible, and non-mortgage backed. FICC/GSD accepts buy-sell transactions, repurchase and reverse repurchase agreement transactions, and Treasury auction purchases in several types of U.S. Government securities.

As the sole central counterparty in the United States for the non-private label mortgage-backed securities market, FICC/MBSD provides clearing, netting, settlement, risk management, pool notification, and a guarantee of trade completion for pass-through mortgage-backed securities issued by the Government National Mortgage Association (''Ginnie Mae''), the Federal Home Loan Mortgage Corporation (''Freddie Mac''), and the Federal National Mortgage Association (''Fannie Mae'').

IV. Discussion

A. Statutory Requirements

Section 17A of the Act directs the Commission—having due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and the maintenance of fair competition—to use its authority to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions.[27] The registration and continued oversight of clearing agencies represent key elements in promoting these statutory objectives. Accordingly, Section 17A of the Act requires a clearing agency, as defined in Section 3(a)(23) of the Act, to register with the Commission.[28] Before granting registration to a clearing agency, Section 17A(b)(3) of the Act requires that the Commission make a number of determinations with respect to the clearing agency's organization, capacity, and rules.[29] Section 17A(b)(3)(A) of the Act requires a clearing agency, among other things, to be ''so organized and [have] the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible, to safeguard securities and funds in its custody or control or for which it is responsible, [and] to comply with the provisions of [the Act] and the rules and regulations thereunder.''[30] An approval of clearing agency registration does not mean that no further modifications of the applicant's rules, systems, procedures, or practices are needed.[31]

In 1980, the Commission published a statement of the views and positions that the Division of Trading and Markets[32] (''Standards Release'')[33] would apply in evaluating applications for clearing agency registration. The Standards Release provides information concerning the Division's interpretation of the requirements for clearing agency registration set forth in subparagraphs (A) through (I) of Section 17A(b)(3),[34] illustrates specific objectives that a clearing agency's rules, procedures, and systems should achieve to be granted registration, and discusses the Division's views on the national system for clearance and settlement.[35]

securities market would have to settle bilaterally. *See id.* at 171.

[23] FICC/GSD currently has 113 members, 104 of which are full-service members. FICC/MBSD currently has 143 members.

[24] *See* Securities Exchange Act Release No. 66550 (March, 9, 2012), 77 FR 15155–01, 15162 (March 14, 2012) (SR–FICC–2008–01) (noting that FICC/MBSD's rules were ''revised to harmonize them with similar provisions in the current [FICC/]GSD rules, and in some cases updated to reflect the MBSD market'').

[25] *See* Financial Stability Oversight Council, 2012 Annual Report, Appendix A, p.168, *available at http://www.treasury.gov/initiatives/fsoc/Documents/2012%20Annual%20Report.pdf.*

[26] *See* Financial Stability Oversight Council, 2012 Annual Report, at p.110 and Appendix A, p.167, *available at http://www.treasury.gov/initiatives/fsoc/Documents/2012%20Annual%20Report.pdf.*

[27] 15 U.S.C. 78q–1.

[28] The term ''clearing agency'' is defined, in pertinent part, as ''any person who acts as an intermediary in making payments or deliveries or both in connection with transactions in securities or who provides facilities for comparison of data respecting the terms of settlement of securities transactions, to reduce the number of settlements of securities transactions, or for the allocation of securities settlement responsibilities.'' 15 U.S.C. 78c(a)(23)(A).

[29] 15 U.S.C. 78q–1(b)(3). *See also* Section 19 of the Act, 15 U.S.C. 78s, and Rule 19b–4 thereunder, 17 CFR 240.19b–4, setting forth procedural requirements for registration and continuing Commission oversight of clearing agencies, and Section 17(a) of the Act, 15 U.S.C. 78q, setting forth certain recordkeeping and record retention requirements for clearing agencies.

[30] 15 U.S.C. 78q–1(b)(3)(A). The Commission has recently adopted standards for registered clearing agencies that establish minimum requirements regarding how registered clearing agencies must maintain effective risk management procedures and controls, as well as meet the statutory requirements under the Act on an ongoing basis. *See* Securities Exchange Act Release No. 68080 (October 22, 2012), 77 FR 66220 (November 2, 2012) (File No. S7–08–11) (''Clearing Agency Standards''). As the Commission noted in the Clearing Agency Standards Release, the standards were modeled on standards developed by the International Organization of Securities Commissions (''IOSCO'') and the Committee on Payment and Settlement Systems (''CPSS'') in the Recommendations for Securities Settlement Systems (2001) (''RSSS'') and Recommendations for Central Counterparties (2004) (''RCCP'') (collectively, ''CPSS–IOSCO Recommendations''). *See id.* at 66222–23. Independent assessors from the International Monetary Fund (''IMF'') evaluated FICC/GSD against the standards outlined in the CPSS–IOSCO Recommendations and determined that FICC/GSD observed or broadly observed the CPSS–IOSCO Recommendations. Since that time, FICC/MBSD updated its rules generally to mirror the rules of FICC/GSD. *See* Securities Exchange Act Release No. 66550 (March, 9, 2012), 77 FR 15155–01, 15162 (March 14, 2012) (SR–FICC–2008–01) (noting that FICC/MBSD's rules were ''revised to harmonize them with similar provisions in the current GSD rules, and in some cases updated to reflect the [FICC/MBSD] market''). Furthermore, FICC has performed a self-assessment of the clearing agency's rules, policies, and procedures against the Clearing Agency Standards. While the Commission believes that FICC's practices are largely consistent with the Clearing Agency Standards, it will evaluate FICC's continued compliance with the Act, the Clearing Agency Standards, and other applicable rules under the Act on an ongoing basis.

[31] *See* Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 45167–02, 45171 (October 3, 1983) (File No. 600–1 *et al.*) (order approving full registration of nine clearing agencies). In approving these registrations, the Commission noted that it ''does not intend this [order approving applications for registration] to suggest that no further modifications of the subject clearing agencies' rules, systems, procedures, and practices are needed now or in the future. Indeed, the findings made in this Order are intended to supplement the Commission's . . . continuing authority under the Act to regulate evolving clearing systems. The Commission will continue to use its oversight, inspection, and enforcement authority as necessary and appropriate to further the purposes of the Act, and, as necessary, will use its rulemaking authority . . . to ensure continued development of the National System [for the clearance and settlement of securities transactions].'' *Id.*

[32] In 1980, the Division of Trading and Markets was named the Division of Market Regulation.

[33] *See* Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 (June 23, 1980).

[34] 15 U.S.C. 78q–1(b)(3)(A) through (I).

[35] The Commission notes that the standards reflected in the Standards Release were developed in the context registering ten clearing agencies engaged primarily in clearing domestic corporate debt and equity securities and, to a lesser extent,

Continued

B. Membership Standards

1. Statutory Requirements

Section 17A(b)(3)(B) of the Act enumerates the following categories of persons that a clearing agency's rules must make eligible for membership: Registered brokers or dealers, registered clearing agencies, registered investment companies, banks, and insurance companies. While the Act requires that these entities must be eligible for membership, clearing agencies are permitted to establish additional admission criteria.[36]

Section 17A(b)(4)(B) of the Act contemplates that a registered clearing agency will have financial responsibility, operational capability, experience, and competency standards that are used to accept, deny, or condition participation of any member or any category of members enumerated in Section 17A(b)(3)(B), but it also provides that these criteria may not be used to unfairly discriminate among applicants.[37] The rules of the clearing agency must not be designed to permit unfair discrimination in the admission of members or among members in the use of the clearing agency, nor impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[38]

2. FICC Compliance With Membership Requirements

FICC/GSD has established each of the membership categories required by Section 17A, and also offers membership to certain other types of entities.[39] FICC/GSD divides its members into four types depending upon the level of services offered: (i) Comparison-only members; (ii) netting members; (iii) sponsored members and their sponsors; and (iv) funds-only settling bank members. FICC/MBSD has also established each of the membership categories required by Section 17A, and also offers membership to certain other types of entities.[40] FICC/MBSD offers two principal categories of membership: one for clearing members, and one for cash-settling bank members.[41]

FICC has established requirements for applicants' financial resources, operational capacity, creditworthiness, and business experience. The financial requirements vary depending upon the nature of the applicant's business, the types of clearing services the applicant uses, and the accounting principles the applicant follows in preparing its audited financial statements.[42] FICC's financial standards require, among other things, that applicants have sufficient resources to make any required clearing fund contributions, to pay cash settlement amounts, to meet any applicable regulatory capital requirements, and to satisfy all obligations to FICC.[43] FICC ensures members' creditworthiness by retaining the authority to deny membership to entities that, among other things, are subject to statutory disqualification under Section 3(a)(39) of the Act,[44] have violated the anti-fraud provisions of federal securities laws, or have been convicted of a criminal offense.[45] FICC's operational criteria require applicants to have adequate personnel, physical facilities, books and records, accounting systems, and internal procedures to process transactions promptly and accurately, to communicate with FICC, and to conform to any conditions imposed by FICC.[46] FICC's business experience criteria require certain applicants to have a profitable business history of at least six months, or personnel with sufficient operational background and experience to ensure the firm's ability to conduct business.[47]

FICC routinely monitors its members to ensure they adhere to FICC's membership requirements on an ongoing basis. In this regard, FICC requires members to provide it with interim and annual financial statements and, periodically, certain regulatory reports (*e.g.,* the FOCUS reports broker-dealers must file with the Financial Industry Regulatory Authority).[48] FICC can require members to undergo periodic operational testing, and members must promptly notify FICC if they cease to satisfy any of FICC's membership requirements.[49] FICC also assigns its bank and broker-dealer members a rating based on their financial stability, and this rating can affect both the level of financial scrutiny these members receive and the members' clearing fund requirement.[50]

FICC has the authority to take action with respect to members that fail to maintain FICC's membership standards. A member that no longer satisfies FICC's membership requirements is subject to enhanced monitoring, increased clearing fund requirements, limitations on its access to FICC's services, and possible loss of membership privileges.[51]

3. Commission Findings on FICC's Compliance With Membership Standards

At the time of GSCC's initial temporary registration, the Commission granted GSCC exemptions from compliance with the participation standards of Section 17A(b)(3)(B) and 17A(b)(4)(B) because the Commission determined that GSCC rules did not provide for all the statutory categories of membership required under the Act or the financial standards for membership as contemplated by the Act.[52] Since the Commission's original order granting temporary registration, the Commission has approved a number of rule filings that amended GSCC's membership categories and membership requirements.[53] The Division

municipal securities. The Commission recognizes that some of these standards may not be appropriate for clearing agencies that provide services for other investment products, such as mortgage-backed securities. Accordingly, the Commission intends to apply the standards flexibly and on a case-by-case basis.

[36] 15 U.S.C. 78q–1(b)(3)(B). The Act uses the term ''participant,'' rather than ''member,'' but as FICC's rules refer to its users as members rather than participants, this Order will use the term ''member'' for the sake of clarity. *See also* 15 U.S.C. 78c(3)(a)(24) (''The term 'participant' when used with respect to a clearing agency means any person who uses a clearing agency to clear or settle securities transactions or to transfer, pledge, lend, or hypothecate securities.'').

[37] 15 U.S.C. 78q–1(b)(4)(B) and (b)(3)(F).

[38] 15 U.S.C. 78q–1(b)(3)(F) and (I).

[39] *See* GSD Rulebook, Rule 2(b).

[40] *See* MBSD Rulebook, Rule 2A.

[41] *See* MBSD Rulebook, Rule 2(b).

[42] For example, a FICC/GSD member that is a broker-dealer member registered under Section 15 of the Act whose financial statements are prepared in accordance with U.S. GAAP must have at least $25 million in net worth and at least $10 million in excess net capital. *See* GSD Rulebook, Rule 2A, Section 4(b)(ii)(A)(1) and (2). Similarly, a FICC/MBSD member that is a broker-dealer registered under Section 15 of the Act whose financial statements are prepared in accordance with U.S. GAAP must have at least $25 million in net worth and at least $10 million in excess net capital. *See* MBSD Rulebook, Rule 2A, Section 2(e)(ii)(A)(1) and (2).

[43] *See* GSD Rulebook, Rule 2A, Sections 3 and 4; MBSD Rulebook, Rule 2A, Section 2.

[44] 15 U.S.C. 78c(a)(39).

[45] *See* GSD Rulebook, Rule 2A, Sections 3 and 4(a); MBSD Rulebook, Rule 2A, Section 2.

[46] *See* GSD Rulebook, Rule 2A, Section 3; MBSD Rulebook, Rule 2A, Section 2.

[47] *See* GSD Rulebook, Rule 2A, Section 4(c); MBSD Rulebook, Rule 2A, Section 2(f).

[48] *See* GSD Rulebook, Rule 3, Section 2; MBSD Rulebook, Rule 3, Section 2.

[49] *See* GSD Rulebook, Rule 3, Sections 6 and 7; MBSD Rulebook, Rule 3, Sections 5 and 6.

[50] *See* GSD Rulebook, Rule 3; MBSD Rulebook, Rule 3.

[51] *See* GSD Rulebook Rule 3; MBSD Rulebook, Rule 3.

[52] *See* Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19839–01 (May 31, 1988) (File No. 600–23) (granting GSCC a temporary registration and exempting it from the Act's fair representation and participation requirements).

[53] *See* Securities Exchange Act Release Nos. 32722 (August 5, 1993), 58 FR 42993 (August 12, 1993) (SR–GSCC–93–01) (order approving establishment of new categories of netting system membership of Category 2 dealers and inter-dealer brokers, issuers of government securities, insurance companies, registered clearing agencies, and registered investment companies) and 34935 (November 3, 1994), 59 FR 56100 (November 10, 1994) (SR–GSCC–94–04) (order approving

thoroughly reviewed FICC's membership eligibility criteria and membership requirements when GSCC and MBSCC merged and determined that FICC's participation standards were consistent with the requirements under the Act.[54] FICC/MBSD updated its membership standards in 2012 to generally mirror the FICC/GSD standards.[55]

FICC's current rules provide for membership for those entities enumerated in the statute and provide for robust financial and operational competency standards. By clearly denoting ongoing compliance obligations and setting forth the consequences for failing to meet those obligations, FICC's rules are designed to sufficiently protect the clearing agency from risk associated with not meeting those competency standards. In addition, FICC's rules are not designed to permit unfair discrimination in the admission of members or among members in the use of the clearing agency, nor do they impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Therefore, the Commission reaffirms its 2002 and 2012 findings and finds that FICC's membership standards are in compliance with the Act.

C. Fair Representation

1. Statutory Requirements

Section 17A(b)(3)(C) of the Act requires that the rules of a clearing agency assure fair representation of the clearing agency's members in the selection of the clearing agency's directors and in the administration of the clearing agency's affairs.[56] The Standards Release interprets this section to require that a clearing agency's rules: (i) Provide members with a meaningful opportunity to be represented in the selection of the clearing agency's directors and the administration of its affairs; and (ii) provide members with sufficient information concerning the clearing agency's affairs to ensure meaningful participation.[57] In particular, clearing agencies should furnish members with audited annual financial statements, an annual report on internal accounting controls prepared by an independent public accountant, and notice of any proposed rule changes.[58]

2. FICC's Compliance With the Fair Representation Requirement

With respect to the selection of directors and the administration of the affairs of FICC, individuals elected to the DTCC Board of Directors are also elected to and constitute the Board of Directors of FICC (collectively, ''Board''). The Board consists of between fifteen and twenty-five directors, as determined by the Board periodically.[59] A majority of the Board must be composed of member representatives.[60] DTCC currently maintains eight Board Committees, with at least one director serving on each Committee.[61] Collectively, these eight committees advise DTCC's Board on matters including, but not limited to, clearing agency operations, membership, credit, and risk. Finally, members that make full use of FICC's services are required to purchase DTCC common shares in proportion to their relative use of FICC's services.[62] Holders of DTCC common shares elect all but two of the Directors of DTCC.[63]

FICC's rules require FICC/GSD and FICC/MBSD to provide members with copies of audited annual financial statements and an annual report on internal accounting controls.[64] FICC rules also require FICC to provide prompt notice of any proposals to change, revise, add or repeal any rule, along with the text or a brief description of the proposed rule and its purpose and effect.[65] Members also have the right to submit to FICC comments on the proposal, and FICC will file such comments with the Commission and retain them with FICC's records.

3. Commission Findings Regarding FICC's Compliance With the Fair Representation Requirements

In approving the merger of GSCC and MBSCC in 2002, the Commission determined that FICC satisfied the fair representation requirements of Section 17A of the Act by (i) continuing to give the members the right to purchase shares of DTCC common stock on a basis that reflects their usage of FICC's services;[66] (ii) continuing to allow members of FICC to take part in the selection of individuals to the Board; and (iii) using the committee structure to ensure that FICC members will have a voice in the operations and affairs of the divisions.[67] Accordingly, the Commission reaffirms its conclusion that FICC's rules provide members with a meaningful opportunity to select Board directors and to participate in the administration of the affairs of the clearing agency. The Commission also finds that FICC provides members with the information necessary to make informed decisions regarding these matters.

establishing new categories of netting system membership for futures commission merchants).

[54] *See* Securities Exchange Act Release No. 47015 (December 17, 2002), 67 FR 78531 (December 24, 2002) (SR–GSCC–2002–07 and SR–MBSCC–2002–01).

[55] *See* Securities Exchange Act Release No. 66550 (March 9, 2012), 77 FR 15155 (March 14, 2012) (File No. 600–23).

[56] 15 U.S.C. 78q–1(b)(3)(C).

[57] *See* Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920, 41293–94 (June 23, 1980).

[58] *Id.*

[59] Currently, the Board is composed of nineteen directors. Twelve directors represent clearing agency members, three directors are independent representatives of non-members, two directors represent DTCC management, and two directors are designated by DTCC's preferred shareholders. For more information, see *http://www.dtcc.com/about/governance/board.php.*

[60] *See* The Board of Directors of the Depository Trust and Clearing Corporation Mission Statement and Charter, *available at http://www.dtcc.com/legal/compliance/governance/DTCC_BOD_Mission_and_Charter.pdf.*

[61] The eight Board Committees are: Governance, Executive, Audit, Business and Products, Operations and Technology, Compensation and Human Resources, Risk, and Finance and Capital.

[62] DTCC common stock is reallocated at least once every three years based on members' usage of services of the DTCC clearing agencies. *See DTCC Common Stock Reallocation,* DTCC Important Notice, May 11, 2012, *available at http://www.dtcc.com/downloads/legal/imp_notices/2012/ficc/gov/GOV050.12.pdf; see also* The Depository Trust & Clearing Corporation Third Amended and Restated Shareholders Agreement, art. 2, Section 2.01(a). Members of one DTCC entity that use the services of other DTCC entities are entitled to purchase additional shares based on their use of those services.

[63] The other two directors are appointed by DTCC's preferred shareholders, NYSE-Euronext and the Financial Industry Regulatory Authority (''FINRA''), each of which hold 10,000 DTCC preferred shares.

[64] *See* GSD Rulebook, Rule 35; MBSD Rulebook, Rule 26. Although FICC/GSD's rule does not include a provision requiring it to provide members with an annual internal accounting controls report, both FICC/MBSD and FICC/GSD make the report available to members on DTCC's Web site within the requisite 60-day period after FICC receives the report. *See* Letter from Nikki Poulos, Managing Director and General Counsel, DTCC, to Joseph Kamnik, Assistant Director, Division of Trading and Markets, Securities and Exchange Commission (May 30, 2013), *available at http://www.sec.gov/rules/other/2013/dtcc-supplemental-letter-053013.pdf. See also www.dtcc.com/legal/internal/FICC_2012.pdf.*

[65] *See* MBSD Rulebook, Rule 27; GSD Rulebook, Rule 36.

[66] Since 2005, members of DTC, NSCC, and FICC that make full use of the services of one or more of these clearing agencies have been required to purchase DTCC common shares based on their use of those clearing agencies in which they are members. For more information, see Securities Exchange Act Release No. 52922 (December 7, 2005), 70 FR 74070 (December 14, 2005) (SR–DTC–2005–16, SR–FICC–2005–19, and SR–NSCC–2005–14).

[67] *See* Securities Exchange Act Release No. 47015 (December 17, 2002), 67 FR 78531 (December 24, 2002) (SR–GSCC–2002–09 and SR–MBSCC–2002–01).

D. Capacity To Enforce Rules and To Discipline Members in Accordance With Fair Procedures

1. Statutory Requirements

Section 17A(b)(3)(A) of the Act provides that a clearing agency must be organized and have the capacity to enforce compliance by its members with the rules of the clearing agency.[68] Section 17A(b)(3)(G) requires that the rules of a clearing agency provide that its members shall be appropriately disciplined for violations of any provision of those rules by expulsion, suspension, a limitation of activities, functions, and operations, fine, censure, or any other fitting sanction.[69] Section 17A(b)(3)(H) requires that the rules of the clearing agency provide a fair procedure with respect to the disciplining of members, the denial of a request for membership, and the prohibition or limitation by the clearing agency of any person with respect to the services offered by the clearing agency.[70]

2. FICC's Capacity To Enforce Rules and To Discipline Members in Accordance With Fair Procedures

FICC rules require members to notify FICC if they fail to maintain the relevant standards and qualifications for admission to membership, including minimum capital standards, operations testing and related reporting requirements.[71] If a member (i) fails to maintain such relevant standards and qualifications, including but not limited to minimum capital standards, operations testing, or reporting requirements imposed pursuant to FICC rules, (ii) violates any rule of or agreement with FICC; (iii) fails to satisfy in a timely manner any obligations to FICC; or (iv) experiences a reportable event (*e.g.,* changes in control of a member or events having a substantial effect on a member's business or financial condition), FICC may undertake appropriate action to determine the member's continued eligibility for membership. Furthermore, at any time FICC deems it necessary or advisable in order to protect FICC, its members, creditors, or investors, to safeguard securities and funds in FICC's custody or control, or to promote the prompt and accurate clearance and settlement of securities transactions, FICC may undertake appropriate action to determine the member's eligibility for membership.[72]

FICC rules also set forth the clearing agency's right to discipline members for violations of any rules or member agreements, and for any error, delay, or other conduct that either constitutes an abuse or misuse of FICC's procedures or is detrimental to the clearing agency.[73] In addition, FICC rules describe certain member actions that may cause FICC to restrict a member's access to services, including but not limited to failing to make certain payments, deliveries, or deposits pursuant to FICC rules, and provide the process by which FICC may wind down a member's activities in the clearing agency.[74] FICC may discipline a member by, as appropriate, terminating membership, ceasing to act on behalf of the member,[75] limiting a member's access to FICC's services, fining or censuring a member, or imposing any other fitting sanctions.[76] FICC must notify members of the type of disciplinary sanction being imposed, the reasons for the sanction, the effective date of the sanction, and the right to a hearing.[77]

The rules of FICC/GSD and FICC/MBSD specify the due process protections to which members are entitled. These rules permit members accused of violations to request a hearing and require FICC to establish a panel to conduct such hearings.[78] The hearing panel is required to advise the requesting member of its decision and the grounds upon which its decision is based. Disciplinary sanctions may be imposed only in accordance with FICC rules. While decisions of the panel are generally final, the Board retains the discretion to modify any sanction or reverse any decision of the panel that is adverse to a member.[79]

3. Commission Findings Regarding FICC's Capacity To Enforce Rules and To Discipline Members in Accordance With Fair Procedures

In approving GSCC's and MBSCC's initial request for registration, the Commission reviewed the clearing agencies' ability to enforce their rules and reviewed the processes by which the clearing agencies imposed fines, expulsions, suspensions, limitation of or restrictions on activities, functions and operations, or other sanctions. In so doing, the Commission was satisfied that GSCC and MBSCC rules met statutory requirements to have the capacity to enforce their rules and fairly discipline their members.[80]

The Commission continues to find that FICC has procedures for enforcing rules and disciplining members that are consistent with the requirements of the Act. Specifically, the Commission finds that FICC's rules provide it with appropriate authority to discipline members for rules violations and to impose each of the sanctions enumerated in the Act. Moreover, the Commission finds that FICC has established procedures to ensure members accused of rules violations receive notice of the alleged violations, and are afforded an opportunity to contest the allegations, including by requesting a hearing at which the accused member may be represented by counsel. In the Commission's view, these procedural safeguards are consistent with the protections envisioned by the Act. The Commission therefore concludes that FICC's capacity to enforce its rules and discipline its members comports with Section 17A(b)(3)(A), (G) and (H).

E. Safeguarding Securities and Funds

1. Statutory Requirements

Sections 17A(b)(3)(A) and (F) of the Act[81] require that a clearing agency be organized and that its rules be designed both to promote the prompt and accurate clearance and settlement of securities transactions for which it is responsible and to safeguard securities and funds in its custody or control, or for which it is responsible. The clearing agency is permitted to use clearing fund resources in limited amounts on a temporary basis to meet unexpected and unusual requirements for funds.[82]

The Standards Release also enumerated certain requirements that should be met to comply with the Act, including that a clearing agency should: (i) Be organized in a manner that effectively establishes operational and audit controls while fostering director independence; (ii) have an audit

[68] 15 U.S.C. 78q–1(b)(3)(A).

[69] 15 U.S.C. 78q–1(b)(3)(G).

[70] 15 U.S.C. 78q–1(b)(3)(H).

[71] *See* GSD Rulebook, Rule 3, Section 7; MBSD Rulebook, Rule 3, Section 6.

[72] *See* GSD Rulebook, Rule 3, Section 7; MBSD Rulebook, Rule 3, Section 6.

[73] *See* GSD Rulebook, Rule 48; MBSD Rulebook, Rule 38.

[74] *See* GSD Rulebook, Rule 21; MBSD Rulebook, Rule 14.

[75] *See* GSD Rulebook, Rules 22 and 22A; MBSD Rulebook, Rules 16 and 17.

[76] *See* GSD Rulebook, Rule 48; MBSD Rulebook, Rule 38.

[77] *See* GSD Rulebook, Rule 48; MBSD Rulebook, Rule 38.

[78] *See* GSD Rulebook, Rule 37; MBSD Rulebook, Rule 28.

[79] *See* GSD Rulebook, Rule 37; MBSD Rulebook, Rule 28.

[80] *See* Securities Exchange Act Release Nos. 24046 (February 2, 1987), 52 FR 4218–01 (February 10, 1987) (File No. 600–22) and 25740 (May 24, 1988), 53 FR 19839 (May 31, 1988) (File No. 600–23).

[81] 15 U.S.C. 78q–1(b)(3)(A) and (F).

[82] *See* Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920, 41929 (June 23, 1980).

committee of its board of directors composed of non-management directors that would select, or participate in the selection of, the clearing agency's independent public accountant and that would review the nature and scope of the work to be performed by the independent public accountant and the results thereof with the independent public accountant; (iii) have an adequately and competently staffed internal audit department that reviews, monitors, and evaluates the clearing agency's system of internal accounting control; (iv) furnish annually to members audited financial statements and furnish quarterly to members on request unaudited financial statements; (v) furnish annually to members an opinion report prepared by its independent public accountant based on a study and evaluation of the clearing agency's system of internal accounting control for the period since the last such report; and (vi) have detailed plans to assure (1) the physical safeguarding of securities and funds, (2) the integrity of the automatic data processing system and (3) the recovery, under a variety of contingencies, from loss or destruction of securities, funds, or data.[83] The Commission provides a more detailed discussion of these requirements and FICC's compliance with each directly below.

2. FICC's Safeguarding Securities and Funds

a. Clearing Fund

i. General

FICC maintains separate clearing funds for FICC/GSD and FICC/MBSD.[84] These clearing funds serve not only to provide readily accessible liquidity to facilitate timely settlement, but also to reduce costs that may be incurred in the event a member becomes insolvent or fails to fulfill its contractual obligations to FICC. FICC calculates certain portions of each member's required clearing fund deposit twice daily[85] based upon the member's unsettled and pending transactions. In calculating members' clearing fund obligations, FICC employs a risk-based margining methodology that measures each Division's credit exposure to its members. Members are required to deposit cash and eligible securities into to the appropriate clearing fund to cover these exposures.[86]

FICC calculates clearing fund requirements for cash-settled transactions at both FICC/GSD and FICC/MBSD assuming a three-day liquidation period in normal market conditions. The clearing fund requirement is calculated to provide FICC/GSD and FICC/MBSD with adequate clearing fund resources to withstand a default of the largest member 99 percent of the time in normal market conditions. FICC uses routine back and stress testing to monitor the sufficiency of clearing fund levels vis-à-vis the risk represented by the 99th percentile of expected possible losses from member portfolios and to monitor tail risk exposure that falls beyond the 99th percentile. FICC's stress tests include events from the last 10 years, as well as special stress events outside that period and hypothetical scenarios. FICC back-tests its clearing fund model on a monthly basis and has outside experts validate the model periodically.

FICC's methodology for calculating members' clearing fund requirements includes two principal components: (i) A Value at Risk (''VaR'') charge, which is calculated using a historical simulation with full revaluation; and (ii) a risk-related charge, known as a ''coverage charge.''[87] The VaR component of the clearing fund addresses the risk presented by a member's unsettled positions. The coverage component seeks to address the VaR model's potential deficiencies through daily back-testing, and further serves to ensure that members' collateral deposits are sufficient to satisfy their obligations 99 percent of the time in normal market conditions. FICC also has the authority under its rules to levy a ''special charge'' on individual members to account for market conditions, changes to a member's financial and operational capabilities, and other forms of risk, including credit, reputational and legal risk.[88]

ii. Investment of Clearing Fund Deposits

All securities and cash associated with FICC's settlement processes and clearing fund are held in FICC's accounts at its two clearing banks, the Bank of New York Mellon and JPMorgan Chase Bank. FICC generally invests its cash in securities issued or guaranteed as to principal and interest by the United States or agencies and instrumentalities of the United States or in repurchase agreements related to securities issued or guaranteed as to principal and interest by the United States or agencies and instrumentalities of the United States. FICC's investment policy also permits investments in certificates of deposit or deposits in FDIC-insured banks, but limited to the level of FDIC insurance protection, and with a time to maturity of not greater than one year. FICC's investment policy also permits it to earn money market rates in interest bearing accounts with creditworthy banks and other financial institutions deemed acceptable by FICC consistent with its investment policy.

The risk of loss of invested funds is minimized in a number of ways. Investments are placed with well-capitalized financial institutions acting as principal rather than as agent, and maturity is limited to the next business day. FICC vets its counterparties for creditworthiness. FICC ensures that its reverse repo investments are fully secured by requiring collateral to have a market value greater than or equal to 102% of the cash invested. A written confirmation of each security underlying the repo is also required to be provided by the custodian bank. In addition to these risk-minimizing measures, counterparty credit limits are established for each investment type.

iii. Loss Allocation

The rules of FICC/GSD and FICC/MBSD set out a loss allocation procedure, which is invoked if a defaulting member's clearing fund deposit is insufficient to cover losses incurred in the liquidation of the member's positions. If a member becomes insolvent, FICC would first use

[83] *See* Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920, 41925–29 (June 23, 1980).

[84] Although FICC has implemented a similar clearing fund methodology for both Divisions, some variations exist to account for the different products each Division clears. For example, to address its clearing of repurchase agreements via a general collateral fund (''GCF''), FICC/GSD's clearing fund calculation includes a GCF Premium Charge and a GCF Repo Event Premium. Moreover, FICC/GSD's clearing fund methodology includes adjustments to account for its cross-margining agreements with the Chicago Mercantile Exchange and New York Portfolio Clearing, LLC. FICC/MBSD's clearing fund formula differs in that it includes a margin requirement differential and a deterministic risk component that are absent from FICC/GSD's formula. Unlike FICC/GSD, FICC/MBSD collects clearing fund deposits once per day, and thus the margin requirement differential addresses the risk that a member may not satisfy the next day's margin requirements. The deterministic risk component captures the mark-to-market gains or losses of a member's portfolio, as well as any net cash items and adjustments.

[85] Only certain components of the clearing fund, such as the Value at Risk component, are calculated twice each day. Others, such as the coverage component, are calculated only once daily.

[86] Members' required clearing fund deposits must be made and maintained in cash, U.S. Treasury securities, securities issued by certain federal agencies, and mortgage-backed securities issued by federal agencies or entities sponsored by the federal government. FICC requires that at least 10% of a member's required deposit be maintained in cash, up to a required maximum of $5 million.

[87] *See* GSD Rulebook, Rule 4; MBSD Rulebook, Rule 4.

[88] *See* GSD Rulebook, Rule 4; MBSD Rulebook, Rule 4.

that member's clearing fund to cover a loss incurred on the liquidation of the member's positions, along with any funds available from applicable collateral sharing arrangements between FICC and other clearing corporations.[89] If those resources are insufficient to cover the liquidation of all of the defaulting member's positions, FICC's loss allocation procedure would be used. Any such loss allocation would first be made against the retained earnings of FICC attributable to the Division of which the defaulter was a member, in the amount of up to 25% of the retained earnings or such higher amount as may be approved by the Board.

iv. Use of Clearing Fund Deposits

The rules of FICC/GSD and FICC/MBSD place limits on their ability to use clearing fund deposits and assets. Specifically, the Divisions may use the clearing fund only to satisfy FICC's losses or liabilities arising from the failure of a member to satisfy an obligation to FICC, the failure of a member that is party to one of FICC's cross-guaranty or cross-margin agreements to satisfy an obligation to a counterparty that is also party to those agreements, or from unexpected or unusual requirements for funds incident to FICC's clearance and settlement business, provided these requirements represent a small percentage of the clearing fund.[90] FICC may also use the clearing fund as a source of collateral both to meet temporary financing needs in connection with its own settlement obligations and those of its members, and to meet unusual or unexpected funding needs, provided that these needs also represent a small percentage of the clearing fund.[91]

b. Operational Capacity

DTCC maintains perpetually active in-region and out-of-region data centers, each of which has sufficient capacity to process the entire production workload so that any data center can function as the sole site if one or more data centers experience an outage. Capacity plans are reviewed annually by DTCC's Infrastructure Department and the Board, and FICC performs a stress test annually to determine daily capacity. DTCC's Operations and Technology Committee oversees the operational and technology capabilities that support FICC's businesses, as well as management's operation and development of technology infrastructure capabilities, technology resources, processes, and controls necessary to fulfill service delivery requirements.[92] The Operations and Technology Committee also monitors key operational and technology metrics associated with the delivery of services, reviews financial performance related to technology and operations, and receives reports on various operational and technological programs.[93] The Operations and Technology Committee meets at least four times per year and reports to the Board regularly.[94] The Committee is required to perform an annual self-assessment of its performance and provide the results to the DTCC Board for review.[95]

c. Audit Committee and Internal Audit Department

DTCC's Audit Committee and internal audit department oversee audit matters for all DTCC entities, including FICC. The Audit Committee's primary responsibilities include supervising the preparation of financial reports, establishing and maintaining adequate internal controls, arranging and supervising internal and external audits, and overseeing the management of legal, compliance, and regulatory risk. The Audit Committee is composed of not less than four members, none of whom are employed by DTCC, and at least one of whom is not affiliated with a member of DTCC. The Audit Committee meets at least four times per year and reports to the Board regularly on its activities, including an annual self-assessment of its performance. DTCC's internal audit department reports directly to DTCC's Audit Committee[96] and provides independent validation of FICC's risk and control environment, evaluates and remediates risk, and reviews the adequacy of FICC's internal controls, procedures, and records. DTCC commissions an independent review of its internal audit department at least once every five years and uses an internal quality assurance program to test its processes on a sample basis every year.[97] FICC also engages independent accountants to perform an annual study and evaluation of the internal controls relating to its operations.

d. Financial Report and Internal Accounting Control Report

FICC provides to members annual audited financial statements prepared in accordance with U.S. Generally Accepted Accounting Principles to members within sixty days after the close of the fiscal year.[98] FICC also provides to members unaudited financial statements within thirty days following the close of FICC's fiscal quarter for each of the first three quarters of each calendar year and for FICC's fourth quarter of each calendar year, within sixty days following the close of FICC's fiscal year.[99] The

[89] FICC has entered into a multilateral netting contract and limited cross-guaranty agreement with the Depository Trust Company (DTC), National Securities Clearing Corporation (NSCC), and the Options Clearing Corporation, under which these clearing agencies have agreed to make payment to each other for any remaining unsatisfied obligations of a common defaulting member to the extent they have excess resources of the defaulting member. FICC/GSD has also established cross-margining arrangements with the Chicago Mercantile Exchange (''CME'') and New York Portfolio Clearing, LLC (''NYPC'') pursuant to which a FICC/GSD member that is also a clearing member of CME or NYPC may elect to have its clearing fund requirement in respect of eligible positions at FICC/GSD and its margin requirements in respect of eligible positions in its proprietary account at CME and NYPC calculated by taking into consideration the net risk of such eligible positions at both clearing organizations. Copies of FICC/GSD's cross-guaranty and cross-margining agreements are appended as Exhibit G to FICC's Amended Application for Registration, and are available on the Commission's Web site at the following address: *http://www.sec.gov/rules/sro/ficc.shtml.*

[90] *See* GSD Rulebook, Rule 4, Section 5; MBSD Rulebook, Rule 4, Section 5.

[91] *See* GSD Rulebook, Rule 4, Section 5; MBSD Rulebook, Rule 4, Section 5.

[92] *See* Exhibit C to FICC's Amended Form CA–1, filed on April 5, 2013, *available at http://www.sec.gov/rules/other/2013/ficc-clearing-agency-app-exhibit-a-thru-d.pdf.*

[93] *See* Exhibit C to FICC's Amended Form CA–1, filed on April 5, 2013, *available at http://www.sec.gov/rules/other/2013/ficc-clearing-agency-app-exhibit-a-thru-d.pdf.*

[94] *See* DTCC Operations and Technology Committee Charter of June 2012. This Charter appears as Exhibit A to FICC's Amended Form CA–1, filed on April 5, 2013, *available at http://www.sec.gov/rules/other/2013/ficc-clearing-agency-app-exhibit-a-thru-d.pdf.*

[95] *See* DTCC Operations and Technology Committee Charter of June 2012. This Charter appears as Exhibit A to FICC's Amended Form CA–1, filed on April 5, 2013, *available at http://www.sec.gov/rules/other/2013/ficc-clearing-agency-app-exhibit-a-thru-d.pdf.*

[96] *See* DTCC Audit Committee Charter of June 2012. The charter provides that the head of DTCC's internal audit department, the General Auditor, has the opportunity at least four times each year to meet with the Audit Committee in an executive session. The charter appears as Exhibit A to FICC's Amended Form CA–1, filed on April 5, 2013, *available at http://www.sec.gov/rules/other/2013/ficc-clearing-agency-app-exhibit-a-thru-d.pdf.*

[97] *See Mitigating Risk at DTCC: The Role of Internal Audit,* DTCC Corporate Newsletter (May 2011), *available at http://www.dtcc.com/news/newsletters/dtcc/2011/may/mitigating_risk.php.*

[98] GSD Rulebook, Rule 35; MBSD Rulebook, Rule 26. *See also* Letter from Nikki M. Poulos, Managing Director and General Counsel, FICC, to Joseph Kamnik, Assistant Director, Division of Trading and Markets, Securities and Exchange Commission (May 30, 2013), *available at http://www.sec.gov/rules/other/2013/dtcc-supplemental-letter-053013.pdf.*

[99] GSD Rulebook, Rule 35; MBSD Rulebook, Rule 26. *See also* Letter from Nikki M. Poulos, Managing Director and General Counsel, FICC, to Joseph Kamnik, Assistant Director, Division of Trading and Markets, Securities and Exchange Commission (May 30, 2013), *available at http://www.sec.gov/*

financial statements include, among other things, the total balances of the clearing funds of FICC/GSD and FICC/MBSD, the balances of both clearing funds' cash and securities components, the types and amounts of investments made with the cash balance, the amount charged to the clearing fund during the year in excess of a member's contribution, if any, and any other charge to clearing fund during the year not directly related to a specific member's contribution.

FICC retains an independent public accountant to evaluate FICC's system of internal accounting control with respect to the safeguarding of members' assets, the clearance and settlement of securities transactions, and the reliability of FICC's records. The evaluation is conducted in accordance with standards established by the American Institute of Certified Public Accountants and is made available to all members within a reasonable time upon receipt from FICC's independent accountant.[100]

e. Securities, Funds, and Data Controls

DTCC has multiple data center locations, including in-region and out-of-region sites. In-region sites use synchronous data replication between them, maintaining multiple exact copies of all production data in separate locations. Production processing is spread across the in-region data centers. The out-of-region site contains additional asynchronously replicated copies of in-region production data.

All data centers have emergency monitoring and backup systems, backup generators, and redundant telecommunications from multiple carriers. All sites have sufficient capacity to process FICC's entire workload independently. To guarantee continuous operation from multiple sites, DTCC decentralized its information technology and key business operations staff among in-region and out-of-region sites.

DTCC's SMART (Securely Managed and Reliable Technology) Network provides connectivity between DTCC and its customers and trading platforms.[101] All critical clearance and settlement transactions use SMART. Each element of SMART is engineered with multiple independent levels of redundancy, and is capable of handling DTCC's entire clearance and settlement workload independently.

3. Commission Findings Regarding FICC's Compliance With the Safeguarding Securities and Funds Requirements

As discussed above, FICC maintains a clearing fund based on a formula applicable to all users with a requirement that the lesser of $5,000,000 or 10 percent of the total required amount, with a minimum of $100,000, must be made and maintained in cash.[102] The clearing fund is used solely to protect members and the clearing agency from member defaults and from clearing agency losses that do not result from day-to-day expenses, and cash contributions to the clearing fund may generally be invested only in securities issued or guaranteed as to principal and interest by the United States or agencies and instrumentalities of the United States, or in repurchase agreements related to securities issued or guaranteed as to principal and interest by the United States or agencies and instrumentalities of the United States.[103]

DTCC has dedicated capacity planning staff and ensures that FICC has sufficient capacity to meet operational needs and adequate controls over the review of capacity plans and operational and technological capabilities of FICC. DTCC maintains an Audit Committee composed of non-management directors and an internal audit department that reports periodically to it. FICC provides financial reports and internal control reports to members on a timely basis, and DTCC has adequate controls around the prevention of a loss of securities, funds, or data and proper recovery mechanism in the event of a loss of securities, funds, or data. The Commission finds that FICC is adequately organized and that its rules are designed both to promote the prompt and accurate clearance and settlement of securities transactions for which it is responsible and to safeguard securities and funds in its custody or control or for which it is responsible, as required by the Act.

F. Obligations to Members: Standard of Care

1. Statutory Requirements

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[104]

The Division has interpreted section 17A(b)(3)(F) to require a clearing agency to maintain a uniform standard of care in its obligations to members, and specifically that a clearing agency is responsible for delivering securities in its custody to, or as directed by, the members for whom such securities are held.[105]

2. FICC's Standard of Care

FICC's standard of care states in pertinent part, that ''[FICC] will not be liable for any action taken, or any delay or failure to take any action, hereunder or otherwise to fulfill [FICC's] obligation to its members, other than for losses caused directly by [FICC's] gross negligence, willful misconduct, or violation of Federal securities laws for which there is a private right of action,'' and that FICC will not be held liable for third party actions or omissions unless FICC was grossly negligent, engaged in willful misconduct, or in violation of Federal securities laws for which there is a private right of action against the third party.[106]

3. Commission Findings on FICC's Standard of Care

The Commission has previously approved a standard of care for FICC's predecessors, MBSCC and GSCC, that limits their liability to direct losses caused by their gross negligence, willful misconduct, or violation of Federal securities laws for which there is a private right of action.[107] The Commission determined that such a standard was warranted given that neither MBSCC nor GSCC has custody

rules/other/2013/dtcc-supplemental-letter-053013.pdf. The financial statements are available on DTCC's Web site at: *http://www.dtcc.com/legal/financials/2012.*

[100] *See* MBSD Rulebook, Rule 26. *See also* Letter from Nikki M. Poulos, Managing Director and General Counsel, FICC, to Joseph Kamnik, Assistant Director, Division of Trading and Markets, Securities and Exchange Commission (May 30, 2013), *available at http://www.sec.gov/rules/other/2013/dtcc-supplemental-letter-053013.pdf.*

[101] SMART is an end-to-end, privately managed communications system encompassing a geographically dispersed complex of processing centers, communications networks and control facilities. *See generally* Securities Exchange Act Release No. 52655 (October 24, 2005), 70 FR 62154 (October 28, 2005) (SR–FICC–2005–15) (relating to the imposition of fees for FICC members who fail to migrate their communications systems to the SMART system); *see also The Complete Guide to SMART,* March 2004, *available at http://www.dtcc.com/products/documentation/technology/technology.php.*

[102] *See* GSD Rulebook Rule 4, Section 2(b); MBSD Rulebook Rule 4, Section 2(d).

[103] *See* GSD Rulebook Rule 4, Section 5; MBSD Rulebook Rule 4, Section 5.

[104] 15 U.S.C. 78q–1(b)(3)(F).

[105] *See* Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920, 41930 (June 23, 1980).

[106] *See* GSD Rulebook, Rule 39; MBSD Rulebook, Rule 30.

[107] Securities Exchange Act Release No. 48201 (July 21, 2003), 68 FR 44128–01 (July 25, 2003) (SR–GSCC–2002–10); Securities Exchange Act Release No. 49373 (March 8, 2004), 69 FR 11921–01 (March 12, 2004) (SR–MBSCC–2003–09).

of their members' funds or securities.[108] As both FICC/GSD and FICC/MBSD continue to perform only non-custodial functions, the Commission reaffirms its prior determination that their standards of care are consistent with the Act.

G. Dues, Fees and Charges

Sections 17A(b)(3)(D) and (E) of the Act require a clearing agency's rules to provide for the equitable allocation of reasonable dues, fees, and other charges among its members, and prohibit the rules of a clearing agency from imposing any schedule of prices, or fixing rates or other fees, for services rendered by its members.

The fees charged by FICC are generally usage-based and apply equally to all members using the relevant service. FICC does not impose any schedule of prices or fix rates or other fees for services rendered by its customers. Accordingly, the Commission is satisfied that the method by which FICC provides for the equitable allocation of reasonable dues, fees, and other charges among its members and its prohibitions regarding the fixing of prices of its members meet the Act's requirements.

H. Examination Findings; Other Considerations

FICC is currently subject to examination [109] by Commission staff, and may be required by Commission staff to make records available for examination by Commission staff,[110] including, but not limited to, in connection with FICC's activities pertaining to risk management, membership, and the safeguarding of securities and funds.[111] FICC also is subject to the requirement to file all proposed rule changes with the Commission for review,[112] including proposed changes that could materially affect the nature or level of risks presented by FICC.[113] Based upon such supervisory contacts, the Commission is not aware of any reason to believe the approval of FICC's application for permanent registration as a clearing agency would not be consistent with the public interest.

V. Conclusion

The Commission concludes that FICC's rules, policies and procedures, as set forth in its application for permanent registration as a clearing agency, meet the requirements for such registration, including those standards set forth under Section 17A of the Act.

It is therefore *ordered* that the application for permanent registration as a clearing agency filed by FICC (File No. 600–23) pursuant to Sections 17A(b) and 19(a)(1) of the Act be, and hereby is, *approved.*

By the Commission.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–15509 Filed 6–27–13; 8:45 am]

BILLING CODE 8011–01–P

[108] Securities Exchange Act Release No. 48201 (July 21, 2003), 68 FR 44128–01 (July 25, 2003) (SR–GSCC–2002–10); Securities Exchange Act Release No. 49373 (March 8, 2004), 69 FR 11921–01 (March 12, 2004) (SR–MBSCC–2003–09).

[109] 15 U.S.C. 78q(b); *see also* Section 807 of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010) (mandating that supervisory agencies examine financial market utilities at least once each year) *and* n.26, *supra* (noting that FICC has been designated a financial market utility).

[110] 15 U.S.C. 78q(a).

[111] *See supra* n.30 for some of the standards by which Commission staff measures FICC's activities.

[112] 15 U.S.C. 78s(b)(1).

[113] Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69836; File No. SR–NYSEMKT–2013–37]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending its Listing Standard for Reverse Merger Companies

June 24, 2013.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b-4 thereunder,[3] notice is hereby given that, on June 11, 2013, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its listing standard for Reverse Merger Companies set forth in Section 101(e) of the Exchange's Company Guide to harmonize with requirements imposed by the Nasdaq Stock Market (''Nasdaq'') and modify in one respect the circumstances under which a reverse merger company may be eligible to list under the rule.

The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE MKT proposes to amend its listing standard for Reverse Merger Companies set forth in Section 101(e) of the Exchange's Company Guide to harmonize with requirements imposed by Nasdaq and modify in one respect the circumstances under which a Reverse Merger Company may be eligible to list under the rule.

Section 101(e) of the Company Guide defines a Reverse Merger Company and establishes initial listing standards for Reverse Merger Companies.[4] Among

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b-4.

[4] For purposes of Section 101(e), a ''Reverse Merger Company'' is a company formed by means of a ''Reverse Mergers.'' A ''Reverse Merger'' is defined as any transaction whereby an operating company becomes an Exchange Act reporting company by combining directly or indirectly with a shell company which is an Exchange Act reporting company, whether through a reverse merger, exchange offer, or otherwise. However, a Reverse Merger does not include the acquisition of an operating company by a listed company which qualified for initial listing under Section 119. In determining whether a company is a shell company, the Exchange will consider, among other factors: whether the Company is considered a ''shell company'' as defined in Rule 12b–2 under the Exchange Act; what percentage of the company's assets are active versus passive; whether the company generates revenues, and if so, whether the revenues are passively or actively generated; whether the company's expenses are reasonably related to the revenues being generated; how many employees work in the company's revenue-generating business operations; how long the company has been without material business operations; and whether the company has publicly announced a plan to begin operating activities or generate revenues, including through a near-term acquisition or transaction.

other requirements Section 101(e) provides that a Reverse Merger Company is eligible to list on the Exchange only if it has timely filed with the Securities and Exchange Commission (''Commission'') all required reports since the consummation of the Reverse Merger, including the filing of at least one annual report containing all required audited financial statements for a full fiscal year commencing on a date after the date of filing with the Commission of the Form 8–K or Form 20–F containing all of the information required by Item 2.01(f) of Form 8–K, including all required audited financial statements (the ''Reverse Merger Form 8–K'').[5] In contrast, Nasdaq Marketplace Rule 5110(c) provides that a Reverse Merger Company may list if it has filed all required reports since the consummation of the Reverse Merger, including the timely filing of all required reports for the immediately preceding 12 months and the filing of at least one annual report containing all required audited financial statements for a full fiscal year commencing on a date after the date of filing with the Commission of the Reverse Merger Form 8–K. The Exchange proposes to harmonize its rule with Nasdaq Marketplace Rule 5110(c), and modify Section 101(e) to provide that a Reverse Merger Company may list if it has filed all required reports since the Reverse Merger, including (i) the filing of at least one annual report containing all required audited financial statements for a full fiscal year commencing on a date after the date of filing with the Commission of the Reverse Merger Form 8–K and (ii) the timely filing of all required reports for the most recent 12-month period prior to the listing date including at least one annual report containing all required audited financial statements. The Exchange believes that investors are sufficiently protected if a Reverse Merger Company is current in its filings at the time of listing and has demonstrated its ability to timely file its reports over a period of 12 months.[6] The Exchange does not believe that it a Reverse Merger Company should be ineligible for listing on the basis that it had a filing delinquency more than 12 months earlier that has subsequently been cured.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[7] of the Securities Exchange Act of 1934 (the ''Act''),[8] in general, and furthers the objectives of Section 6(b)(5) of the Act,[9] in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed amendment is consistent with the investor protection objectives of Section 6(b)(5) because any company listing under the proposed amended rule will still need to be current in its filings with the Commission and will have demonstrated its ability to remain timely in its filings for at least the previous 12 months. Moreover, the proposed amendment will foster cooperation and coordination with persons engaged in regulating transactions in securities by harmonizing the Exchange's listing requirements in this regard with those of Nasdaq.

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. The proposed amendment may potentially increase the competition for the listing of Reverse Merger Companies, as it will eliminate a discrepancy between the applicable listing requirements of the Exchange and those of Nasdaq and therefore enable the Exchange to list Reverse Merger Companies that are currently qualified to list on Nasdaq but not on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii)[10] of the Act and Rule 19b–4(f)(6) thereunder.[11] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, of consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[12] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

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

[5] A Reverse Merger Company must also meet all other applicable listing requirements to be eligible for listing.

[6] The Exchange notes that Section 101(e) in its current form provides for two circumstances in which a Reverse Merger Company may list notwithstanding the fact that it has not made all required filings on a timely basis for the previous 12 months, provided that it is not delinquent in its filing obligations at the time of listing. First, a Reverse Merger Company will not be subject to the requirements of Section 101(e) if it is listing in connection with a firm commitment underwritten public offering where the proceeds to the Reverse Merger Company will be at least $40,000,000 and the offering is occurring subsequent to or concurrently with the Reverse Merger. In addition, a Reverse Merger Company that has filed at least four annual reports with the Commission, which each contain all required audited financial statements for a full fiscal year commencing after filing the Reverse Merger Form 8–K, will not be subject to the requirements of Section 101(e), other than the requirement that its common stock has traded for at least one year in the U.S. over-the-counter market, on another national securities exchange or on a regulated foreign exchange following the consummation of the Reverse Merger. However, such companies will be required to (i) comply with the applicable stock price requirement of Section 102(b) at the time of each of the filing of the initial listing application and the date of the Reverse Merger Company's listing and (ii) not be delinquent in their filing obligations with the Commission. In either of the cases described in this paragraph, the Reverse Merger Company will only need to meet the requirements of one of the financial initial listing standards in Section 101(a) in addition to all other applicable non-financial listing standard requirements, including, without limitation, the requirements of Sections 102(a) and 102(b) and the applicable requirements of Chapter 8 of the Company Guide.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78a.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

Commission shall institute proceedings under Section 19(b)(2)(B)[14] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2013–37 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number *SR–NYSEMKT–2013–37.* This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NYSEMKT–2013–37 and should be submitted on or before July 19, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

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[14] 15 U.S.C. 78s(b)(2)(B).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69834; File No. SR–MSRB–2013–05]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change To Amend MSRB Rules G–8, G–11 and G–32 To Include Provisions Specifically Tailored for Retail Order Periods

June 24, 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 June 17, 2013, the Municipal Securities Rulemaking Board (the ''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (the ''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. 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 MSRB is filing with the Commission a proposed rule change consisting of amendments to MSRB Rules G–8, G–11 and G–32, and conforming changes to Form G–32 (the ''proposed rule change'').

The text of the proposed rule change is available on the MSRB's Web site at *www.msrb.org/Rules-and-Interpretations/SEC-Filings/2013-Filings.aspx,* at the MSRB's principal office, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change amends Rules G–8, G–11 and G–32 to include provisions specifically tailored for retail order periods. These provisions will establish basic protections for issuers and customers and provide additional tools to assist with the administration and examinations of retail order period requirements, as further described below under ''Summary of Proposed Rule Change'' and under ''Discussion of Comments.''

The MSRB previously issued guidance to dealers on the subject of retail order periods. In 2010, the MSRB stated that Rule G–17 requires an underwriter to follow an issuer's directions in any applicable retail order period.[3] Most recently, the MSRB stated that fair dealing requires an underwriter to take reasonable steps to ensure that retail clients are *bona fide;* that an underwriter that knowingly accepts an order that has been improperly designated as a retail order violates Rule G–17; and that a dealer placing a non-qualifying order under a retail order period violates Rule G–17.[4] In that same notice, the MSRB indicated that it will continue to monitor retail order period practices to ensure that they are conducted in a fair and orderly manner consistent with the intent of the issuer and the MSRB's investor protection mandate. The proposed rule change reflects the MSRB's determination that additional rulemaking in this area is necessary and appropriate.

The MSRB believes that the proposed rule change is necessary in consideration of its mandate to protect municipal entities and investors. The proposed rule change addresses

[3] *See* MSRB Notice 2010–26 (August 15, 2010).

[4] *See* MSRB Notice 2012–25 (May 7, 2012) (the ''G–17 Underwriters' Notice'').

concerns related to retail order periods presented from issuers, dealers, and municipal advisors. Those concerns include the mischaracterization of orders as ''retail'' and the failure of syndicate managers to disseminate timely notice of the terms and conditions of a retail order period to all dealers, including selling group members,[5] or that pricing information that had been requested was not delivered or had not been delivered in sufficient time to allow for communication with the requesting dealer's ''retail'' customers to determine whether the investor would like to purchase the bonds.[6]

To address these concerns, the proposed rule change establishes specific obligations on the senior syndicate manager to disseminate to the syndicate and selling group members detailed information about the terms and conditions of any retail order period. The proposed rule change also requires dealers to capture certain additional information in connection with orders placed under a retail order period designed to ensure that such orders are from *bona fide* retail customers. In addition, the MSRB proposes to increase transparency for regulators regarding the use of retail order periods by amending Form G–32 to require an underwriter to report to the Electronic Municipal Market Access (EMMA®)[7] system when a retail order period was conducted.

The MSRB proposed, but thereafter reconsidered a decision to issue interpretive guidance related to Rules G–17 and G–30 in connection with the proposed rule change. The proposed interpretive guidance, among other things, emphasized that during a retail order period, an issuer may require underwriters to make a *bona fide* public offering to retail customers at the initial offering price for the securities, either directly or through other dealers, and that dealers must follow the issuer's instructions for retail order periods. The particular statement that a duty of fair dealing includes following an issuer's instructions for retail order periods is inherent in a rule on fair dealing, and, as mentioned earlier, was recently addressed in the G–17 Underwriters' Notice.

The proposed guidance also addressed pricing differentials, including that large differences between institutional and individual prices that exceed the price/yield variance that normally applies to transactions of different sizes in the primary market provide evidence that the duty of fair pricing to individual clients may not have been met. This statement repeated guidance previously provided by the MSRB.[8] The discussion that followed sought to apply that previously articulated guidance to a few specific factual scenarios but did not provide any analysis or guidance that did not fairly and reasonably flow from the MSRB's prior guidance. As discussed below, the limited scope of the discussion and the perception that only those items discussed would justify a pricing differential was of concern to some commenters. The thrust of this proposed rule change is to provide mechanisms by which issuers can have greater assurance that a dealer has, when directed to do so by the issuer, made a *bona fide* public offering of the securities to retail customers at their initial offering prices, as well as provide regulators with enhanced information to monitor the activities of dealers participating in retail order periods. A further discussion for the reasons the MSRB has not included the interpretive guidance is set forth below under ''Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others.''

The MSRB proposes to establish two separate implementation dates for the proposed rule change. The amendments to Rules G–11 and G–8, the core of the proposal, would be implemented six months after the SEC approval date to allow dealers sufficient time to make necessary software or systems modifications. It also would allow time for the MSRB to create educational materials, host webinars and conduct outreach to the dealer and issuer communities, as appropriate, regarding the new rules.

The second implementation date would relate to the amendments to Rule G–32 that require syndicate managers or sole underwriters to designate to EMMA whether a retail order period was conducted. The implementation date would be not later than March 31, 2014, or such earlier date to be announced by the MSRB in a notice published on the MSRB Web site with at least a thirty day advance notification prior to the effective date. This time frame would allow for the MSRB to design an automated system for dealers to report to the EMMA system. It would include approximately six months of lead time for Rule G–32 submitters to design automated interfaces and allow time for both Rule G–32 submitters and FINRA to test all of these changes.

Certain proposed rule changes are intended to be clarifying changes only and are not related to retail order periods, as further described below under ''Summary of Proposed Rule Change.''

Summary of Proposed Rule Change

Rule G–11

MSRB Rule G–11 addresses syndicate practices and management of the syndicate, and among other things, requires syndicates to establish priorities for different categories of orders and requires certain disclosures to syndicate members, which are intended to assure that allocations are made in accordance with those priorities.

The proposed addition of provisions addressing retail order periods necessitates several new definitions in Rule G–11. First, the term ''retail order period'' is defined in subparagraph (a)(vii) to mean an order period during which solely going away orders will be solicited solely from customers that meet the issuer's designated eligibility criteria. Second, the term ''going away order'' is defined in subparagraph (a)(xii) to mean an order for which a customer is already conditionally committed. Third, the term ''selling group'' is defined in subparagraph (a)(xiii) to mean a group of brokers, dealers, or municipal securities dealers formed for the purpose of assisting in the distribution of a new issue of municipal securities for the issuer other than members of the syndicate. Selling groups are sometimes included by issuers in the distribution of new issues of municipal securities to expand the distribution channel beyond the customers of syndicate members.

Rule G–11(f) requires that the senior syndicate manager furnish in writing to the other members of the syndicate a written statement of all terms and conditions required by the issuer. The proposed rule change expands these requirements to require expressly that such written statement must be delivered to selling group members and that the statement must include all of

[5] In some cases the length of a retail order period may be less than five hours.

[6] In some jurisdictions, it is not common practice to advertise the issuer's intention to conduct retail order periods on the radio, television or in the newspaper to inform the investing public of upcoming issuances and terms related to a retail order period. Advertisements to notify the investing public of retail order periods in connection with primary offerings of municipal securities can be very expensive and often issuers do not wish to incur this cost or reimburse dealers for this expense.

[7] EMMA is a registered trademark of the MSRB.

[8] *See* Guidance of Disclosure and Other Sales Practice Obligations to Individual and Other Retail Investors in Municipal Securities (July 14, 2009) (the ''Sales Practice Notice'').

the issuer's retail order period terms and conditions and pricing information. The proposed rule change further requires that an underwriter furnish each dealer with which it has an arrangement to market the issuer's securities all of the information provided by the senior syndicate manager.[9]

Rule G–11(f) also provides that if a senior syndicate manager prepares the statement of all of the terms and conditions required by the issuer (including those related to the issuer's retail order period requirements), the statement must be provided to the issuer. The proposed rule change adds the requirement to obtain the approval of the issuer of any statement prepared by the senior syndicate manager. This approval must be secured in all cases and is not solely limited to those instances when a retail order period is conducted. The MSRB believes that it is important to ensure that an issuer is aware of, and agrees with, any requirements imposed on the syndicate and selling group members in its name.

New paragraph (k) requires any dealer placing an order during a retail order period to provide certain information to assist in the determination that such order is a *bona fide* retail order. Specifically, the order must provide (i) Whether the order met the issuer's eligibility criteria for participation in the retail order period; (ii) whether the order was a going away order; (iii) whether the dealer received more than one order from a single customer for a security for which the same CUSIP number has been assigned; (iv) any identifying information required by the issuer, or the senior syndicate manager on the issuer's behalf, in connection with such retail order (but not including customer names or social security numbers); and (v) the par amount of the order. This information must be submitted no later than the Time of Formal Award (as defined in Rule G–34(a)(ii)(C)(1)(a)), and may be part of the order submitted to the senior syndicate manager through an electronic order entry system. Because a senior syndicate manager generally would not have independent knowledge of the details of an order placed on behalf of another dealer's customer, the proposed rule change provides that the senior syndicate manager may rely on the information furnished by such dealer, unless the senior syndicate manager knows, or has reason to know, that the information is not true, accurate or complete.

Rule G–8

Under Rule G–8(a)(viii)(A), for each primary offering for which a syndicate has been formed for the purchase of municipal securities, the syndicate manager shall maintain a variety of records which show: the description and aggregate par value of the securities; the name and percentage of participation of each member of the syndicate; the terms and conditions governing the formation and operation of the syndicate; a statement of all terms and conditions required by the issuer (including whether there was a retail order period and the issuer's definition of ''retail,'' if applicable); all orders received for the purchase of the securities from the syndicate;[10] all allotments of the securities and the price at which sold; those instances in which the syndicate manager allocated securities in a manner other than in accordance with the priority provisions, including those instances in which the syndicate manager accorded equal or greater priority over other orders to orders by syndicate members for their own accounts or their respective related accounts and the specific reason for doing so; the date and amount of any good faith deposit made to the issuer; the date of settlement with the issuer; the date of closing of the account; and a reconciliation of profits and expenses of the account. The proposed rule change to Rule G–8(a)(viii)(A) would add to the documentation that must be maintained in the files of the syndicate manager all orders received for the purchase of the securities from the selling group; the information required by Rule G–11(k) and all pricing information distributed pursuant to Rule G–11(f). Such changes will facilitate review by the examining authorities of *all* of the records related to a primary offering from files maintained by one underwriter[11] (which is more efficient) rather than a review of the files of each dealer that participates in the primary offering. The proposed rule change to Rule G–8(a)(viii)(A) (and the identical provision found in subsection (B)) reflects a change in phraseology. The parenthetical would be revised in each case to delete the reference to ''whether there was a retail order period and the issuer's definition of retail'' and to replace it with ''those of any retail order period.'' This part of proposed rule change is not intended to be a substantive change.

Under Rule G–8(a)(viii)(B), for each primary offering for which a syndicate has not been formed for the purchase of municipal securities, the sole underwriter shall maintain a variety of records which show: the description and aggregate par value of the securities; all terms and conditions required by the issuer (including whether there was a retail order period and the issuer's definition of ''retail,'' if applicable); all orders received for the purchase of the securities from the underwriter; all allotments of the securities and the price at which sold; those instances in which the underwriter accorded equal or greater priority over other orders to orders for its own account or its related accounts and the specific reason for doing so; the date and amount of any good faith deposit made to the issuer; and the date of settlement with the issuer. The proposed rule change to Rule G–8(a)(viii)(B) would add to the documentation that must be maintained in the files of the sole underwriter the information required by Rule G–11(k).

Rule G–32

Generally, Rule G–32(b) provides detailed requirements for underwriters submitting documents or disclosure-related information to EMMA. Rule G–32(b)(vi)(C)(1)(a) provides that an underwriter must submit data such as CUSIP numbers, initial offering prices or yields, if applicable, the expected closing date for the transaction and whether the issuer or other obligated persons have agreed to undertake to provide continuing disclosure information as contemplated by Securities Exchange Act Rule 15c2–12. The proposed rule change to Rule G–32(b)(vi)(C)(1)(a) adds to the data that must be submitted a requirement that the underwriter report to the EMMA system (for solely regulatory purposes) whether a primary offering of securities included a retail order period and each

[9] This arrangement, commonly referred to as a ''distribution or marketing agreement,'' is used by some firms to enhance the firm's ability to ''reach'' retail customers, such as in the case where a firm does not have a significant retail distribution network. Under the proposed rule change, the onus to furnish the information is placed on the underwriter that has entered into such arrangement, rather than the senior syndicate manager, to circulate this information because the senior syndicate manager may not be aware that a given syndicate member has entered into this type of arrangement.

[10] *See* Rule G–8(a)(vii) relating to dealer records for principal transactions. Dealers are not required to retain records related to customer orders unless an order has been filled. The requirement in the rule for a memorandum of the transaction including a record of the customer's order applies only in the event such purchase or sale occurs with the customer.

[11] Records related to a successful primary offering are required to be maintained for a period of not less than six years. *See* Rule G–9(a)(iv).

date and time (beginning and end)[12] it was conducted.[13]

Miscellaneous Clarifying Changes Unrelated to Retail Order Periods

Rule G–11(h)(i) provides that discretionary fees for clearance costs to be imposed by a syndicate manager and management fees shall be disclosed to the syndicate members prior to submission of a bid. The proposed rule change would require the syndicate manager specifically to disclose to each syndicate member the *amount* of any discretionary fees for clearance costs or any management fees imposed by the syndicate manager. The proposed rule change addresses concerns that certain syndicate managers failed to disclose the amount of such fees.

Rule G–32(a) provides requirements for the disclosure to customers of certain information in connection with primary offerings of municipal securities. Rule G–32(a)(i) provides, among other requirements, that no broker, dealer or municipal securities dealer shall sell, whether as a principal or agent, any offered securities to a customer unless such dealer delivers to the customer a copy of the official statement. The proposed rule change amends Rule G–32(a)(i) to clarify that all dealers, not just underwriters, are subject to the official statement delivery requirement of the rule during the primary offering disclosure period. This proposed change codifies the MSRB's long-standing position and would promote consistent application and reduce the number of interpretive questions surrounding this requirement.

Rule G–32(b)(v) provides that in the event a syndicate or similar account has been formed for the underwriting of a primary offering, the managing underwriter shall take the actions required under the provisions of the rule and shall also comply with the recordkeeping requirements of Rule G–8(a)(xiii)(B). Subsection (B) of Rule G–8(a)(xiii) addresses the recordkeeping requirements in the case of a primary offering in which a syndicate has *not* been formed. The proposed rule change would delete the reference to such recordkeeping requirements because the cross reference to ''(B)'' is incorrect.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,[14] which provides that the MSRB's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The proposed rule change is consistent with Section 15B(b)(2)(C) of the Act. As summarized above, the proposed rule change protects, among others, investors and municipal entities by establishing certain basic regulatory standards to support the use of retail order periods. It would prevent fraudulent and manipulative acts and practices by requiring additional representations and disclosures to support whether the orders placed during a retail order period meet the eligibility criteria for retail orders established by issuers. It also provides enhanced recordkeeping to assist regulators in determining whether the requirements of Rule G–11 are being met. By ensuring that a syndicate manager must communicate an issuer's requirements for the retail order period and other syndicate information to all dealers, including selling group members, the proposed rule change should also foster cooperation and coordination among all dealers engaged in the marketing and sale of new issue municipal securities. In addition, the proposed rule change should minimize the opportunities for misrepresentation of orders as ''retail orders'' by requiring that certain information about each order is submitted in writing to the syndicate manager or sole underwriter in sufficient time so that the information can be examined by issuers and their financial advisors before bonds are allocated to dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The MSRB solicited comment on the potential burdens of the proposed rule change in the most recent request for comment.[15] Among the questions asked were:

- Would the Revised Draft Proposal effectively further the MSRB's objective of protecting issuers and retail investors?
- Would any aspects of the Revised Draft Proposal have a negative effect on the protection of issuers, retail investors or the public interest, or on the fair and efficient operation of the municipal securities market?
- What would be the incremental additional burden, if any, to dealers resulting from the Revised Draft Proposal beyond the existing burden of compliance with Rule G–11?
- Are there alternative methods the MSRB should consider to providing the protections sought under the Revised Draft Proposal that would be more effective and/or less burdensome?

The specific comments and responses thereto are discussed below under ''Discussion of Comments.'' The MSRB believes that the proposed rule change will benefit issuers, individual investors and the municipal market by improving the fairness and effectiveness of retail order periods. Specifically, the benefits of the proposed rule change should accrue to those issuers who have decided to conduct retail order periods by providing greater assurance that bonds will in fact be marketed to those ''retail'' investors that issuers have determined should have the opportunity to compete to buy their bonds in the primary market. Retail investors will benefit from the proposed rule change because they will have greater access to bonds sold in the primary market. Dealers will benefit through improved management of primary offerings and enhanced communication by and among syndicate members and selling group members. Also, improvements to the order taking process as a result of the proposed rule change will foster greater accuracy and fairness and limit opportunities for abuse. Finally, the proposed rule change will benefit the municipal market because it provides regulators with the necessary tools and information to ensure compliance with retail order period requirements.

The MSRB could, as an alternative to the proposed rule change, determine to ''wait and see'' if earlier rulemaking related to retail order periods issued in 2010 and 2012 [16] results in significant improvements in the conduct of

[12] All times would be required to be reported as Eastern Time to be consistent, for example, with the requirement to report time of trade under Rule G–14 as Eastern Time.

[13] Under the proposed rule change, the underwriter would be required to report to EMMA that a retail order period has occurred by no later than the closing date of the transaction. Under Rule G–32(b)(vi)(C)(1)(a), Form G–32 submissions shall be ''initiated on or prior to the date of first execution . . . '' The ''date of first execution'' is defined in Rule G–32(d)(xi) and, for purposes of this report, is deemed to occur by no later than the closing date.

[14] 15 U.S.C. 78o–4(b)(2)(C).

[15] *See* MSRB Notice 2012–50 (October 2, 2012) (the ''October Notice'').

[16] *See* MSRB Notices cited in footnotes 3 and 4 above.

syndicate managers and other dealers participating in retail order periods. However, the Board believes that earlier rulemaking lacked specific, concrete requirements necessary to modify dealer practices and foster improvements in compliance. In addition, previous rulemaking did not address many of the issues associated with recordkeeping which the Board believes is necessary and appropriate to support enforcement of Rule G–11.

The MSRB also considered whether education and training of issuers and dealers was a suitable regulatory alternative. However, the MSRB concluded that a significant and uniform regulatory response is needed to efficiently and effectively address widespread concerns involving retail order period practices.

The MSRB recognizes that there are costs of compliance associated with the proposed rule change. The MSRB notes that the requirement to submit additional information about each order would apply equally to all dealers that participate in primary offerings that include retail order periods. At the present time, dealers routinely submit a number of details related to each order. Many dealers have utilized software platforms which can be modified to capture the newly required disclosures. Details about orders are reflected in a report created by the platform. The customer specific information required under the proposed rule change is consistent with the type of information dealers normally must obtain in performing appropriate diligence on a customer's order. The proposed rule change attempts to minimize the potential burden on dealers by allowing the required information about each order to be submitted electronically. Moreover, any dealer that believes that gathering this additional information is an undue burden does not need to participate in collecting orders for an issuer's retail order period. The burden on dealers to capture additional information on each customer order in a retail order period is balanced against the need for issuers to have confidence that orders placed during a retail order period are *bona fide* and meet the issuer's eligibility requirements for participation in the retail order period.

The MSRB addressed concerns regarding the potential burdens to syndicate managers of auditing potentially large numbers of orders submitted to it by other dealers by expressly stating that a senior syndicate manager may rely upon the information furnished by each broker, dealer, or municipal securities dealer unless the senior syndicate manager knows, or has reason to know, that the information is not true, accurate or complete. The proposed rule change does not require that a syndicate manager undertake an exhaustive investigation of the disclosures about each order. Thus, the proposed rule change does not impose additional requirements on the senior syndicate manager other than those that would normally be required under principles of fair dealing that currently apply.

The recordkeeping requirements in Rule G–8 would be expanded under the proposed rule change to require the syndicate manager or sole underwriter to maintain all of the new documentation required as a result of amendments to Rule G–11. The MSRB believes that the maintenance of this basic information is necessary to ensure the integrity of the primary offering process in general and the retail order period in particular. These burdens are incremental in that under current Rule G–8, these parties are already required to maintain comprehensive records relating to each primary offering including all of the terms and conditions required by the issuer and whether there was a retail order period. Any reports produced electronically can be easily printed or saved and included in the deal file for easy retrieval.

Lastly, the amendments to Rule G–32 in the proposed rule change requiring the syndicate manager or sole underwriter to notify the MSRB of the date and time of each retail order period conducted presents only a modest, incremental burden to the existing requirements of Rule G–32, but provides significant regulatory value. Without this reporting requirement, neither the MSRB nor the examination authorities will have any notification of whether an offering contained a retail order period. To minimize the costs to dealers associated with this requirement, the MSRB would undertake to design an automated system for dealers to report to the EMMA system. The MSRB believes that it is reasonable to delay the implementation date for this part of the proposed rule change until such time as the automated system has been tested by the dealer community.

The MSRB notes that one issuer [17] has stated that the proposed rule change does not negatively impact the municipal securities market or its efficient operation and that, while there may be claims that the proposed rule change creates some additional burdens, in the opinion of that commenter, it is far outweighed by the benefit of an open, fair and efficient municipal marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change was developed with input from a diverse group of market participants. On October 2, 2012, the MSRB requested comment on a revised proposal on retail order periods under Rules G–11, G–8 and G–32 and a draft interpretive notice concerning the application of Rules G–17 and G–30 to retail order periods.[18] The revised proposal in the October Notice modified certain draft provisions of Rules G–11, Rule G–8 and the draft interpretive notice but did not further revise the provisions of Rule G–32 under the initial draft proposal.[19] The MSRB received 24 comment letters in response to the March and October Notices.[20]

Discussion of Comments

Definition of Retail Customer for Purposes of a Retail Order Period

Comments: MSRB Should Not Create a Definition of ''Retail:'' SIFMA generally supported the approach that it is an issuer's prerogative to determine whether there should be a retail order period and to define retail, but indicated concern on the part of some members that lack of uniformity as to the definition of retail may make it difficult to comply with the MSRB requirements to ensure that only qualifying orders are placed and to maintain adequate records. FPA agreed that there is no reason for the MSRB to create a uniform definition of retail but understood the appeal of a uniform base definition that could be modified by an issuer.

[17] *See* the comment letter submitted by the Executive Director of the Rhode Island Health and Educational Building Corp (RIHEBC)

[18] *See* the October Notice.

[19] *See* MSRB Notice 2012–13 (March 6, 2012) (the ''March Notice''), which contained the initial draft proposal regarding retail order periods under Rules G–11, G–8 and G–32 and a draft interpretive notice concerning the application of Rules G–17 and G–30 to retail order periods.

[20] Comment letters were received from: Alamo Capital (''Alamo''); Bond Dealers of America (''BDA''); CFA Institute (''CFA''); Dorsey & Company, Inc. (''Dorsey''); Edward D. Jones & Co. (''Edward Jones''); Financial Planning Association (''FPA''); Full Life Financial LLC (''Full Life''); Government Finance Officers Association (''GFOA''); Investment Company Institute (''ICI''); Richard Li (''Li''); Chris Melton (''Melton''); National Association of Independent Public Finance Advisors (''NAIPFA''); Rhode Island Health and Educational Building Corp. (''RIHEBC''); Securities Industry and Financial Markets Association (''SIFMA''); Thornburg Investment Management (''Thornburg''); Vanguard (''Vanguard''); and Wells Fargo Advisors (''Wells Fargo''). Some of the commenters submitted comment letter responses to both notices.

Comments: MSRB Should Create a Definition of ''Retail:'' Many commenters recommended, for a variety of reasons, that the MSRB establish a uniform definition of ''retail'' for use by issuers, or, in the alternative, create a ''model'' definition that issuers can use or modify as they deem appropriate.[21] GFOA's comments were representative of those commenters that believed that a boilerplate definition would benefit infrequent issuers who do not have sufficient expertise or who do not engage a financial advisor and may avoid reliance on other parties to the transaction who do not have a fiduciary duty to the issuer. Wells Fargo, Li and CFA believed that a uniform definition would make compliance more effective and less costly. Li, Full Life, GFOA and Edward Jones also supported a standard definition created by the MSRB with the option provided to issuers to create their own definition.

Comments: Divergent Views of ''Retail:'' Many commenters proffered specific proposals regarding definitions of retail that should be considered by the MSRB.[22] Some commenters favored a more limited definition that would include only individuals (*i.e.,* natural persons) while others would include orders from a trust department or registered investment advisor acting on behalf of a specifically identifiable natural person. Still others were either in favor of or against including mutual funds as ''retail'' customers. A few commenters offered arguments on behalf of or against the size of the customer order or locality of the customer as appropriate criteria for ''retail.''

MSRB Response: The current MSRB rules do not contain a definition of a ''retail'' customer and the MSRB has declined to create a definition in the proposed rule change in part because of concerns that an MSRB definition of ''retail'' may unduly influence certain issuers regarding the scope of eligible customers for a retail order period. The MSRB believes that issuers should designate the eligibility criteria for their retail order period on an issue-by-issue basis and issuers should have the flexibility to choose the criteria that best suits their unique circumstances even if this option results in lack of uniformity in the marketplace or challenges in compliance. As an alternative to a model MSRB definition, the MSRB believes that it is preferable to develop educational materials concerning retail order periods that would assist issuers in selecting their own definition. The MSRB can work with issuers and industry groups to develop model definitions and other best practices which would address this issue without the imprimatur of being a regulatory standard.

Communications Relating to Issuer Requirements

Comments: CFA supported the need for better and honest communication between various parties involved in the initial sale of municipal securities to investors. Full Life supported the proposals in principal, in particular requiring syndicate managers to disseminate timely notice of issuer requirements to all dealers, including selling group members.

MSRB Response: The MSRB appreciates these comments.

Comments: SIFMA was supportive of the timing in the current rule which requires the dissemination of information ''prior to the first offer of any securities. . . .'' SIFMA stated that among the terms and conditions required by the issuer related to the retail order period would be any time parameters for which the retail order period would be conducted. SIFMA stated that this information is especially important to dealers contacting customers with non-discretionary accounts. GFOA was supportive of a specific time frame in which the syndicate manager must provide issuer terms and conditions for the retail order period to other dealers.

MSRB Response: The MSRB is appreciative of SIFMA's comments. The MSRB does not agree that it is appropriate to impose a fixed time frame on dealers in a rule because of concerns that such a requirement could have unintended consequences. For example, it could hamper the marketing of a transaction if an issuer determines that an offering must come to market quickly.

Length of the Retail Order Period

Comments: Full Life said that the length of a retail order period should be sufficiently long to fulfill the issuer's intent. Full Life and Dorsey said that it should afford a genuine opportunity for retail investor participation. FPA stated that the period should be meaningful—it should be sufficiently long to allow an individual investor to make an informed decision.

Two commenters recommended that either the MSRB or the syndicate should fix the length of the retail order period. Dorsey said that the syndicate should specify a time reasonably sensible in length and should include the pricing structure. NAIPFA suggested that the MSRB establish a fixed timeframe for the retail order period.

Edward Jones recommended that ''meaningful notice of the retail order period'' would include 24-hour notice with preliminary pricing terms (*e.g.,* coupon, maturity, price and yield that an individual retail investor could use to form a reasoned investment decision) before the retail order period is to begin. Edward Jones suggested that an adequate retail order period should include a minimum of a full trading day with the issuer having the opportunity to extend the retail order period beyond a single trading day. Edward Jones supported a ''full day retail order period'' even if an institutional order period runs concurrently for some portion of the day.

MSRB Response: The MSRB believes that the current rule should not be revised because an issuer should retain control over the issuance process which includes the ability to adjust the length of time for the retail order period to suit its needs or market conditions.

Representations and Required Disclosures About Each Order

Comments: GFOA was supportive of the requirement to provide additional information about each order. NAIPFA was also supportive and believed it would be beneficial to issuers because it would allow issuers to better assess the effectiveness of their underwriter's ability to sell the issuers' securities as well as the underwriter's adherence to the issuers' instructions and also may help curtail flipping. Li said that details regarding the order could possibly be required by the senior manager to be communicated during the order process not just afterwards in order to prevent inadvertent misrepresentations. RIHEBC stated that it already requires much of the same information listed in the proposed rule change in order for it to judge the performance of the senior manager and co-managers.

MSRB Response: The MSRB appreciates these comments.

Comments: Alamo and BDA generally did not support the additional disclosures about each order because it would be an unreasonable administrative burden, costly and inconsistent. BDA said that the requirements are particularly burdensome in cases in which the dealer obtains large numbers of retail orders during retail order periods. BDA stated that burdens on dealers could have unintended consequences for everyone and perhaps discourage the practice of retail order periods

[21] CFA, Edward Jones, Full Life, GFOA, ICI, Li, NAIPFA, and Wells Fargo.

[22] Dorsey, Edward Jones, FPA, Full Life, ICI, NAIPFA, Vanguard, and Wells Fargo.

altogether and this can hurt issuers and retail investors. BDA suggested that, at most, dealers should comply with requirements of issuers to document or represent that they have complied with retail order period requirements. Melton said that required detailed disclosures regarding each order is inconsistent with permitting issuers to define retail and may not be completely necessary.

MSRB Response: The MSRB believes that the additional required disclosures will provide important information to the issuer. The MSRB understands that it is not uncommon for certain experienced issuers already to demand this additional information about orders. The MSRB believes it is essential to require the type of information contained in the rule because some issuers may not be sufficiently knowledgeable to ask for it or have appropriate leverage. Moreover, even when issuers have requested this information be gathered, it may not have been provided to them prior to the execution of the bond purchase agreement; this deadline is important so that the senior syndicate manager has all of the information it will need before committing the underwriters to the purchase of the bonds and before it allocates a share of securities to each dealer. In addition, one of the benefits of requiring written representations and disclosures is that it should help to minimize the likelihood of inadvertent misrepresentations related to whether or not a particular order meets the issuer's designated eligibility criteria.

Comments: SIFMA said that the representation that an order meets the issuer's definition of retail is more appropriate for the master Agreement Among Underwriters (AAU). Rather than providing the information about each order, the MSRB could provide that a dealer is deemed to have made the required representations by virtue of submitting an order during a retail order period or the representations can be made in the AAU or Selling Group Agreement (SGA), and that, therefore, it is not necessary for the representation to be made separately for each order submitted during the retail order period.

MSRB Response: SIFMA may wish to revise its standard form of AAU or SGA in support of the proposed rule change and the MSRB would be supportive of any agreement which seeks to bind members of the syndicate or selling group to honor the issuer's intentions. However, compliance with MSRB rules should stand independent of private agreements between parties.

Comment: Melton noted privacy concerns that may have led the MSRB to require dealers to identify customers without providing names and social security numbers. Dorsey and Edward Jones supported the required disclosure of zip codes to support retail priority as adequate and stated this should be adopted as an industry standard practice. Edward Jones suggested that the MSRB revise the proposal to limit the identifying information that the issuer may require. Edward Jones also suggested that an issuer should not be allowed to require dealers to provide customer account numbers, addresses, phone numbers or tax identification numbers. SIFMA said the rule should specify that any identifying information required by the issuer may not include customer account numbers, names or taxpayer identification numbers.

MSRB Response: Certain issuers have said to the MSRB that it would be helpful to have additional tools to verify orders. The MSRB believes that, if there are legitimate customer privacy protection issues associated with a specific request, particularly as it relates to certain identifying information or account numbers, an issuer may be amenable to allowing a dealer to truncate numbers before submission. The MSRB is aware that zip codes are often requested by issuers and usually provided by dealers in support of evidence that an order is from an individual or that the order is from a customer from a particular locality. Both issuers and dealers have acknowledged that it is easy to supply a zip code for a residential area and ''claim'' that it belongs to the order.

Comment: SIFMA also recommended that the MSRB create a safe harbor for senior syndicate managers so that senior managers would satisfy their own fair dealing obligations to the issuer when relying on representations made to them by other dealers that any orders submitted are retail orders.

MSRB Response: The MSRB agrees that a senior syndicate manager should, subject to certain exceptions, be entitled to rely on the information furnished by another dealer. However, the MSRB believes that a senior syndicate manager would not be entitled to rely on the information if the senior syndicate manager knows, or has reason to know, that the information is not true or accurate.

Recordkeeping

Comments: GFOA supported the new recordkeeping requirements on syndicate managers. SIFMA said that the proposed amendments requiring the syndicate members to keep such records are not warranted as they would be duplicative of recordkeeping requirements already imposed upon dealers. Edward Jones sought clarification as to whether the recordkeeping requirements applied to a sole managed deal, *i.e.,* a deal where there is no syndicate.

MSRB Response: The MSRB does not agree that proposed revisions to the recordkeeping requirements would be duplicative of recordkeeping requirements already imposed on dealers. Rule G–8(a)(vii) provides that the dealer keep a record of the customer's order in the event of a purchase or sale of municipal securities (so that a record of orders need not be retained if the order is not filled). Existing Rule G–8(a)(viii) requires that the records of all orders received (regardless of whether an order is filled) be maintained by the syndicate manager. The proposed rule change is necessary so that the additional information that must be provided by the senior syndicate manager or by each dealer as a result of the amendments to Rule G–11 will be retained in the centralized file maintained by the syndicate manager. The MSRB agrees and the proposed rule change applies to recordkeeping requirements in the case of a sole managed deal.

Comment: SIFMA said that dealers should not be required to share customer specific information with syndicate managers, and that it would be more appropriate (and should be sufficient for recordkeeping and enforcement purposes) that these customer order details remain with the dealer that maintains the customer relationship.

MSRB Response: The MSRB disagrees for the reasons stated above. Issuers will benefit from having access to customer specific information to verify orders and examinations will likely be more efficient due to centralized recordkeeping.

Revisions to Rule G–32 To Indicate That a Transaction Included a Retail Order Period

Comments: SIFMA and Full Life supported the proposed revisions to Rule G–32. Full Life said that it provides an opportunity for regulatory oversight essential to fostering administration of *bona fide* retail order periods that actually result in retail participation. SIFMA also recommended that the dates and times of any retail order period be reported to EMMA.

MSRB Response: The MSRB appreciates these comments. The MSRB agrees with SIFMA's recommendation and it is reflected in the proposed rule change to Rule G–32.

Additional Rulemaking Regarding Retail Order Periods

Comment: SIFMA stated that the G–17 Underwriters' Notice has adequately addressed the concerns regarding retail order periods so that additional rulemaking is not necessary.

MSRB Response: The MSRB considers the G–17 Underwriters' Notice as an important step towards improving practices in this area but it did not address all of the issues associated with retail order periods. More specific, concrete requirements in the proposed rule change should assist in compliance. For example, the G–17 Underwriters' Notice does not address many of the issues associated with recordkeeping. The proposed rule change also will support efforts by the issuer and the syndicate manager to audit orders.

Alternatives to Rulemaking

Comment: BDA suggested that if the MSRB produces educational materials, they should include specific guidance practices that issuers should consider in formulating effective retail order period rules. BDA recommended that issuers reserve the right to conduct an audit of compliance by the syndicate of retail order period rules. GFOA recommended that the MSRB seek to establish some type of protocol or system so that the issuer can have some comfort that retail orders meet the preset criteria set by the issuer.

MSRB Response: The MSRB would consider working with issuer trade associations on best practices which may address these issues.

Other Comments

Comment: Combined Order Periods: Vanguard said that all interested investors should be permitted to submit orders for municipal securities in the primary market and no priority should be given to retail orders, and that issuers would benefit from more accurate price discovery.

MSRB Response: The MSRB does not wish to substitute its judgment in place of that of issuers who manage their debt issuances. Issuers may choose to conduct combined order periods and the proposed rule change does not prevent them from doing so.

Comment: Definition of Selling Group: SIFMA suggested the definition of selling group be limited to those dealers that sign an SGA or substantially similar agreements for a particular new issue of municipal securities.

MSRB Response: The MSRB does not wish to define selling group by reference to an agreement which may not be executed in all cases, although the MSRB recognizes that it may be customary practice for selling group members to execute an SGA. In addition, duties of selling group members and the duties of syndicate managers to selling group members should apply to a dealer in a selling group even if for some reason it does not become a party to an SGA since to provide otherwise might have the unintended consequence of subverting the intent of Rule G–11 to apply to all dealers.

Comments: Definition of Going Away Orders: SIFMA suggested that the term going away order has not been previously defined under MSRB rules. Li included recommendations to address flipping.

MSRB Response: The term going away order was defined in an approval order concerning a previous revision to Rule G–11.[23] The proposed rule change was not directed at concerns related to flipping.

Comments: Interpretive Guidance related to Duties of All Dealers Placing Orders in Retail Order Periods and Fair Pricing: Wells Fargo suggested that the proposed guidance created a compliance challenge for firms, making almost any pricing difference subject to the whims and vagaries of which person is viewing the pricing and its fairness. SIFMA, BDA and Edward Jones raised concerns related to differential pricing between retail and institutional investors seeking specific examples of the characteristics of the securities that may fairly justify differences in pricing. SIFMA recommended that the MSRB clarify that the specific examples provided are not an exhaustive list and acknowledge that market conditions could shift within a day. GFOA suggested that the MSRB revise the interpretive guidance to state that price differences between the retail order period and the later institutional order period do not *per se* create an assumption of lack of fair dealing.

BDA found that revisions to the guidance provided a helpful discussion of how prices and yields may legitimately differ on sales of the same security. Wells Fargo suggested that retail and institutional orders should not receive different pricing and Full Life was supportive of guidance that would discourage differences in pricing as between retail and institutional investors in the new issue market. GFOA and NAIPFA were not supportive of the guidance as it related to fair pricing because of concerns that it would hurt issuers and, in the long-term, retail customers may be forced from the market.

MSRB Response: The MSRB is not proposing to issue additional guidance related to fair pricing at this time. The MSRB most recently issued guidance on the issue of fair pricing to individual clients in 2009.[24] The comments received on retail order periods and the Board's study of such programs does not establish a basis for additional pricing guidance at this time. In particular, that MSRB is mindful that any guidance should be grounded from further study and analysis and should consider the extent to which pricing differentials may affect an issuer's willingness to use a retail order period. As the MSRB continues to promote price transparency in the primary market, new issue pricing practices will be monitored to ascertain whether additional guidance is warranted.

Topics Related to Primary Offerings But Beyond the Scope of the Proposed Rule Change

Comment: Takedown: Full Life suggested that the MSRB should discourage consideration of disparity in takedown as influencing dealers' motivation to exhibit greater effort to secure institutional customers versus retail.

MSRB Response: The MSRB appreciates this comment but believes that at this time the MSRB should direct its rulemaking efforts towards ensuring that dealers submit orders only from retail customers.

Comment: Disclosures of Sales by Underwriters Following the End of the Underwriting Period: Li requested that the MSRB consider promulgating a rule requiring disclosure to issuers of sales for a period of time (perhaps seven days) following the end of the underwriting period. Li believed that this might allow the issuer to identify any pricing problems and support fair dealing.

MSRB Response: The MSRB appreciates this comment and will consider whether additional rulemaking is appropriate, but views this comment as outside the scope of the proposed rule change on retail order periods.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period of up to 90 days (i) as the Commission may designate if it finds such longer period

[23] *See* Securities Exchange Act Release 34–62715 (August 13, 2010); 75 FR 51128 (August 18, 2010); File No. SR–MSRB 2009–17.

[24] *See* the Sales Practice Notice.

to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–MSRB–2013–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MSRB–2013–05. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MSRB–2013–05 and should be submitted on or before July 19, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–15492 Filed 6–27–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69837; File No. SR–BX–2013–036]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Order Approving a Proposed Rule Change for Permanent Approval of a Pilot To Permit BX Options To Accept Inbound Options Orders From NASDAQ OMX PHLX LLC and NASDAQ Options Market

June 24, 2013.

I. Introduction

On May 7, 2013, NASDAQ OMX BX, Inc. (''Exchange'' or ''BX'') 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 requesting permanent approval of the Exchange's pilot program that permits the BX Options System to accept inbound orders routed by Nasdaq Options Services LLC (''NOS'') from the NASDAQ OMX PHLX LLC (''PHLX'') and The NASDAQ Stock Market LLC's NASDAQ Options Market (''NOM''). The proposed rule change was published for comment in the **Federal Register** on May 21, 2013.[3] The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

II. Background

BX Rule 2140(a) prohibits the Exchange or any entity with which it is affiliated from, directly or indirectly, acquiring or maintaining an ownership interest in, or engaging in a business venture with, an Exchange member or an affiliate of an Exchange member in the absence of an effective filing under Section 19(b) of the Act.[4] NOS is a registered broker-dealer that is a member of the Exchange, and currently provides to members of NASDAQ Stock Market LLC (''NASDAQ'') and PHLX optional routing services to other markets.[5] NOS is owned by NASDAQ OMX Group, Inc. (''NASDAQ OMX''), which also owns three registered securities exchanges—the Exchange, the NASDAQ and PHLX.[6] Thus, NOS is an affiliate of these exchanges.[7] Absent an effective filing, BX Rule 2140(a) would prohibit NOS from being a member of the Exchange. The Commission initially approved NOS's affiliation with BX in connection with NASDAQ OMX's acquisition of BX,[8] and NOS currently performs certain limited activities for the Exchange.[9]

On May 1, 2012, BX filed a proposed rule change to permit the Exchange to accept inbound orders that NOS routes in its capacity as a facility of NASDAQ and PHLX on a pilot basis subject to certain limitations and conditions.[10] On May 7, 2013, the Exchange filed the instant proposal to allow the Exchange to accept such orders routed inbound by NOS from NASDAQ and PHLX on a permanent basis subject to certain limitations and conditions.[11]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national

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[25] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 69576 (May 15, 2013), 78 FR 29795 (''Notice'').

[4] 15 U.S.C. 78s(b). BX Rule 2140(a) also prohibits a BX member from being or becoming an affiliate of BX, or an affiliate of an entity affiliated with BX, in the absence of an effective filing under Section 19(b). *See* BX Rule 2140(a)(2).

[5] NOS operates as a facility of both Phlx and NASDAQ that provides outbound routing from Phlx and NOM to other market centers, subject to certain conditions. *See* Phlx Rule 1080(m) and NASDAQ Options Rules, Chapter VI, Sec. 11 (Order Routing).

[6] *See* Securities Exchange Act Release No. 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (SR–BSE–2008–02; SR–BSE–2008–23; SR–BSE–2008–25; SR–BSECC–2008–01) (order approving NASDAQ OMX's acquisition of BX) (''BX Acquisition Order''). *See also* Securities Exchange Act Release 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008) (SR–Phlx–2008–31) (order approving NASDAQ OMX's acquisition of PHLX).

[7] *See id. See also* Notice, 78 FR 29795.

[8] *See* BX Acquisition Order, 73 FR 46944.

[9] *See, e.g.,* BX Options Rules, Chapter VI, Sec. 11 (Order Routing). *See also* Securities Exchange Act Release No. 67256 (June 26, 2012), 77 FR 39277 (July 2, 2012) (SR–BX–2012–030) (''BX Options Order'').

[10] *See* Securities Exchange Act Release No. 66983 (May 14, 2012), 77 FR 29730 (May 18, 2012 (notice of proposed rule change to establish BX Options market and allow, among other things, BX to accept inbound orders from NASDAQ and PHLX on a one-year pilot basis).

[11] *See* Notice, 78 FR 29795–29796.

securities exchange.[12] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,[13] which requires, among other things, that a national securities exchange be so organized and have the capacity to carry out the purposes of the Act, and to comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulation thereunder, and the rules of the Exchange. Further, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[14] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest. Section 6(b)(5) also requires that the rules of an exchange not be designed to permit unfair discrimination among customers, issuers, brokers, or dealers.

Recognizing that the Commission has expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange to which it is routing orders, the Exchange previously implemented limitations and conditions to NOS's affiliation with the Exchange to permit the Exchange to accept inbound orders that NOS routes in its capacity as a facility of NASDAQ and PHLX on a pilot basis.[15] The Exchange has now proposed to permit BX to accept inbound orders that NOS routes in its capacity as a facility of NASDAQ and PHLX on a permanent basis, subject to the same limitations and conditions of this pilot:[16]

- First, the Exchange and the Financial Industry Regulatory Authority (''FINRA'') maintain a Regulatory Contract, as well as an agreement pursuant to Rule 17d–2 under the Act (''17d–2 Agreement'').[17] Pursuant to the Regulatory Contract and the 17d–2 Agreement, FINRA is allocated regulatory responsibilities to review NOS's compliance with certain Exchange rules.[18] Pursuant to the Regulatory Contract, however, the Exchange retains ultimate responsibility for enforcing its rules with respect to NOS.
- Second, FINRA monitors NOS for compliance with the Exchange's trading rules, and collects and maintains certain related information.[19]
- Third, FINRA provides a report to the Exchange's chief regulatory officer (''CRO''), on a quarterly basis, that: (i) quantifies all alerts (of which the Exchange or FINRA is aware) that identify NOS as a participant that has potentially violated Commission or Exchange rules, and (ii) lists all investigations that identify NOS as a participant that has potentially violated Commission or Exchange rules.
- Fourth, the Exchange has in place BX Rule 2140(c), which requires NASDAQ OMX, as the holding company owning both the Exchange and NOS, to establish and maintain procedures and internal controls reasonably designed to ensure that NOS does not develop or implement changes to its system, based on non-public information obtained regarding planned changes to the Exchange's systems as a result of its affiliation with the Exchange, until such information is available generally to similarly situated Exchange members, in connection with the provision of inbound order routing to the Exchange.

The Exchange stated that it has met all the above-listed conditions. By meeting such conditions, the Exchange believes that it has set up mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to NOS, and has demonstrated that NOS cannot use any information advantage it may have because of its affiliation with the Exchange.[20]

In the past, the Commission has expressed concern that the affiliation of an exchange with one of its members raises potential conflicts of interest, and the potential for unfair competitive advantage.[21] Although the Commission continues to be concerned about potential unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members, for the reasons discussed below, the Commission believes that it is consistent with the Act to permit NOS, in its capacity as a facility of NASDAQ and PHLX, to route orders inbound to the Exchange on a permanent basis instead of a pilot basis, subject to the limitations and conditions described above.[22]

The Exchange has proposed four ongoing conditions applicable to NOS's routing activities, which are enumerated above. The Commission believes that these conditions will mitigate its concerns about potential conflicts of interest and unfair competitive advantage. In particular, the Commission believes that FINRA's

[12] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(1).

[14] 15 U.S.C. 78f(b)(5).

[15] *See* BX Options Order, 77 FR 39280–39281 (order approving, among other things, BX's proposal to accept inbound orders from NASDAQ and PHLX on a one-year pilot basis).

[16] *See* Notice, 78 FR 29796.

[17] 17 CFR 240.17d–2.

[18] NOS is also subject to independent oversight by FINRA, its designated examining authority, for compliance with financial responsibility requirements. *See* Notice, 78 FR 29796 n.11.

[19] Pursuant to the Regulatory Contract, both FINRA and the Exchange collect and maintain all alerts, complaints, investigations and enforcement actions in which NOS (in its capacity as a facility of NASDAQ and PHLX routing orders to the Exchange) is identified as a participant that has potentially violated applicable Commission or Exchange rules. The Exchange and FINRA will retain these records in an easily accessible manner in order to facilitate any potential review conducted by the Commission's Office of Compliance Inspections and Examinations. *See* Notice, 78 FR 29796 n.12.

[20] *See* Notice, 78 FR 29796.

[21] *See, e.g.,* Securities Exchange Act Release Nos. 54170 (July 18, 2006), 71 FR 42149 (July 25, 2006) (SR–NASDAQ–2006–006) (order approving NASDAQ's proposal to adopt NASDAQ Rule 2140, restricting affiliations between NASDAQ and its members); 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–2005–77) (order approving the combination of the New York Stock Exchange, Inc. and Archipelago Holdings, Inc.); 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR–Amex–2008–62 and SR–NYSE–2008–60) (order approving the combination of NYSE Euronext and the American Stock Exchange LLC); 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (SR–ISE–2009–85) (order approving the purchase by ISE Holdings of an ownership interest in Direct Edge Holdings LLC); 59281 (January 22, 2009), 74 FR 5014 (January 28, 2009) (SR–NYSE–2008–120) (order approving a joint venture between NYSE and BIDS Holdings L.P.); 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (File No. 10–182) (order granting the exchange registration of BATS Exchange, Inc.); 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (File Nos. 10–194 and 10–196) (order granting the exchange registration of EDGX Exchange, Inc. and EDGA Exchange, Inc.); and 62716 (August 13, 2010), 75 FR 51295 (August 19, 2010) (File No. 10–198) (order granting the exchange registration of BATS–Y Exchange, Inc.).

[22] The Commission notes that these limitations and conditions are consistent with those previously approved by the Commission for the Exchange. *See, e.g.,* Securities Exchange Act Release Nos. 69233 (March 25, 2013), 78 FR 19352 (March 29, 2013) (SR–NASDAQ–2013–028); 69232 (March 25, 2013), 78 FR 19342 (March 29, 2013) (SR–BX–2013–013); 69229 (March 25, 2013), 78 FR 19337 (March 29, 2013) (SR–Phlx–2013–15); 67256 (June 26, 2012) 77 FR 39277 (July 2, 2012) (SR–BX–2012–030); and 64090 (March 17, 2011), 76 FR 16462 (March 23, 2011) (SR–BX–2011–007).

oversight of NOS,[23] combined with FINRA's monitoring of NOS's compliance with the Exchange's rules and quarterly reporting to the Exchange, will help to protect the independence of the Exchange's regulatory responsibilities with respect to NOS. The Commission also believes that the Exchange's Rule 2140(c) is designed to ensure that NOS cannot use any information advantage it may have because of its affiliation with the Exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[24] that the proposed rule change (SR–BX–2013–036) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Kevin M. O'Neill,

Deputy Secretary.

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[23] This oversight will be accomplished through the 17d–2 Agreement between FINRA and the Exchange and the Regulatory Contract. *See* Notice, 78 FR 29796 n.10 and accompanying text.

[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69835; File No. SR–MSRB–2013–04]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change Relating to a New MSRB Rule G–45, on Reporting of Information on Municipal Fund Securities

June 24, 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 June 10, 2013, the Municipal Securities Rulemaking Board (''MSRB'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. 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 MSRB is filing with the Commission a proposed rule change consisting of new Rule G–45, on reporting of information on municipal fund securities, and Form G–45, and amendments to Rules G–8, on books and records, and G–9, on preservation of records (the ''proposed rule change''). The MSRB will designate an implementation date for the proposed rule change that is not earlier than one year from the date of SEC approval.

The text of the proposed rule change is available on the MSRB's Web site at *www.msrb.org/Rules-and-Interpretations/SEC-Filings/2013-Filings.aspx,* at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Summary of Proposed Rule Change. The proposed rule change will, for the first time, provide the MSRB with more comprehensive information regarding 529 College Savings Plans (''529 plans'' or ''plans'') underwritten by brokers, dealers or municipal securities dealers (''dealers'') by gathering data directly from such dealers. The MSRB regulates dealers that act in the capacity of underwriters of 529 plans, as well as dealers that sell interests in 529 plans and municipal advisors to such plans. Interests in 529 plans have been deemed to be municipal securities by the Commission,[3] and the MSRB has categorized such interests as municipal fund securities.[4] MSRB rules govern the activities of dealers who transact business in municipal fund securities, and it is important that the MSRB have accurate, reliable and complete information about 529 plans underwritten by dealers in order to carry out its rulemaking responsibilities.

Current MSRB Requirements

Today, the MSRB collects certain information regarding 529 plans from underwriters and issuers. Just as it does for municipal securities that are not municipal fund securities, the MSRB's Electronic Municipal Market Access (''EMMA®'')[5] system serves as a centralized venue for the submission by underwriters of 529 plan primary offering disclosure documents (''plan disclosure documents'') and continuing disclosures, such as annual financial reports submitted to EMMA by issuers or their agents. However, the MSRB does not currently receive detailed underwriting or transaction information, as it does for other types of municipal securities.

The proposed rule change will require dealers acting in the capacity of underwriters to submit to the MSRB, for the 529 plans they underwrite, on a semi-annual or, in the case of performance data, annual basis, certain information. The information includes plan descriptive information, assets, asset allocation information (at the investment option level), contributions, withdrawals, fee and cost structure, performance data, and other information. While some of the information, such as fees and costs, may be contained in plan disclosure documents submitted to EMMA, the information is not submitted in a manner that allows for analysis or comparison, since it is imbedded in static documents submitted in portable document format. The proposed rule change requires the information to be submitted electronically through new Form G–45, which is discussed in more detail below. The MSRB, and other regulatory authorities that are charged by statute with examining dealers for compliance with, and enforcing, MSRB rules, including the SEC and the Financial Industry Regulatory Authority (''FINRA''), will be able to utilize this information to analyze 529 plans, monitor their growth rate, size and investment options, and compare plans based on fees and costs and performance. By collecting this information, the MSRB will enhance its

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter dated February 26, 1999 from Catherine McGuire, Chief Counsel, Division of Market Regulation, SEC, to Diane G. Klinke, General Counsel of the Board, in response to letter dated June 2, 1998 from Diane G. Klinke to Catherine McGuire, *published as* Municipal Securities Rulemaking Board, SEC No-Action Letter, Wash. Serv. Bur. (CCH) File No. 032299033 (Feb. 26, 1999).

[4] The term municipal fund security is defined in MSRB Rule D–12 to mean a municipal security issued by an issuer that, but for the application of Section 2(b) of the Investment Company Act of 1940, would constitute an investment company within the meaning of Section 3 of the Investment Company Act of 1940.

[5] EMMA is a registered trademark of the MSRB.

understanding of the 529 plan market, the growth of plans and their investment options, and the differences among plans. Such information may inform the MSRB of the risks and impact of each plan and investment option and provide the MSRB and other regulators with additional information to monitor the market for wrongful conduct.

At present, there is no central, reliable source for this information. While information vendors and an issuer-related association collect information regarding 529 plans, even assuming it would be the same information needed by the MSRB, the information submitted to these entities is done so voluntarily by 529 plan program managers or their affiliates or contractors. Consequently, it is not possible to confirm that all 529 plans will continue to submit information to these organizations or that all information requested will be provided. Further, it is not possible to test or otherwise confirm the accuracy of the information provided to these organizations. In short, the voluntary collection of limited 529 plan information by private organizations is not a substitute for actual data submitted by regulated dealers.

Since the creation of the earliest 529 plans, the MSRB has issued interpretive guidance regarding dealer obligations in connection with transactions in interests in 529 plans. On March 31, 2006, the MSRB filed with the Commission an interpretation on customer protection obligations relating to the marketing of interests in 529 plans (the ''2006 Notice'').[6] The 2006 Notice addressed the basic customer protection obligations of dealers, including their disclosure obligations under MSRB Rule G–17. In the 2006 Notice, the MSRB noted that various organizations, including the College Savings Plans Network (''CSPN''), an affiliate of the National Association of State Treasurers, and certain private entities had established Web sites devoted to 529 plans.[7]

At that time, the MSRB urged market participants to develop a more comprehensive and user-friendly system of established industry sources for the 529 plan market. An established industry source is considered by the MSRB to be one which provides a broad variety of information that professionals can and do use to obtain material information about municipal securities.[8] The MSRB stressed the importance of disclosure of material information regarding 529 plans and commented that it had long been an advocate for the best possible disclosure practices by 529 plan market participants, though it lacked the authority to mandate specific disclosures by issuers. Over the years, the MSRB has worked with CSPN and individual states on, among other issues, disclosure principles and best practices, in order to better inform and protect investors.[9] The disclosure principles cover a variety of topics that might be considered material to investors in making an informed investment decision, including the discussion of investment options, possible federal and state tax benefits, program management, investment management, risk factors, fees and costs, and investment performance.

Given the complexity of 529 plans and their unique characteristics, such as individual state tax treatment, the MSRB urged market professionals to develop more comprehensive Web sites with features that would assist the general public in understanding the key terms and features of 529 plans.[10] In the 2006 Notice, the MSRB noted that it would monitor the 529 plan market closely and consider whether further rulemaking regarding disclosures would be appropriate.

EMMA

On June 1, 2009, the MSRB implemented an electronic system for free public access to primary market disclosure documents through EMMA.[11] Thereafter, 529 plan underwriters have been obligated to submit plan disclosure documents to EMMA, pursuant to MSRB Rule G–32.[12] On July 1, 2009, the MSRB implemented the continuing disclosure service of EMMA.[13] Since that date, 529 plan issuers or their agents have been submitting continuing disclosures regarding 529 plans to EMMA, such as audited financial statements, based on continuing disclosure agreements entered into pursuant to SEC Rule 15c2–12 (''Rule 15c2–12''), promulgated under the Act. Underwriters of 529 plans generally are obligated to determine that continuing disclosure agreements have been entered into in connection with the plans.[14]

The proposed rule change will assist the MSRB and other regulators that, pursuant to Section 15B of the Act, perform examinations and other oversight activities of dealers and municipal advisors, by providing them with important information regarding 529 plans underwritten by dealers. For example, the information will enable the MSRB or other regulators to, on a comprehensive basis, compare the asset allocation, fees and costs, and performance of similar investment options across plans and identify trends or changes. Such information also may be used to determine the nature or timing of risk-based dealer examinations.

The information will be submitted to EMMA and retained in a database for regulatory use and will not, at this time, be disseminated publicly, though the MSRB's goal is to disseminate through EMMA the information that would be of benefit to investors. For example, the MSRB may display fee and expense or performance information on EMMA. Prior to such a public dissemination, the MSRB will file a proposed change to the EMMA or other facility with the SEC, and provide market participants with an opportunity to comment publicly on the proposal.

Proposed Rule G–45

The proposed rule change will require each underwriter of a primary offering of municipal fund securities that are not interests in local government investment pools to report to the MSRB the information relating to such offering required by Form G–45 by no later than 60 days following the end of each semi-annual reporting period ending on June 30 and December 31 each year and in the manner prescribed in the Form G–45 procedures and as set forth in the Form G–45 Manual.[15] Interests in 529

[6] MSRB Notice 2006–07 (March 31, 2006).

[7] CSPN's Web site is located at *www.collegesavings.org.*

[8] *See* MSRB Notice 2006–07, Note 10 (March 31, 2006).

[9] CSPN published its Disclosure Principles Statement No. 5 (''Disclosure Principles No. 5'') on May 3, 2011 (*www.collegesavings.org/legislativeInitiative.aspx*), which assists states in improving the quality of disclosure to investors about their 529 plans. Based on comments to draft Rule G–45, the MSRB has modified certain reporting requirements to be consistent with Disclosure Principles No. 5, as more fully described below.

[10] In this regard, CSPN, for example, developed a Web site that aggregates information regarding 529 plans and enables investors to compare plans by state and by feature. The MSRB views these established industry sources as helpful in providing investors and investment professionals who transact business in 529 plans with material information necessary for investors to make informed investment decisions.

[11] MSRB Notice 2009–22 (May 22, 2009).

[12] Since May 2011, for 529 plans not underwritten by dealers, states have been permitted to voluntarily submit plan disclosure documents for public dissemination through EMMA.

[13] MSRB Notice 2008–47 (December 8, 2008).

[14] *See* Interpretation Relating to Sales of Municipal Fund Securities in the Primary Market (January 18, 2001).

[15] The Form G–45 Manual will be a new item created to assist persons in the submission of the information required under Rule G–45 and is not part of the proposed rule change.

plans are the only type of municipal fund security that will be covered by the proposed rule change. Such interests are sold through a continuous primary offering. Under the proposed rule, brokers, dealers or municipal securities dealers that are underwriters under Rule 15c2–12(f)(8) [16] will be required to submit the required information to the MSRB. The MSRB recognizes that, just as with municipal bonds, there may be more than one underwriter of a particular primary offering. In the case of 529 plans, program managers, their affiliates, including primary distributors, and/or their contractors, may fall within the statutory definition of underwriter. Consequently, the MSRB would deem the obligation to submit the required information fulfilled if any one of the underwriters submitted the required information. In this regard, on proposed Form G–45, each submitter would indicate the identity of each underwriter on whose behalf the information is submitted.

Originally, the MSRB proposed that the information be submitted within 30 days of the end of the reporting period.[17] Commenters raised concerns about the deadline and, in response, the MSRB revised the proposal and extended the deadline to 60 days from the end of the reporting period to address the burdens on dealers in gathering and validating the information.[18] Similarly, in the August Notice the MSRB initially proposed that underwriters report the required information quarterly. In response to comments to the August Notice, the MSRB in the November Notice changed the reporting period from quarterly to semi-annually to address the burdens of more frequent filings. Moreover, underwriters only will be required to submit performance data annually instead of quarterly or semi-annually. This change was also in response to concerns raised about the burden of quarterly submissions. In the November Notice, the MSRB also revised the proposal to eliminate the requirement to submit information on the percentage of plan contributions derived from automatic contributions, such as through ACH (Automated Clearing House) debit transfers from an account owner's bank account. The MSRB believes that the burden on dealers to submit this information outweighs its regulatory benefit. Finally, in the August Notice the MSRB initially proposed to collect information regarding the underlying portfolio investments in which each investment option invests. Based on comments to the initial proposal and in recognition of the additional burdens associated with supplying the individual portfolio data that is subsumed within an investment option, in the November Notice, the MSRB eliminated this requirement from the proposed rule change.

Rules G–8 and G–9

The proposed rule change includes amendments to the MSRB's books and records rules to require underwriters obligated to submit information to the MSRB under proposed Rule G–45 to maintain the information required to be reported on Form G–45 for six years.

Proposed Form G–45

The information required by Form G–45 will be submitted electronically by underwriters, either through automated upload or through a web portal, at the discretion of the underwriter. In order to minimize the burden on underwriters, once the information is initially submitted, future submissions will be pre-populated with certain basic information on the electronic form. Form G–45 requires the submission of the following information:

- *Plan descriptive information:* The underwriter will provide the MSRB with the name of the state, name of the plan, name of the underwriter and contact information, name of other underwriters on whose behalf the underwriter is submitting information, name of the program manager and contact information, plan Web site address and type of marketing channel (whether sold with or without the advice of a broker-dealer). This information will be pre-populated and will likely change infrequently.
- *Aggregate plan information:* The underwriter will provide the MSRB with total plan assets, as of the end of each semi-annual reporting period, total contributions for the most recent semi-annual reporting period, and total distributions for the most recent semi-annual reporting period.
- *Investment option information:* For each investment option offered by the plan, the underwriter will provide the MSRB with the name and type of investment option (such as an age-based, conservative), the inception date of the investment option, total assets in the investment option as of the end of the most recent semi-annual period, the asset classes in the investment option, the actual asset class allocation of the investment option as of the end of the most recent semi-annual period, the name of each underlying investment in each investment option as of the end of the most recent semi-annual period, the investment option's performance for the most recent calendar year (as well as any benchmark and its performance for the most recent calendar year), total contributions to and distributions from the investment option for the most recent semi-annual reporting period and the fee and expense structure in effect as of the end of the most recent semi-annual reporting period. In order to ease the burden on underwriters submitting the information, the MSRB modified the proposal to permit the performance and fee and expense information to be submitted in a format consistent with Disclosure Principles No. 5, which commenters inform the MSRB is the industry norm for reporting such information.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,[19] which provides that the MSRB's rules shall

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The statute requires the MSRB to protect both investors and municipal entities. In fulfilling its responsibility, the MSRB must understand the market and possess basic, reliable information regarding individual 529 plans and their investment options. The proposed rule change will provide the MSRB with such information. The information will allow the MSRB to assess the impact of each plan on the market, evaluate trends and differences, and gain an understanding of the aggregate risk taken by investors by the allocation of assets in each investment option. Having this information will better position the MSRB to protect investors and the public interest.

Additionally, the MSRB has a statutory obligation to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade. Typically, underwriters of 529 plans draft or participate in drafting the plan

[16] 17 CFR 240.15c2–12(f)(8).

[17] MSRB Notice 2012–40 (August 6, 2012) (the ''August Notice'').

[18] MSRB Notice 2012–59 (November 23, 2012) (the ''November Notice'').

[19] 15 U.S.C. 78o–4(b)(2)(C).

disclosure documents, as well as marketing material for 529 plans. The MSRB or other regulators may use the information submitted on Form G–45 to, among other things, determine if the disclosure documents or marketing material prepared or reviewed by underwriters are consistent with the data submitted to the MSRB.

Finally, while commenters have suggested that underlying investments in 529 plans are typically registered investment companies regulated by the SEC and therefore oversight by the MSRB would be duplicative, the investment options are unique to 529 plans and are not regulated as registered investment companies by the SEC. It is therefore important that the MSRB collect information about 529 plan investment options.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, since it would provide information necessary for the MSRB to carry out its regulatory responsibilities under the Act and would apply equally to all dealers that serve as underwriters of 529 plans. Moreover, the MSRB believes that such underwriters collect and retain the information required by the proposed rule change and utilize it for a variety of purposes, including reporting to issuers and other market participants. The information that the proposed rule change requires underwriters to submit to EMMA will be required to be submitted on an equal and non-discriminatory basis. As described above, the MSRB will realize substantial benefits in obtaining reliable, accurate information about 529 plans, promoting greater regulatory oversight and investor protection. In addition, the proposed rule change will not impose any burden on dealers that sell interests in 529 plans, as the obligation to submit information semi-annually to the MSRB will only be imposed on underwriters. On balance, the MSRB believes that the benefits of the proposed rule change greatly exceed any potential increased burden it imposes on dealers.

In the November Notice requesting comment on the proposed rule change, the MSRB explained that, in order to ease the burden on dealers, the proposed rule change ''eliminate[d] the requirement to submit information on underlying investments and the requirement to submit the percentage of plan contributions derived from automatic contributions, based on comments that some plans do not track such information.'' The November Notice also provided that ''in order to facilitate the submission of information, the MSRB will take steps to pre-populate certain data fields on Form G–45, subsequent to the initial filing by underwriters.'' As explained earlier, the MSRB made other substantive changes to the proposal to ease the burden on dealers, such as changing the reporting period from quarterly to semi-annually (except for performance, which would be reported annually), extending the reporting deadline from 30 days after the end of the reporting period to 60 days after the end of the reporting period, and conforming the reporting format for fees and performance to the Disclosure Principles No. 5. The MSRB believes these changes, taken together, reduce the reporting burden significantly.

Among the suggested alternatives to the proposed rule change are (a) a manual review of information in plan disclosure documents submitted to EMMA or on plan Web sites; or (b) a review of data supplied by information vendors voluntarily. Neither of these alternatives will satisfy the regulatory needs of the MSRB. A manual review of information would be insufficient because some of the information sought by the MSRB is not disclosed in public documents. For example, plans may not publish information on their assets, contributions, distributions, performance or benchmark performance at the investment option level. Moreover, monitoring EMMA and other Web sites for the publication of new information would be time consuming and inefficient. While information supplied by dealers to information vendors may be of interest, it is unreliable from a regulatory standpoint. Additionally, the MSRB would be relying on such information vendors for important regulatory information. On balance, the MSRB believes that semi-annual reporting of limited information, which is readily available to underwriters, will not pose an unreasonable burden on dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

On November 23, 2012, the MSRB issued a request for comment on a draft rule requiring underwriters to submit 529 plan data to the MSRB.[20] The November Notice outlined the requirements of draft MSRB Rule G–45 and Form G–45, including the requirement that underwriters submit information required by Form G–45 semi-annually, except for performance information which would be submitted annually, a 60 day deadline to report the information after the end of the reporting period, and an implementation period of at least one year following approval of the rule change by the Commission.[21]

Publication of Collected Information

In response to the November Notice, the MSRB received eight letters that comment on the proposed rule change.[22] A number of commenters raise concerns about the possibility of public dissemination of the data collected on the EMMA Web site.[23] The concerns are that investors may be confused if information is displayed out of context and that some of the information may be proprietary.[24] The MSRB stated in the November Notice that the information would be collected for regulatory purposes and that no information collected under proposed Rule G–45 would be displayed on EMMA without a subsequent rule filing. The MSRB intends to collect and analyze the information before making any determinations regarding the dissemination of any of the data through EMMA. UESP further notes that, although the MSRB indicated that the information would be used for regulatory purposes, the draft rule contains no such assurance. This commenter requests that the MSRB further address the issue before the draft rule is finalized. As noted above, the MSRB does not intend to disseminate through EMMA the information to be collected under the proposed rule change, though it does have a goal of disseminating more information on 529 plans, where it would benefit investors. The MSRB is mindful of the concerns raised by commenters that information out of context might be confusing or misleading to investors. Consequently, it will study the data collected and consider these concerns before filing a

[20] *See* footnote 18.

[21] The November Notice described revisions to a draft rule that was first proposed in the August Notice.

[22] Comment letters were received from the College Savings Foundation (''CSF''), College Savings Plans Network (''CSPN''), College Savings Plans of Maryland (''CSPM''), Financial Research Corporation (''FRC''), Investment Company Institute (''ICI''), Securities Industry and Financial Markets Association (''SIFMA''), Utah Educational Savings Plan (''UESP'') and Coalition of Mutual Fund Investors (''CMFI'') (this letter raises concerns with fees associated with omnibus accounting of 529 plans and does not directly address the proposed rule change).

[23] *See* comments from CSF, CSPN, CSPM, SIFMA and UESP.

[24] *See, e.g.,* comment from CSPM.

proposal to disseminate any of the information collected.

Implementation Period and Reporting Deadline

In terms of the implementation period and lag time for reporting information, two commenters suggest that the one year implementation period is too short and that 18 to 24 months is needed.[25] For example, FRC suggests that two years is more appropriate, given the need for dealer system changes and to ensure data integrity. It draws its perspective from its role as an information vendor that analyzes information submitted voluntarily by 529 plan intermediaries. While the MSRB is sensitive to the burdens and systems implications of the proposed rule change, its experience in developing similar systems in the past suggests that a one year implementation period is more appropriate. The dealer community has been on notice for many months of these proposed changes, and should begin preliminary preparations for extracting the necessary data. In the November Notice, the MSRB proposed a one year implementation period based on comments to the August Notice from ICI, SIFMA and CSPM suggesting that one year would be an appropriate time frame to allow underwriters to modify their systems to comply with a mandatory reporting regime. It is important that the MSRB begin collecting the information as soon as possible, as there is no authoritative, reliable source for this information, as discussed above, and the MSRB agrees with such commenters that one year should be sufficient to prepare for the submissions.

FRC also suggests that, based on its experience as an information vendor, the 60 day reporting deadline should be extended to 120 days. Interestingly, FRC collects 529 plan information quarterly and requests that its survey participants submit information within 30 days from the end of the quarter. Based on input from underwriters and other commenters, the MSRB believes that a 60 day deadline is appropriate. For example, SIFMA and ICI support a 60 day reporting deadline, as does CSPM for performance data, although it believes 30 days is sufficient for assets, contributions and distributions, according to comment letters submitted in response to the August Notice. Moreover, the Commission requires registered investment companies to file portfolio holding information within 60 days of the end of the reporting period on Form N–Q. Consequently, the MSRB believes the 60 day deadline is appropriate.

Duplication of Effort

FRC recommends that the MSRB not collect information at all, or at least not at the investment option level, because data is sent to the MSRB by the commenter and some of the information is contained in plan disclosure documents submitted by underwriters to EMMA. While the MSRB appreciates the cooperation of this commenter in producing its reports voluntarily to the MSRB, the reports are no substitute for data mandated by rule, which can be validated through regulatory examination. Further, the receipt of information in a disclosure document is not equivalent to its receipt in electronic data fields. Finally, FRC suggests that the proposed rule change would raise the expenses of 529 plans and burden investors unnecessarily. It comments that the requirement for underwriters to submit data will entail additional costs, which may be passed onto the 529 plans, and indirectly, investors. The MSRB believes that the additional burden on underwriters of submitting readily available information semi-annually will be modest, compared with the benefit of obtaining reliable, accurate information to assist with its regulatory activities.

Scope of MSRB Rulemaking Authority

FRC suggests that the MSRB only has authority over ''advisor-sold'' plans and should only collect information regarding these plans. The distinction between ''advisor-sold'' plans and ''direct-sold'' plans is a marketing distinction that has no bearing on the jurisdiction of the MSRB. The MSRB's jurisdiction extends to dealers or municipal advisors with respect to all their municipal fund securities and municipal advisory activities. Consequently, underwriters of ''direct-sold'' and ''advisor-sold'' plans must submit information required by the proposed rule change to the MSRB.

Use of CSPN Disclosure Principles

Commenters[26] generally support the MSRB's proposed use of the reporting format in Disclosure Principles No. 5 for reporting 529 plan fees and performance. CSF suggests that the use of Disclosure Principles No. 5 will make the transition to the reporting process less cumbersome and more efficient. Nevertheless, several commenters suggest that, for clarification and flexibility, the MSRB adopt certain relevant provisions in Disclosure Principles No. 5, allow for explanatory text and footnotes to the reporting tables on fees and performance, and permit different tabular presentations that are at least as specific as those examples provided in Disclosure Principles No. 5.[27] The MSRB has adopted these recommendations in the proposed rule change and will permit submitters to add explanatory text and footnotes to the reporting tables on fees and performance, as well as different tabular presentations that are at least as specific as those examples provided in Disclosure Principles No. 5. The specifications for reporting will be contained in the G–45 Manual, which will be published on *www.msrb.org,* sufficiently in advance of the effective date to provide submitters with adequate notice and time to comply.

CSF also requests that plans be able to report fees as of the most recent offering document, since most plans issue offering documents once per year and proposed Rule G–45 would require semi-annual reporting. As CSF correctly notes, the proposed rule change requires semi-annual reporting of the fee and cost table. If the fees and costs have not changed since the most recent offering document, underwriters can simply insert the information from that offering document. If the fees and costs have changed, however, underwriters would be required to update the table to reflect those changes. In order to make it as easy as possible to submit information, the MSRB intends to pre-populate the electronic Form G–45 with certain information submitted previously by underwriters. For example, basic plan descriptive information will be pre-populated. Additionally, the fee and cost tables will be pre-populated. If there are no changes to the fee and cost table from the prior filing, underwriters need not make changes to the table.

ICI also requests that the MSRB make clear that, to the extent a plan does not separately compute and disclose one or more fees listed in the fee and cost tables, it should not require underwriters to artificially create such fees solely for purposes of Form G–45. The proposed rule change would not require underwriters to calculate and artificially segment fees for purposes of completing Form G–45. Rather, underwriters would simply report fees and costs as they are calculated and reported to account holders.

[25] *See* comments from CSF and FRC.

[26] *See* comments from CSF, CSPN, ICI and SIFMA.

[27] *See* comments from CSF, CSPN, ICI and SIFMA.

Required Submitters

Several commenters state that only the underwriter or primary distributor should be required to file proposed Form G–45.[28] The MSRB acknowledges the efficiencies in having a complete set of Form G–45 data submitted by a single party, and believes that where such a submission provides a complete set of data on a 529 Plan, no additional submissions should be required. However, the MSRB also is concerned that limiting the filing requirement solely to the primary distributor may leave gaps in the information reported. In principle, the MSRB supports filing by a single party, but only to the extent such party aggregates the data from all persons acting as underwriters. Under the proposed rule change, each underwriter has a separate obligation to submit information required on Form G–45; provided, however, that the obligation will be deemed satisfied if produced by another underwriter, such as the primary distributor, on its behalf.

ICI notes that 529 plans have only one underwriter, the primary distributor, and that many other entities are involved in operating and maintaining a plan, such as the plan's program manager, record-keeper, investment manager, custodian and state sponsor. ICI suggests that none of these entities would qualify as an underwriter under the proposed rule. MSRB disagrees. Under SEC Rule 15c2–12(f)(8),[29] an underwriter is defined broadly and may include one or more of the entities identified by ICI. Nevertheless, if a program manager, for example, is an underwriter pursuant to SEC rules, its obligation to submit information would be deemed satisfied if the primary distributor or another underwriter submitted all of the information required by proposed Rule G–45 on its behalf.

CSPN also notes that underwriters may not have the legal right to information transmitted by selling dealers to a plan's record-keeper because they are not, in some instances, acting as the plan's record-keeper and therefore do not have access to or control such information. In essence, CSPN contends that these underwriters serve a very limited function and do not receive information from selling dealers about transactions in 529 plan accounts. The proposed rule change will only require underwriters to produce information that they possess or have a legal right to obtain, such as information in the possession of an underwriter's subcontractor. ICI acknowledges that it would be appropriate to require production of such information: ''[ICI] concurs that it is appropriate to require a plan's underwriter to report information it owns or controls even if the underwriter has delegated responsibility for collecting or maintaining the information to another entity.'' The MSRB believes that, in most cases, the record-keeper will be an underwriter or a subcontractor of an underwriter. Although selling dealers will have no obligation to submit information to the MSRB under the proposed rule change, those selling dealers that enter into omnibus accounting arrangements with program managers or others will transmit information to underwriters or their subcontractors that must be included in the information submitted to the MSRB. Depository Trust & Clearing Corporation (''DTCC'') and its affiliate, National Securities Clearing Corporation (''NSCC'') worked with an industry group to modify the 529 plan aggregation file produced by NSCC to include 529 plan daily activity and position changes, so that a nightly file may be transferred to the program manager or others showing all activity and positions in 529 plan accounts for which the selling dealer performs accounting services. In an omnibus accounting arrangement, the selling dealer places purchase and sale orders in an aggregated fashion on behalf of the dealer and maintains records of individual account holder purchases and sales through subaccounts. Through this arrangement, orders are placed in an omnibus manner and do not identify the underlying account owners or beneficiaries. Nevertheless, the MSRB believes that underwriters have possession or the legal right to the 529 aggregation files and, therefore, have information regarding all activity and positions in the 529 plans they underwrite. The MSRB further understands that DTCC/NSCC created the 529 aggregation files at the request of the program managers and state sponsors because they must have information regarding each customer subaccount in order to monitor the contributions and withdrawals so that no beneficiary accumulates more funds in an account than is permitted by the Internal Revenue Service under the Internal Revenue Code. Consequently, the MSRB understands that underwriters have information as to customer activity and positions, notwithstanding the omnibus accounting arrangements entered into by certain selling dealers.

Definitions and Format

Finally, commenters[30] suggest slight definitional and formatting changes that have been incorporated into the proposed rule change. For example, pursuant to the suggestion of CSPN, the MSRB has changed the definition of ''marketing channel,'' ''reallocation,'' and ''underlying investment.'' The MSRB will also permit submitters to identify the ''marketing channel'' of each plan by a drop down menu on the electronic Form G–45, which will be further detailed in the G–45 Manual. Also, pursuant to a suggestion by ICI and SIFMA, the MSRB has moved Form G–45(ii)(D) on the fee and expense structure to (iii)(L). As for the ICI recommendation that information regarding asset allocation be reported in ranges rather than precise amounts, the MSRB believes that precision is needed to provide accurate information regarding the asset allocations and to distinguish one plan's investment options from another.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MSRB–2013–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission,

[28] *See* comments from CSPN, ICI and SIFMA.

[29] 17 CFR 240.15c2–12(f)(8).

[30] *See* comments from CSPN, ICI and SIFMA.

100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number *SR–MSRB–2013–04.* This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MSRB–2013–04 and should be submitted on or before July 19, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–15463 Filed 6–27–13; 8:45 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB)

Office of Management and Budget, *Attn:* Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

(SSA)

Social Security Administration, DCRDP, *Attn:* Reports Clearance Director, 107 Altmeyer Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov.*

The information collection below is pending at SSA. SSA will submit it to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than August 27, 2013. Individuals can obtain copies of the collection instruments by writing to the above email address.

Disability Report—Child—20 CFR 416.912—0960–0577—

Sections 223(d)(5)(A) and 1631(e)(1) of the Social Security Act (Act) require Supplemental Security Income (SSI) claimants to furnish medical and other evidence proving they are disabled. SSA uses Form SSA–3820 to collect various types of information about a child's condition from treatment sources or other medical sources of evidence. State Disability Determination Services evaluators use the information Form SSA–3820 provides to develop medical and school evidence, and to assess the alleged disability. The information, together with medical evidence, forms the evidentiary basis upon which SSA makes its initial disability evaluation. The respondents are claimants seeking SSI childhood disability payments.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minute)	Estimated annual burden (hours)
SSA–3820	500	1	90	750
Electronic Disability Collect System	1,000	1	120	2,000
i3820	540,000	1	60	540,000
Totals	541,500			542,750

II. SSA submitted the information collections below to OMB for clearance. Your comments regarding the information collections would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than July 29, 2013. Individuals can obtain copies of the OMB clearance packages by writing to *OR.Reports.Clearance@ssa.gov.*

1. Report to United States Social Security Administration by Person Receiving Benefits for a Child or for an Adult Unable to Handle Funds; Report to United States Social Security Administration—0960–0049. Section 203(c) of the Act requires the Commissioner of SSA to make benefit deductions from the following categories: (1) Entitled individuals who engage in remunerative activity outside of the United States in excess of 45 hours a month, and (2) beneficiaries who fail to have in their care the specified entitled child beneficiaries. SSA uses the information Forms SSA–7161–OCR–SM and SSA–7162–OCR–SM provide to: (1) Determine continuing entitlement to Social Security benefits; (2) correct benefit amounts for beneficiaries outside the United States; and (3) monitor the performance of representative payees outside the United States. The respondents are

[31] 17 CFR 200.30–3(a)(12).

individuals living outside the United States who are receiving benefits on their own (or for someone else) under title II of the Act.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minute)	Estimated annual burden (hours)
SSA–7161–OCR–SM	43,000	1	15	10,750
SSA–7162–OCR–SM	364,000	1	5	30,333
Totals	407,000			41,083

2. Cost Reimbursable Research Request—20 CFR 401.165—0960–0754. Qualified researchers need SSA administrative data for a variety of projects. To request SSA's program data for research, we require the researcher to submit a completed research application, Form SSA–9901 (How to Request SSA Program Data for Research) for SSA's evaluation. In the application, the requesting researcher provides basic project information and describes the way in which the proposed project will further SSA's mission to promote the economic security of the Nation's people through its administration of the Old Age, Survivors, and Disability Insurance programs, or the SSI program. SSA reviews the application, and once we approve it, the researcher signs Form SSA–9903, (SSA Agreement Regarding Conditions for Use of SSA Data), which outlines the conditions and safeguards for the research project data exchange. If the researcher uses the data for research and statistical purposes only, we require them to complete Form SSA–9902, (Confidentiality Agreement). SSA recovers all expenses incurred in providing this information as part of this reimbursable service. The respondents are Federal and State government agencies or their contractors, private entities, and colleges and universities.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minute)	Estimated annual burden (hours)
SSA–9901; SSA-9902; SSA-9903	15	1	240	60

3. Government-to-Government Services Online Web site Registration; Government-to-Government Services Online Web site Account Modification/Deletion Form—20 CFR 401.45—0960–0757. The Government-to-Government Services Online (GSO) Web site allows various external organizations to submit files to a variety of SSA systems and, in some cases, receive return files. The users include State and local government agencies, other Federal agencies, and some private sector business entities. The SSA systems that process data transferred via GSO include, but are not limited to, systems responsible for disability processing and benefit determination or termination. SSA uses the information on Form SSA–159 (GSO Web site Registration Form) to maintain the identity of the requestor within GSO. The organization can also modify its online account (e.g., address change) by completing Form SSA–160 (GSO Web site Account Modification/Deletion Form). Respondents are State and local government agencies, and private sector businesses.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minute)	Estimated annual burden (hours)
SSA–159	925	1	15	231
SSA–160	2,500	1	15	625
Totals	3,425			856

Dated: June 25, 2013.

Faye Lipsky,

Reports Clearance Director, Social Security Administration.

[FR Doc. 2013–15521 Filed 6–27–13; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or

fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB)

Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov*.

(SSA)

Social Security Administration, DCRDP, Attn: Reports Clearance Director, 107 Altmeyer Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov*.

SSA submitted the information collections below to OMB for clearance. Your comments regarding the information collections would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than July 29, 2013. Individuals can obtain copies of the OMB clearance packages by writing to *OR.Reports.Clearance@ssa.gov*.

1. Application for Lump Sum Death Payment—20 CFR 404.390–404.392—0960–0013. SSA uses Form SSA–8–F4 to collect information needed to authorize payment of the lump sum death payment (LSDP) to a widow, widower, or children as defined in section 202(i) of the Social Security Act (Act). Respondents complete the application for this one-time payment via paper form, telephone, or during an in-person interview with SSA employees. Respondents are applicants for the LSDP.

Note: This is a correction notice: SSA published the incorrect burden information for this collection at 78 FR 21183, on 4/09/13. We are correcting this error here.

Type of Request: Revision of an OMB-approved information collection.

Modality of collection	Number of respondents	Frequency of response	Average burden per esponse (minutes)	Estimated total annual burden (hours)
Modernized Claims System (MCS)	557,650	1	9	83,648
Paper	29,350	1	10	4,892
Totals	587,000			88,540

2. Request for Earnings and Benefit Estimate Statement—20 CFR 404.810—0960–0466. Section 205(c)(2)(A) of the Act allows the Commissioner of SSA to establish and maintain records of wages paid to, and amounts of self-employment income derived by, each individual as well as the periods in which such wages were paid and such income derived. An individual may complete and mail Form SSA–7004 to SSA to obtain a Statement of Earnings or Quarters of Coverage. SSA uses the information Form SSA–7004 collects to identify respondents' Social Security earnings records, extract posted earnings information, calculate potential benefit estimates, produce the resulting Social Security statements, and mail them to the requesters. The respondents are Social Security number holders requesting information about their Social Security earnings records and estimates of their potential benefits.

Type of Request: Revision of an OMB-approved information collection.

Modality of collection	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–7004 (paper)	17,219	1	5	1,435
SSA–7004 (Internet)	3,198,361	1	5	266,530
Totals	3,215,580			267,965

3. Questionnaire About Special Veterans Benefits—0960–0782. SSA regularly reviews individuals' claims for Special Veterans Benefits (SVB) to determine their continued eligibility and the correct payment amounts owed to them. Individuals living outside the United States receiving SVB must report to SSA any changes that affect their benefits, such as (1) a change in mailing address or residence; (2) an increase or decrease in a pension, annuity or other recurring benefit; (3) a return or visit to the United States for a calendar month or longer; and (4) an inability to manage benefits. SSA uses Form SSA–2010, Questionnaire About Special Veterans Benefits, to collect this information. Respondents are beneficiaries living outside the United States collecting SVB.

Type of Request: Revision of an OMB-approved information collection.

Modality of collection	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–2010	1,308	1	20	436

Dated: June 25, 2013.

Faye Lipsky,

Reports Clearance Director, Social Security Administration.

[FR Doc. 2013–15520 Filed 6–27–13; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 8363]

In the Matter of the Designation of Nayif Bin-Muhammad al-Qahtani as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

In accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended (''the Order''), I hereby determine that the individual known as Nayif Bin-Muhammad al-Qahtani, also known as Nayif Bin-Muhammad al-Qahtani, also known as Nayef Bin Muhammad al-Qahtani, also known as Nayif Muhammad al-Qahtani, also known as Nayf Mohammed al-Qahtani, also known as Mohammad Said al-Qahtani Alkodri, also known as Naif Mohammed Saeed al-Kodari al-Qahtani, also known as Nayef Bin Mohamed al-Khatani, also known as Mohammed Naif al-Khatani, also known as Nayef bin Mohamed al-Khatany, also known as Al-Qahtani Abohemem, also known as Abi Hamam, also known as Abu-Hamam, also known as Abu-Humam, also known as Abu-Hammam, also known as Abu Hammam al-Qahtani, no longer meets the criteria for designation under the Order, and therefore I hereby revoke the designation of the aforementioned individual as a Specially Designated Global Terrorist pursuant to section 1(b) of the Order.

This notice shall be published in the **Federal Register**.

Dated: June 19, 2013.

John F. Kerry,

Secretary of State.

[FR Doc. 2013–15552 Filed 6–27–13; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 8362]

In the Matter of the Designation of Eric Breininger as a Specially Designated Global Terrorist Pursuant To Section 1(b) of Executive Order 13224, as Amended

In accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended (''the Order''), I hereby determine that the individual known as Eric Breininger, also known as Abdul-Gaffar, also known as Abdulgaffar el Almani, no longer meets the criteria for designation under the Order, and therefore I hereby revoke the designation of the aforementioned individual as a Specially Designated Global Terrorist pursuant to section 1(b) of the Order.

This notice shall be published in the **Federal Register**.

Dated: June 19, 2013.

John F. Kerry,

Secretary of State.

[FR Doc. 2013–15551 Filed 6–27–13; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Environmental Impact Statement: T.F. Green Airport, Warwick, Rhode Island

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Availability.

SUMMARY: The FAA is issuing this notice to advise the public that a Written Re-Evaluation and Record of Decision (ROD) for an Environmental Impact Statement has been prepared for Theodore Francis Green Airport in Warwick, Rhode Island.

FOR FURTHER INFORMATION CONTACT: Richard Doucette, Environmental Program Manager, Federal Aviation Administration New England, 12 New England Executive Park, Burlington, MA 01803, (781) 238–7613, or at *Richard.doucette@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA has issued a Written Re-Evaluation and Record of Decision, which evaluates an updated noise mitigation program at Theodore Francis Green Airport in Warwick, Rhode Island. The Re-Evaluation and ROD is available for review during normal business hours at the following locations:

FAA New England, 16 New England Executive Park, Burlington MA, 781–238–7613

Warwick Central Library, 600 Sandy Lane, Warwick, RI, 401–739–5440

Warwick Library, Apponaug Branch, 3267 Post Road, Warwick, RI, 401–739–6411

Warwick Library, Norwood Branch, 328 Pawtuxet Ave., Warwick, RI, 401–941–7545

Copies of the document can be obtained by contacting Richard Doucette at *Richard.doucette@faa.gov* or 781–238–7613. It is also available at *http://www.faa.gov/airports/new_england/.*

Issued on: June 12, 2013.

Richard Doucette,

Environmental Program Manager, Airports Division, FAA New England Region.

[FR Doc. 2013–15472 Filed 6–27–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2007–28043]

Hours of Service of Drivers; Renewal and Expansion of American Pyrotechnics Association Exemption From the 14-Hour Rule During Independence Day Celebrations

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; granting of application for exemption.

SUMMARY: FMCSA announces the granting of an exemption of 55 member-companies of the American Pyrotechnics Association (APA) from FMCSA's regulation prohibiting drivers of commercial motor vehicles (CMVs) from driving after the 14th hour after coming on duty. The FMCSA renews the exemption for 45 APA member-companies and grants 10 additional carriers coverage by the exemption, which is applicable during the periods June 28–July 8, 2013, and June 28–July 8, 2014, inclusive. The requested renewal of the exemption for one motor carrier is being denied. Additionally, the APA advised FMCSA of the removal from the original renewal application of two companies that are no longer in business or no longer members of the APA. The original application was for 58 carriers; two were removed by APA and one denied by FMCSA, leaving 55 carriers being granted the exemption. Drivers who operate these CMVs in conjunction with staging fireworks shows celebrating Independence Day will be allowed to exclude off-duty and sleeper-berth time of any length from the calculation of the 14 hours. These drivers will continue to be subject to a prohibition from driving after accumulating 14 hours on duty, the 11-hour driving time limit, and the 60- and 70-hour limits. FMCSA believes that with the terms and conditions in place, APA-member motor carriers will maintain a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the regulation.

DATES: This exemption is effective during the periods of June 28 (12:01 a.m.) through July 8, 2013 (11:59 p.m.)

and from June 28 (12:01 a.m.) through July 8, 2014 (11:59 p.m.).

FOR FURTHER INFORMATION CONTACT: Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, Telephone: 202–366–4325. Email: *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

APA Application for Exemption

The hours-of-service (HOS) rule in 49 CFR 395.3(a)(2) prohibits a property-carrying CMV driver from driving a CMV after the 14th hour after coming on duty following 10 consecutive hours off duty. Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption from the HOS requirements in 49 CFR 395.3(a)(2) for a 2-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The procedures for requesting an exemption (including renewals) are prescribed in 49 CFR part 381.

The APA, a trade association representing the domestic fireworks industry, applied for an exemption in 2004. Various APA members have held 2-year exemptions during Independence Day periods from 2005 through 2012. The last exemption, for 45 of its members, expired on July 9, 2012. The current application covers 45 members that previously held exemptions and 10 additional member-companies. The original application was for 58 carriers with two removed by APA and one denied by FMCSA; 55 carriers are being granted the exemption.

The initial APA exemption application for relief from the 14-hour rule was submitted in 2004; a copy of the application is in the docket. That application fully describes the nature of the pyrotechnic operations during a typical Independence Day period.

The CMV drivers employed by APA member-companies are trained pyrotechnicians who hold commercial driver's licenses (CDLs) with hazardous materials (HM) endorsements. They transport fireworks and related equipment by CMVs on a very demanding schedule during a brief Independence Day period, often to remote locations. After they arrive, the drivers are responsible for set-up and staging of the fireworks shows.

The APA states that it is seeking an HOS exemption for the 2013 and 2014 Independence Day periods because compliance with the current 14-hour rule in 49 CFR 395.3(a)(2) by its members would impose a substantial economic hardship on numerous cities, towns and municipalities, as well as its member-companies. To meet the demand for fireworks shows under the current HOS rules, APA member-companies state that they would be required to hire a second driver for most trips. The APA advises that the result would be a substantial increase in the cost of the fireworks shows—beyond the means of many of its members' customers—and that many Americans would be denied this important component of the celebration of Independence Day. The 55 APA member-companies within the scope of this exemption approval are listed in an appendix to this notice. A copy of the request for the exemption is included in the docket referenced at the beginning of this notice.

Method To Ensure an Equivalent or Greater Level of Safety

The APA believes that renewal of the exemption for previously exempt carriers and the granting of relief for new carriers will not adversely affect the safety of the fireworks transportation provided by these motor carriers. According to APA, its member-companies have operated under this exemption for eight previous Independence Day periods without a reported motor carrier safety incident. Moreover, it asserts, without the extra duty-period time provided by the exemption, safety would decline because APA drivers would be unable to return to their home base or other safe location after each show. They would be forced to park the CMVs carrying HM 1.1G, 1.3G and 1.4G products in areas less secure than the motor carrier's home base. As a condition of holding the exemption, each motor carrier would be required to notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5) involving the operation of any its CMVs while under this exemption. To date, FMCSA has received no accident notifications, nor is the Agency aware of any accidents reportable under terms of the prior APA exemptions.

In its exemption request, APA asserted that the operational demands of this unique industry minimize the risk of CMV crashes. In the last few days before the 4th of July, these drivers transport fireworks over relatively short routes from distribution points to the site of the fireworks display, and normally do so in the early morning when traffic is light. At the site, they spend considerable time installing, wiring, and safety-checking the fireworks displays, followed by several hours off duty in the late afternoon and early evening prior to the event. During this time, the drivers are able to rest and nap, thereby reducing or eliminating the fatigue accumulated during the day. Before beginning another duty day, these drivers must take 10 consecutive hours off duty, the same as other CMV drivers. FMCSA believes that these APA operations conducted under the terms and conditions of this limited exemption will provide a level of safety that, at a minimum, is equivalent to the level of safety achieved without the exemption.

Public Comments

On May 7, 2013, FMCSA published notice of this application, and asked for public comment (78 FR 26690). One set of comments was received. Advocates for Highway and Auto Safety (Advocates) opposed the exemption from the HOS regulations. Their comments are available for review in the docket for this notice.

Advocates objected to this exemption on various grounds: (1) Advocates opposes the issuance of *any* HOS exemptions, especially ''blanket'' exemptions; (2) the carriers for which this exemption is requested have had out-of-service (OOS) orders issued during past exemption periods, have OOS rates above National averages, and may be ''on alert'' in one or more violation categories under FMCSA's Safety Measurement System; (3) the exemption is unnecessary because the APA has had 8 years during which to develop alternative operational methods that would not require an exemption; (4) claims that the exemption allows safer storage of hazardous materials are questionable; (5) Advocates objects to the length of time FMCSA has taken from receipt of the application to issue this disposition notice; and (6) FMCSA did not adequately investigate and announce the applicant-carriers' safety records when it published the notice of APA's exemption application.

FMCSA Response

Prior to publishing the **Federal Register** notice announcing the receipt of the APA exemption request, FMCSA ensured that the motor carriers involved have a current USDOT registration, Hazardous Materials Safety Permit (if required), minimum required levels of insurance, and are not subject to any ''imminent hazard'' or other OOS orders. The Agency comprehensively investigated the safety history of each applicant during the review process. FMCSA has reviewed its safety records, including inspection and accident reports, for each applicant motor carrier. The Agency also requested and received

a records review of each carrier from the Pipeline and Hazardous Materials Safety Administration (PHMSA).

Because each company is listed in the notice seeking public comment, and each company's safety performance record is reviewed by the Agency, there is no merit to Advocates' argument. FMCSA views Advocates' comments about blanket exemptions versus individual exemptions as a distinction without a substantive difference. Each carrier is listed and subject to the notice-and-comment process, and any individual carrier could be denied based on public comments and/or FMCSA's assessment. Therefore, the only entity potentially adversely affected by a lengthy process would be an applicant. FMCSA recognizes no potential harm to the public due to the current process. To the contrary, processing an application of this type too far in advance of the relevant event could result in the status of the applicants having changed between the time of the records review and the effective date of the exemption.

With regard to Advocates' suggestion that APA members should have developed alternative means to comply with the HOS regulations without an exemption, FMCSA does not believe reasonable alternatives are necessarily available in many locations. Such alternatives would include locating additional drivers with CDLs and HM endorsements. This is difficult for part-time, holiday-specific work. CDL holders with HM endorsements are likely to be in high demand, given the Transportation Security Administration requirements for a security threat analysis for such drivers. And, as indicated in this notice and APA's application, potential alternatives could drive the cost of the fireworks displays beyond the financial capabilities of many communities.

With regard to the security of alternative storage locations following a fireworks ''shoot,'' many sites do not provide security following a display and may require all vehicles to depart the area. Arrangements can be made for the next community at which a display is planned to begin their access and security upon the planned arrival of the fireworks team.

FMCSA Decision

The FMCSA has evaluated APA's application, the safety records of the companies to which the exemption would apply, and the public comments. The Agency believes that APA member-companies will likely achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption [49 CFR 381.305(a)], and grants the requested exemption to the 55 APA member-companies listed in an appendix to this notice.

The exemption requested for one carrier is denied: Arthur Rozzi Pyrotechnics (Rozzi), Maineville, OH, USDOT 2008107. Rozzi is subject to an open investigation and enforcement action by PHMSA, involving violations of the Hazardous Materials Regulations. Under the circumstances, it would be inappropriate to grant Rozzi an exemption.

Terms and Conditions of the Exemption

Period of the Exemption

The requested exemption from the requirements of 49 CFR 395.3(a)(2) is effective during the periods of June 28 (12:01 a.m.) through July 8, 2013 (11:59 p.m.) and from June 28 (12:01 a.m.) through July 8, 2014 (11:59 p.m.). The exemption will expire on July 8, 2014, at 11:59 p.m. local time.

Extent of the Exemption

This exemption is restricted to the 55 motor carriers listed in the appendix to this notice and their CMV drivers. The drivers are provided a limited exemption from the requirements of 49 CFR 395.3(a)(2). This regulation prohibits a driver from driving a CMV after the 14th hour after coming on duty and does not permit off-duty periods to extend the 14-hour limit. Drivers covered by this exemption may exclude off-duty and sleeper-berth time of any length from the calculation of the 14-hour limit. This exemption is contingent on each driver driving no more than 11 hours in the 14-hour period after coming on duty as extended by any off-duty or sleeper-berth time in accordance with this exemption. The exemption is further contingent on each driver having a minimum of 10 consecutive hours off duty prior to beginning a new duty period. The carriers and drivers must comply with all other applicable requirements of the Federal Motor Carrier Safety Regulations (49 CFR parts 350–399) and Hazardous Materials Regulations (49 CFR parts 105–180).

Other Conditions

This exemption is contingent upon each carrier maintaining USDOT registration, a Hazardous Materials Safety Permit (if required), minimum levels of public liability insurance, and not being subject to any ''imminent hazard'' or other out-of-service (OOS) order issued by FMCSA. Each driver covered by the exemption must maintain a valid CDL with required endorsements, not be subject to any OOS order or suspension of driving privileges, and meet all physical qualifications required by 49 CFR part 391.

Preemption

During the periods the exemption is in effect, no State may enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a person or entity operating under the exemption (49 U.S.C. 31315(d)).

FMCSA Accident Notification

Exempt motor carriers must notify FMCSA within 5 business days of any accidents (as defined by 49 CFR 390.5) involving the operation of any of its CMVs while under this exemption. The notification must include the following information:

a. Date of the accident,

b. City or town, and State, in which the accident occurred, or which is closest to the scene of the accident,

c. Driver's name and driver's license number,

d. Vehicle number and State license number,

e. Number of individuals suffering physical injury,

f. Number of fatalities,

g. The police-reported cause of the accident,

h. Whether the driver was cited for violation of any traffic laws, or motor carrier safety regulations, and

i. The total driving time and the total on-duty time of the CMV driver at the time of the accident.

Termination

The FMCSA does not believe the motor carriers and drivers covered by this exemption will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation of the exemption. The FMCSA will immediately revoke the exemption for failure to comply with its terms and conditions.

Issued on: June 25, 2013.

T.F. Scott Darling,

Chief Counsel.

APPENDIX TO NOTICE OF RENEWAL AND EXPANSION OF AMERICAN PYROTECHNICS ASSOCIATION (APA) EXEMPTION FOR 55 MOTOR CARRIERS FROM THE 14-HOUR HOS RULE DURING 2013 AND 2014 INDEPENDENCE DAY CELEBRATIONS

Motor Carrier	Street Address	City, State & Zip Code	DOT No.
1. Alonzo Fireworks Display, Inc	846 Stillwater Bridge Rd	Schaghticoke, NY 12154	420639
2. American Fireworks Company	7041 Darrow Road	Hudson, OH 44236	103972
3. American Fireworks Display, LLC	P.O. Box 980	Oxford, NY 13830	2115608
4. AM Pyrotechnics, LLC	2429 East 535th Rd	Buffalo, MO 65622	1034961
5. Atlas Enterprises Inc	6601 Nine Mile Azle Rd	Fort Worth, TX 76135	0116910
6. Atlas Pyrovision Productions, Inc	136 Old Sharon Rd	Jaffrey, NH 03452	789777
7. B.J. Alan Company	555 Martin Luther King, Jr Blvd	Youngstown, OH 44502–1102	262140
8. Central States Fireworks, Inc	18034 Kincaid Street	Athens, IL 62613	1022659
9. Colonial Fireworks Company	5225 Telegraph Road	Toledo, OH 43612	177274
10. East Coast Pyrotechnics, Inc	4652 Catawba River Rd	Catawba, SC 29704	545033
11. Entertainment Fireworks, Inc	13313 Reeder Road SW	Tenino, WA 98589	680942
12. Falcon Fireworks	3411 Courthouse Road	Guyton, GA 31312	1037954
13. Fireworks & Stage FX America	12650 Hwy 67S. Suite B	Lakeside, CA 92040	908304
14. Fireworks by Grucci, Inc	1 Grucci Lane	Brookhaven, NY 11719	324490
15. Fireworks Extravaganza	174 Route 17 North	Rochelle Park, NJ 07662	2064141
16. Fireworks West Internationale	910 North 3200 West	Logan, UT 84321	245423
17. Garden State Fireworks, Inc	383 Carlton Road	Millington, NJ 07946	435878
18. Gateway Fireworks Displays	P.O. Box 39327	St Louis, MO 63139	1325301
19. Great Lakes Fireworks	24805 Marine	Eastpointe, MI 48021	1011216
20. Hamburg Fireworks Display Inc	2240 Horns Mill Road SE	Lancaster, OH	395079
21. Hawaii Explosives & Pyrotechnics, Inc	17–7850 N. Kulani Road	Mountain View, HI 96771	1375918
22. Hi-Tech FX, LLC	18060 170th Ave	Yarmouth, IA 52660	1549055
23. Hollywood Pyrotechnics, Inc	1567 Antler Point	Eagan, MN 55122	1061068
24. Homeland Fireworks, Inc	P.O. Box 7	Jamieson, OR 97909	1377525
25. Island Fireworks Co., Inc	N1597 County Rd VV	Hager City, WI 54014	414583
26. J&M Displays, Inc	18064 170th Ave	Yarmouth, IA 52660	377461
27. Lantis Fireworks, Inc	130 Sodrac Dr., Box 229	N. Sioux City, SD 57049	534052
28. Lantis Productions dba Lantis Fireworks and Lasers.	799 N. 18150 W	Fairfield, UT 84013	195428
29. Legion Fireworks Co., Inc	10 Legion Lane	Wappingers Falls, NY 12590	554391
30. Mad Bomber/Planet Productions	P.O. Box 294, 3999 Hupp Road R31	Kingsbury, IN 46345	777176
31. Martin & Ware Inc. dba Pyro City Maine & Central Maine Pyrotechnics.	P.P. Box 322	Hallowell, ME 04347	734974
32. Melrose Pyrotechnics, Inc	1 Kingsbury Industrial Park	Kingsbury, IN 46345	434586
33. Precocious Pyrotechnics, Inc	4420–278th Ave NW	Belgrade, MN 56312	435931
34. Pyro Engineering Inc., dba/Bay Fireworks.	400 Broadhollow Rd. Ste #3	Farmindale, NY 11735	530262
35. Pyro Shows Inc	701 W. Central Ave	LaFollette, TN 37766	456818
36. Pyro Spectacluars, Inc	3196 N Locust Ave	Rialto, CA 92376	029329
37. Pyro Spectaculars North, Inc	5301 Lang Avenue	McClellan, CA 95652	1671438
38. Pyrotechnic Display, Inc	8450 W. St. Francis Rd	Frankfort, IL 60423	1929883
39. Pyrotecnico (S. Vitale Pyrotechnic Industries, Inc.).	302 Wilson Rd	New Castle, PA 16105	526749
40. Pyrotecnico, LLC	60 West Ct	Mandeville, LA 70471	548303
41. Pyrotecnico FX	6965 Speedway Blvd. Suite 115	Las Vegas, NV 89115	1610728
42. Rainbow Fireworks, Inc	76 Plum Ave	Inman, KS 67546	1139643
43. RES Specialty Pyrotechnics	21595 286th St	Belle Plaine, MN 56011	523981
44. Rozzi's Famous Fireworks, Inc	11605 North Lebanon Rd	Loveland, OH 45140	0483686
45. Skyworks, Ltd	13513 W. Carrier Rd	Carrier, OK 73727	1421047
46. Spielbauer Fireworks Co, Inc	220 Roselawn Blvd	Green Bay, WI 54301	046479
47. Starfire Corporation	682 Cole Road	Carrolltown, PA 15722	554645
48. Stonebraker-Rocky Mountain Fireworks Co.	5650 Lowell Blvd, Unit E	Denver, CO 80221	0029845
49. Vermont Fireworks Co., Inc./Northstar Fireworks Co., Inc.	2235 Vermont Route 14 South	East Montpelier, VT 05651	310632
50. Western Display Fireworks, Ltd	10946 S. New Era Rd	Canby, OR 97013	498941
51. Western Enterprises, Inc	P.O. Box 160	Carrier, OK 73727	203517
52. Western Fireworks, Inc	14592 Ottaway Road NE	Aurora, OR 97002	838585
53. Wolverine Fireworks Display, Inc	205 W Seidlers	Kawkawlin, MI	376857
54. Young Explosives Corp	P.O. Box 18653	Rochester, NY 14618	450304
55. Zambelli Fireworks MFG, Co., Inc	P.O. Box 1463	New Castle, PA 16103	033167

[FR Doc. 2013–15608 Filed 6–26–13; 8:45 am]
BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2013 0076]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel MISTRESS MALLIKA; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 29, 2013.

ADDRESSES: Comments should refer to docket number MARAD–2013–0076. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov*.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel MISTRESS MALLIKA is:

Intended Commercial Use Of Vessel: ''Pleasure Charters''.

Geographic Region: Rhode Island; Connecticut; Massachusetts; Maine; New York; New Jersey; Delaware; Maryland; Virginia; Florida.

The complete application is given in DOT docket MARAD–2013–0076 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: June 20, 2013.

By Order of the Maritime Administrator.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2013–15461 Filed 6–27–13; 8:45 am]
BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2013–0078]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel OLIVIA; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 29, 2013.

ADDRESSES: Comments should refer to docket number MARAD–2013–0078. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov*.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel OLIVIA is:

Intended Commercial Use Of Vessel: ''Sailing Charters for six or fewer passengers (six pack)''.

Geographic Region: Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida.

The complete application is given in DOT docket MARAD–2013–0078 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: June 20, 2013.

By Order of the Maritime Administrator.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2013–15462 Filed 6–27–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2013 0079]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel SEA BREEZE 27; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 29, 2013.

ADDRESSES: Comments should refer to docket number MARAD–2013–0079. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SEA BREEZE 27 is:

Intended Commercial Use of Vessel: ''Charter fishing 6 people or less''.

Geographic Region: ''Ohio''.

The complete application is given in DOT docket MARAD–2013–0079 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: June 20, 2013.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2013–15457 Filed 6–27–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2012–0086]

Group Lotus plc; Modification of a Temporary Exemption From an Advanced Air Bag Requirement of FMVSS No. 208

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of modification of a temporary exemption from a provision of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection.*

SUMMARY: This notice modifies the temporary exemption granted to Group Lotus plc (Lotus) on March 8, 2013. The agency granted Lotus an exemption from the higher maximum speed (56 km/h (35 mph)) belted test requirement using 5th percentile adult female dummies for the front passenger position of its Evora model for the period from March 8, 2013 to March 8, 2014. The agency is modifying the dates of the exemption to account for vehicles Lotus manufactured before the exemption went into effect.

DATES: NHTSA Temporary Exemption No. EX–13–01 granted to Lotus is modified to include vehicles imported on or after November 7, 2012. The termination date of the exemption is modified to be November 7, 2013.

FOR FURTHER INFORMATION CONTACT: David Jasinski, Office of the Chief Counsel, NCC–112, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., West Building 4th Floor, Room W41–326, Washington, DC 20590. Telephone: (202) 366–2992; Fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION: On March 8, 2013, NHTSA published in the **Federal Register** a notice granting Group Lotus Plc (Lotus) a temporary exemption from the higher maximum speed (56 km/h (35 mph)) belted test requirement using 5th percentile adult female dummies in Federal Motor Vehicle Safety Standard (FMVSS) No. 208 for the front passenger position of its Evora model for the period from March 8, 2013 to March 8, 2014.[1] This requirement became effective for small manufacturers such as Lotus as of September 1, 2012.

After publication of Lotus's exemption, Lotus informed the agency of the existence of 51 vehicles that were

[1] 78 FR 15114.

manufactured on or after September 1, 2012 and before March 8, 2013 that were imported into the United States. Lotus asserted that these vehicles were partially manufactured prior to September 1, 2012, but were not completed until after that date. These 51 vehicles bear certification labels stating a date of manufacture of August 2012 and are certified to comply with the standards, including FMVSS No. 208, applicable as of August 2012.

For the purpose of FMVSS No. 208 compliance, these vehicles are identical to those manufactured prior to September 1, 2012 and after March 8, 2013. However, the vehicles are not certified to be compliant with the standards in effect as of the date they were actually manufactured, which include the higher speed belted test requirement using the 5th percentile adult female dummy. Moreover, the exemption that NHTSA granted to Lotus would not apply to these vehicles because they were manufactured before March 8, 2013.

Lotus has agreed to pay a civil penalty for alleged violations of 49 USC 30112(a).[2] Additionally, the Administrator has the authority to terminate or modify a temporary exemption granted under 49 CFR Part 555 upon a finding that (1) the temporary exemption is no longer consistent with the public interests and the objectives of the National Traffic and Motor Vehicle Safety Act; or (2) the temporary exemption was granted on the basis of false, fraudulent, or misleading representations or information. At the time the agency granted Lotus its exemption, the agency believed that Lotus ceased production of the Evora for the United States market as of September 1, 2012 and was not aware that Lotus continued to manufacture the Evora after September 1, 2012. On the basis of this incorrect information, NHTSA granted Lotus a one-year exemption commencing on March 8, 2013.

Having found that Lotus's exemption was based on incorrect information, the agency has the authority to modify or terminate Lotus's temporary exemption.[3] Because the 51 vehicles are identical to those manufactured prior to September 1, 2012 and those that may be manufactured under Lotus's temporary exemption, the agency has decided it is appropriate to modify Lotus's exemption to apply it retroactively to vehicles manufactured after September 1, 2012 and imported on or after November 7, 2012. This will allow the exemption to apply to 50 of the 51 vehicles manufactured after September 1, 2012.[4] Lotus will export one vehicle from the United States, which will not be included in the exemption.

The 50 vehicles will count toward the 450 vehicle limit under the exemption. Because these 50 vehicles are now covered by an exemption, Lotus must ensure that they are labeled with the correct date of manufacture and statements required by 49 CFR 555.9 for exempted vehicles.

The agency's determination that a one-year exemption is appropriate under the circumstances has not changed. Thus, in addition to applying the exemption retroactively to 50 vehicles, the agency has also modified the termination date of the exemption so that the exemption granted is not longer than one year. The exemption will now apply to vehicles manufactured through November 7, 2013.

Based on the foregoing and pursuant to 49 CFR 555.8(d), the Administrator finds that NHTSA Temporary Exemption No. EX 13–01, granted to Lotus from S14.7 of 49 CFR 571.208 for the front passenger seat of its Evora model was based on incorrect information. Accordingly, the exemption is modified to include vehicles imported on or after November 7, 2012. The exemption is also modified to terminate on November 7, 2013.

Authority: 49 U.S.C. 30113; 49 CFR 1.95, 555.8.

Issued in Washington, DC, on June 21, 2013 under authority delegated in 49 CFR 1.95, 501.5, and 501.7.

David L. Strickland,

Administrator.

[FR Doc. 2013–15534 Filed 6–27–13; 8:45 am]

BILLING CODE 4910–59–P

[2] Among other things, 49 USC 30112(a) prohibits a person from selling, offering for sale, introducing or delivering into interstate commerce, or importing into the United States any motor vehicle that does not comply with the FMVSSs then in effect.

[3] Lotus has acknowledged that it has been duly notified by NHTSA of any facts that warrant modifying or terminating its exemption and that it has had an opportunity to demonstrate or achieve compliance with all lawful requirements.

[4] It is not unprecedented that for NHTSA to apply a temporary exemption to vehicles that have already been manufactured at the time of the grant of an exemption. In a March 1995 grant of an application for a temporary exemption from the air bag requirements FMVSS No. 208 to Excalibur Automobile Corporation, the agency applied a temporary exemption to 36 vehicles that were, at the time of the request for exemption, in control of the company's dealers. See 60 FR 12281 (Mar. 6, 1995).

DEPARTMENT OF THE TREASURY

Fiscal Service

Prompt Payment Interest Rate; Contract Disputes Act

AGENCY: Bureau of the Fiscal Service, Treasury.

ACTION: Notice.

SUMMARY: For the period beginning July 1, 2013, and ending on December 31, 2013, the prompt payment interest rate is 1¾ per centum per annum.

ADDRESSES: Comments or inquiries may be mailed to Sam Doak, Reporting Team Leader, Federal Borrowings Branch, Division of Accounting Operations, Office of Public Debt Accounting, Bureau of the Fiscal Service, Parkersburg, West Virginia, 26106–1328. A copy of this Notice is available at *http://www.treasurydirect.gov*.

DATES: Effective July 1, 2013, to December 31, 2013.

FOR FURTHER INFORMATION CONTACT: Adam Charlton, Manager, Federal Borrowings Branch, Office of Public Debt Accounting, Bureau of the Fiscal Service, Parkersburg, West Virginia 26106–1328, (304) 480–5248; Sam Doak, Reporting Team Leader, Federal Borrowings Branch, Division of Accounting Operations, Office of Public Debt Accounting, Bureau of the Fiscal Service, Parkersburg, West Virginia 26106–1328, (304) 480–5117; or Elisha S. Garvey, Attorney-Advisor, Office of the Chief Counsel, Bureau of the Fiscal Service, (202) 504–3715.

SUPPLEMENTARY INFORMATION: An agency that has acquired property or service from a business concern and has failed to pay for the complete delivery of property or service by the required payment date shall pay the business concern an interest penalty. 31 U.S.C. 3902(a). The Contract Disputes Act of 1978, Sec. 12, Public Law 95–563, 92 Stat. 2389, and the Prompt Payment Act, 31 U.S.C. 3902(a), provide for the calculation of interest due on claims at the rate established by the Secretary of the Treasury.

The Secretary of the Treasury has the authority to specify the rate by which the interest shall be computed for interest payments under section 12 of the Contract Disputes Act of 1978 and under the Prompt Payment Act. Under the Prompt Payment Act, if an interest penalty is owed to a business concern, the penalty shall be paid regardless of whether the business concern requested payment of such penalty. 31 U.S.C. 3902(c)(1). Agencies must pay the interest penalty calculated with the interest rate, which is in effect at the

time the agency accrues the obligation to pay a late payment interest penalty. 31 U.S.C. 3902(a). ''The interest penalty shall be paid for the period beginning on the day after the required payment date and ending on the date on which payment is made.'' 31 U.S.C. 3902(b).

Therefore, notice is given that the Secretary of the Treasury has determined that the rate of interest applicable for the period beginning July 1, 2013, and ending on December 31, 2013, is 1¾ per centum per annum.

Richard L. Gregg,

Fiscal Assistant Secretary.

[FR Doc. 2013–15671 Filed 6–27–13; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of One (1) Individual Pursuant to Executive Order 13553

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the name of one (1) individual newly-designated as a person whose property and interests in property are blocked pursuant to Executive Order 13553 of September 28, 2010, ''Blocking Property of Certain Persons With Respect to Serious Human Rights Abuses by the Government of Iran and Taking Certain Other Actions.''

DATES: The designation by the Director of OFAC of the individual identified in this notice, pursuant to Executive Order 13553 of September 28, 2010, is effective May 30, 2013.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance and Evaluation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, Tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, Tel.: 202/622–0077.

Background

On September 28, 2010, the President issued Executive Order 13553, ''Blocking Property of Certain Persons With Respect to Serious Human Rights Abuses by the Government of Iran and Taking Certain Other Actions'' (the ''Order'') pursuant to, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–06) (''IEEPA'') and the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Pub. L. 111–195). In the Order, the President took additional steps with respect to the national emergency declared in Executive Order 12957 of March 15, 1995.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any United States person, of persons listed in the Annex to the Order and of persons determined by the Secretary of the Treasury, in consultation with or at the recommendation of the Secretary of State, to meet any of the criteria set forth in the Order.

The Annex to the Order listed eight individuals whose property and interests in property are blocked pursuant to the Order.

On May 30, 2013, the Director of OFAC, in consultation with or at the recommendation of the Secretary of State, designated, pursuant to one or more of the criteria set forth in subparagraphs (a)(ii)(A) through (a)(ii)(C) of Section 1 of the Order, one (1) individual whose property and interests in property are blocked, pursuant to the Order.

The listing for this individual is as follows:

- MIR–HEJAZI, Asghar (a.k.a. HEJAZI, Asghar; a.k.a. HEJAZI, Asghar Sadegh; a.k.a. MIR–HEJAZI RUHANI, Ali Asqar; a.k.a. MIRHEJAZI, Ali; a.k.a. MIR–HEJAZI, Ali Asqar); DOB 08 Sep 1946; POB Esfahan, Iran; citizen Iran; Security Deputy of Supreme Leader; Member of the Leader's Planning Chamber; Head of Security of Supreme Leader's Office; Deputy Chief of Staff of the Supreme Leader's Office (individual) [IRAN–HR]

Dated: May 30, 2013.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2013–15510 Filed 6–27–13; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning, (TD 7533, Disc Rules on Procedure and Administration; Rules on Export Trade Corporations), and (TD 7896, Income From Trade Shows).

DATES: Written comments should be received on or before August 27, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Martha R. Brinson, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3869, or through the Internet at *Martha.R.Brinson@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Disc Rules on Procedure and Administration; Rules on Export Trade Corporations; and, Income From Trade Shows.

OMB Number: 1545–0807.

Regulation Project Numbers: TD 7533 and TD 7896. Abstract: Regulation section 1.6071–1(b) requires that when a taxpayer files a late return for a short period, proof of unusual circumstances for late filing must be given to the District Director. Sections 6072(b), (c), (d), and (e) of the Internal Revenue Code deal with the filing dates of certain corporate returns. Regulation section 1.6072–2 provides additional information concerning these filing dates.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Individual or households, business or other for-profit organizations, not-for-profit institutions, farms, and state, local or tribal governments.

Estimated Number of Respondents: 12,417.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 3,104.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 13, 2013.

Allan Hopkins,

IRS Reports Clearance Officer.

[FR Doc. 2013–15481 Filed 6–27–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning, General Asset Accounts under the Accelerated Cost Recovery System.

DATES: Written comments should be received on or before August 27, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Martha R. Brinson, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3869, or through the Internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: General Asset Accounts under the Accelerated Cost Recovery System.

OMB Number: 1545–1331.

Regulation Project Number: TD 8566.

Abstract: Section 168(i)(4) of the Internal Revenue Code authorizes the Secretary of the Treasury to provide rules under which a taxpayer may elect to account for property in one or more general asset accounts for depreciation purposes. The regulations describe the time and manner of making the election described in Code section 168(i)(4). Basic information regarding this election is necessary to monitor compliance with the rules of Code section 168.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and Farms.

Estimated Number of Respondents: 1,000.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 250.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 13, 2013.

Allan Hopkins,

IRS Reports Clearance Officer.

[FR Doc. 2013–15473 Filed 6–27–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8655

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8655, Reporting Agent Authorization.

DATES: Written comments should be received on or before August 27, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington DC 20224, or through the Internet, at *Martha.R.Brinson@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Reporting Agent Authorization.

OMB Number: 1545–1058.

Form Number: Form 8655.

Abstract: Form 8655 allows a taxpayer to designate a reporting agent to file certain employment tax returns electronically or on magnetic tape, to receive copies of notices and other tax information, and to submit Federal tax deposits. This form allows IRS to disclose tax account information and to provide duplicate copies of taxpayer correspondence to authorized agents.

Current Actions: There are no changes being made to this form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 110,000.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 11,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 13, 2013.

Allan Hopkins,

IRS Reports Clearance Officer.

[FR Doc. 2013–15479 Filed 6–27–13; 8:45 am]

BILLING CODE 4830–01–P

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Part II

Department of Agriculture

Food and Nutrition Service

7 CFR Parts 210 and 220

National School Lunch Program and School Breakfast Program: Nutrition Standards for All Foods Sold in School as Required by the Healthy, Hunger-Free Kids Act of 2010; Interim Final Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210 and 220

[FNS–2011–0019]

RIN 0584–AE09

National School Lunch Program and School Breakfast Program: Nutrition Standards for All Foods Sold in School as Required by the Healthy, Hunger-Free Kids Act of 2010

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim final rule.

SUMMARY: This interim final rule amends the National School Lunch Program and School Breakfast Program regulations to establish nutrition standards for all foods sold in schools, other than food sold under the lunch and breakfast programs. Amendments made by Section 208 of the Healthy, Hunger-Free Kids Act of 2010 (HHFKA) require the Secretary to establish nutrition standards for such foods, consistent with the most recent Dietary Guidelines for Americans, and directs the Secretary to consider authoritative scientific recommendations for nutrition standards; existing school nutrition standards, including voluntary standards for beverages and snack foods; current State and local standards; the practical application of the nutrition standards; and special exemptions for infrequent school-sponsored fundraisers (other than fundraising through vending machines, school stores, snack bars, à la carte sales and any other exclusions determined by the Secretary). In addition, this interim final rule requires schools participating in the National School Lunch Program and School Breakfast Program to make potable water available to children at no charge in the place where lunches are served during the meal service, consistent with amendments made by section 203 of the HHFKA, and in the cafeteria during breakfast meal service. This interim final rule is expected to improve the health and well-being of the Nation's children, increase consumption of healthful foods during the school day, and create an environment that reinforces the development of healthy eating habits.

DATES: *Effective date:* This rule is effective August 27, 2013. *Implementation dates:* State agencies, local educational agencies and school food authorities must implement the provisions of this rule as follows:

1. The *potable water* provisions in §§ 210.10(a)(1)(i) and 220.8(a)(1) must be implemented no later than August 27, 2013.

2. All other provisions of this interim final rule must be implemented beginning on July 1, 2014.

Comment Date: Written comments on this interim final rule must be received on or before October 28, 2013 to be assured of consideration.

ADDRESSES: The Food and Nutrition Service (FNS), United States Department of Agriculture (USDA or Department), invites interested persons to submit written comments on this interim final rule. To be considered for this rulemaking, written comments must be submitted by one of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*, select ''Food and Nutrition Service'' from the agency drop-down menu, and click ''Submit.'' In the Docket ID column of the search results select ''FNS–2011–0019'' to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.

• *By Mail:* Send comments to William Wagoner, Section Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, P.O. Box 66874, Saint Louis, MO 63166. Mailed comments must be postmarked on or before the comment deadline identified in the **DATES** section of this preamble to be assured of consideration.

All submissions received in response to this interim final rule will be included in the record and will be available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting comments will be subject to public disclosure. FNS will also make the comments publicly available by posting a copy of all comments on *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: William Wagoner, Section Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Virginia 22302, or by telephone at (703) 305–2590.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of the Regulatory Action

This interim final rule sets forth provisions to implement amendments made by sections 203 and 208 of Public Law 111–296, the Healthy, Hunger-Free Kids Act of 2010 (HHFKA), to the Child Nutrition Act of 1966 (CNA) and the Richard B. Russell National School Lunch Act (NSLA) for schools that participate in the National School Lunch Program (NSLP) and the School Breakfast Program (SBP). This rule amends the NSLP and SBP regulations consistent with amendments made in the HHFKA. The HHFKA requires that the Secretary promulgate regulations to establish nutrition standards for foods sold in schools other than those foods provided under the CNA and the NSLA. The amendments made by the HHFKA specify that such nutrition standards apply to all foods sold (a) outside the school meal programs; (b) on the school campus; and (c) at any time during the school day. In addition, the amendments made by the HHFKA require that such standards be consistent with the most recent Dietary Guidelines for Americans and that the Secretary consider authoritative scientific recommendations for nutrition standards; existing school nutrition standards, including voluntary standards for beverages and snack foods; current State and local standards; the practical application of the nutrition standards; and special exemptions for infrequent school-sponsored fundraisers (other than fundraising through vending machines, school stores, snack bars, à la carte sales and any other exclusions determined by the Secretary). These changes are intended to improve the health and well-being of the Nation's children, increase consumption of healthful foods during the school day and create an environment that reinforces the development of healthy eating habits.

The standards for food and beverages in this interim final rule represent minimum standards that local educational agencies, school food authorities and schools are required to meet. Should they wish to do so, State agencies and/or local school districts have the discretion to establish their own standards for non-program foods sold to children, as long as such standards are consistent with the Federal standards. This interim final rule also requires, per the amendments made by the HHFKA, that schools participating in the NSLP make free potable water available to children in the place lunches are served during

meal service, and also at breakfast when breakfast is served in the cafeteria.

Summary of Major Provisions

Competitive foods and beverages must meet the nutrition standards specified in the interim final rule, beginning July 1, 2014. A special exemption to the standards is allowed for foods and beverages that do not meet competitive food standards but which are sold for the purpose of conducting infrequent school-sponsored fundraisers. Such exempt fundraisers must not occur more often than the frequency specified by the State agency. Exempted fundraiser foods or beverages may not be sold in competition with school meals in the food serving area during the meal service. In addition, NSLP and SBP entrées sold à la carte are exempt from the interim final rule's nutrient standards if sold on the day that they are offered as part of a reimbursable meal, or sold on the following school day.

Food Requirements

To be allowable, a competitive food must meet all of the competitive food nutrient standards *and:*

- Be a grain product that contains 50 percent or more whole grains by weight or have as the first ingredient a whole grain; *or*
- Have as the first ingredient one of the non-grain major food groups: fruits, vegetables, dairy or protein foods (meat, beans, poultry, seafood, eggs, nuts, seeds, etc.); *or*
- Be a combination food that contains ¼ cup of fruit and/or vegetable; *or*
- For the period through June 30, 2016, contain 10 percent of the Daily Value of a nutrient of public health concern based on the most recent Dietary Guidelines for Americans (i.e., calcium, potassium, vitamin D or dietary fiber). Effective July 1, 2016, this criterion is obsolete and may not be used to qualify as a competitive food; and
- If water is the first ingredient, the second ingredient must be one of the food items above.

Fresh, canned, and frozen fruits or vegetables with no added ingredients except water, or in the case of fruit, packed in 100 percent juice, extra light, or light syrup are exempt from the interim final rule's nutrient standards. Canned vegetables that contain a small amount of sugar for processing purposes are also exempt.

Competitive foods must contain 35 percent or less of total calories from fat per item as packaged or served. Exemptions to the total fat standard are granted for reduced fat cheese and part-skim mozzarella cheese, nuts, seeds, nut or seed butters, products consisting of only dried fruit with nuts and/or seeds with no added nutritive sweeteners or fat, and seafood with no added fat.

Competitive foods must contain no more than 10 percent of total calories from saturated fat per item as packaged or served. Exemptions to the saturated fat standard are granted for reduced fat cheese and part-skim mozzarella cheese, nuts, seeds, nut or seed butters, and products consisting of only dried fruit with nuts and/or seeds with no added nutritive sweeteners or fat.

Competitive foods must have 0 g of trans fat per item as packaged or served.

Sodium content in snacks is limited to 230 mg per item as packaged or served. On July 1, 2016, the sodium standard will move to 200 mg per item as packaged or served. Entrée items must have no more than 480 mg of sodium per item as packaged or served, unless they meet the exemption for NSLP/SBP entrée items.

Total sugar must be no more than 35 percent by weight. Exemptions to the sugar standard are provided for dried whole fruits or vegetables; dried whole fruit or vegetable pieces; dehydrated fruits or vegetables with no added nutritive sweeteners; and dried fruits with nutritive sweeteners that are required for processing and/or palatability purposes.

Snack items and side dishes served à la carte must have no more than 200 calories per item as packaged or served, including accompaniments such as butter, cream cheese, salad dressing, etc. Entrée items sold à la carte must contain no more than 350 calories including accompaniments, unless they meet the exemption for NSLP/SBP entrée items.

Accompaniments must be included in the nutrient profile as a part of the item served.

Beverage Requirements

Allowable beverages for elementary students are limited to plain water (carbonated or uncarbonated), lowfat milk (unflavored) and nonfat milk (including flavored), nutritionally equivalent milk alternatives (as permitted by the school meal requirements), and full strength fruit or vegetable juices and full strength fruit and vegetable juice diluted with water or carbonated water. All beverages must be no more than eight ounces with the exception of water, which is unlimited.

Allowable beverages for middle school students are limited to plain water (carbonated or uncarbonated), lowfat milk (unflavored) and nonfat milk (including flavored), nutritionally equivalent milk alternatives (as permitted by the school meal requirements), and full strength fruit or vegetable juice and full strength fruit or vegetable juice diluted with water or carbonated water. All beverages must be no more than 12 ounces, with the exception of water, which is unlimited.

Elementary and middle school foods and beverages must be caffeine free with the exception of naturally occurring trace amounts.

Allowable beverages for high school students are limited to plain water (carbonated or uncarbonated), lowfat milk (unflavored) and nonfat milk (including flavored), nutritionally equivalent milk alternatives (as permitted by the school meal requirements), and full strength fruit or vegetable juice and full strength fruit and vegetable juice diluted with water or carbonated water. Milk and milk equivalent alternatives and fruit or vegetable juice must be no more than 12 ounces.

Also allowed in high schools are calorie-free, flavored and/or carbonated water and other calorie-free beverages that comply with the FDA requirement of less than five calories per 8 ounce serving (or less than or equal to 10 calories per 20 fluid ounces), in no more than 20 ounce servings. Beverages of up to 40 calories per eight fluid ounce (or 60 calories per 12 fluid ounce) in no more than 12 ounce servings are also allowed. There is no ounce restriction on plain water (carbonated or uncarbonated). Beverages containing caffeine are also permitted. Allowable beverages are available in the food service area and elsewhere without restriction.

Costs, Benefits and Transfers

This interim final rule requires schools to improve the nutritional quality of foods offered for sale to students outside of the Federal school lunch and school breakfast programs. The new standards apply to foods sold à la carte, in school stores, snack bars, or vending machines. The principal benefit of such a rule is improvement in public health. The primary purpose of the rule is to ensure that foods sold in competition with school meals (competitive foods) are consistent with the most recent Dietary Guidelines, effectively holding competitive foods to the same standards as other foods sold at school during the school day. The link between poor diet and health problems (such as childhood obesity) is a matter of policy concern because the associated health problems produce significant social costs; imposing nutrition standards on competitive foods is one way to ensure that children

are provided with healthy food options throughout the school day.

The Department anticipates the rule will result in significant changes to the nutritional quality of competitive foods available in schools, although it is not possible to quantify those benefits on overall diets or student health. Excess body weight has long been demonstrated to have adverse health, social, psychological, and economic consequences for affected adults, and recent research has also demonstrated that excess body weight has negative impacts for obese and overweight children. Ancillary benefits, although also not quantifiable, may be realized by the nutrition standards in the rule, e.g., improving the nutritional value of competitive foods will support the efforts of parents to promote healthy choices at home and at school, reinforce school-based nutrition education and promotion efforts, and contribute significantly to the overall effectiveness of the school nutrition environment in promoting healthful food and physical activity choices.

Upon implementation of the rule, students will have new food choices which will meet standards for calories, fats, sugar, and sodium, and have whole grains, lowfat dairy, fruits, vegetables, or protein foods as their main ingredients. Our regulatory impact analysis examines a range of possible behavioral responses of students and schools to these changes. To estimate the effects on school revenue, we look to the experience of school districts that have adopted or piloted competitive food reforms in recent years. While no State standard aligns to all of the provisions of the rule, these State standards offer the closest ''real-world'' analogue to the rule.

The available information indicates that many schools have successfully introduced competitive food reforms with little or no loss of revenue. In some of those schools, losses from reduced sales of competitive foods were fully offset by increases in reimbursable meal revenue. In other schools, students responded favorably to the healthier options and competitive food revenue increased or remained at previous levels.

But not all schools that adopted or piloted competitive food standards fared as well. Some of the same studies and reports that highlight school success stories note that other schools sustained losses after implementing similar standards. The competitive food revenue lost by those schools was not offset (at least not fully) by revenue gains from the reimbursable meal programs.

We present a series of possible school revenue effects in the regulatory impact analysis that reflect the variation in outcomes across these case studies, differences in the adopted nutrition standards and implementation strategies, and differences in the schools' economic circumstances. This discussion illustrates a range of potential outcomes; the limited nature of available data and the substantial variation in school experiences to date prevent any assessment of the most likely outcome. The analysis examines the possible effects of the rule on school revenues from competitive foods, the administrative costs of complying with the rule, and the benefits to school children. The magnitude of these effects is subject to considerable uncertainty; the ultimate impact of the rule will be determined by the manner in which schools implement the new standards and how students respond. That said, the most current and comprehensive research available does indicate that nutritional standards for competitive foods can be successfully implemented with no revenue loss or even revenue gains by schools.

Background

The NSLP served an average of 31.6 million children per day in Fiscal Year (FY) 2012. In that same FY, the SBP served an average of 12.9 million children daily.

The Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. 1751 et seq.) and the Child Nutrition Act of 1966 (CNA) (42 U.S.C. 1771 et seq.) require the Secretary to establish nutrition standards for meals served under the NSLP and SBP, respectively. Prior to the enactment of the Healthy, Hunger-Free Kids Act of 2010 (HHFKA), section 10 of the CNA limited the Secretary's authority to regulate competitive foods, i.e., foods sold in competition with the school lunch and breakfast programs, to those foods sold in the food service area during meal periods. The Secretary did not have authority to establish regulatory requirements for food sold in other areas of the school campus or at other times in the school day.

The HHFKA, enacted December 13, 2010, directed the Secretary to promulgate regulations to establish science-based nutrition standards for foods sold in schools other than those foods provided under the NSLP and SBP. Section 208 of the HHFKA amended section 10 of the CNA (42 U.S.C. 1779) to require that such nutrition standards apply to all foods sold:

- Outside the school meal programs;
- On the school campus; and
- At any time during the school day.

Section 208 requires that such standards be consistent with the most recent Dietary Guidelines for Americans (DGA) and that the Secretary consider authoritative scientific recommendations for nutrition standards; existing school nutrition standards, including voluntary standards for beverages and snack foods; current State and local standards; the practical application of the nutrition standards; and special exemptions for infrequent school-sponsored fundraisers (other than fundraising through vending machines, school stores, snack bars, à la carte sales and any other exclusions determined by the Secretary).

In addition, the amendments made by section 203 of the HHFKA amended section 9(a) of the NSLA (42 U.S.C. 1758(a)) to require that schools participating in the NSLP make potable water available to children at no charge in the place where meals are served during the meal service. This is a nondiscretionary requirement of the HHFKA that became effective October 1, 2010.

The Department published a proposed rule in the **Federal Register** on February 8, 2013 (78 FR 9530), also titled *National School Lunch Program and School Breakfast Program: Nutrition Standards for All Foods Sold in School as Required by the Healthy, Hunger-Free Kids Act of 2010.* This rule proposed nutrition standards for foods offered for sale to students outside of the Federal school lunch and school breakfast programs, including foods sold à la carte and in school stores and vending machines. The proposed standards were designed to complement recent improvements in school meals, and to help promote diets that contribute to students' long term health and well-being. For information on recent improvements to school meals, refer to the final rule, *Nutrition Standards in the National School Lunch and School Breakfast Programs* (January 26, 2012, at 77 FR 4088). The proposed rule also would have required schools participating in the NSLP and afterschool snack service under NSLP to make water available to children at no charge during the lunch and afterschool snack service.

As previously indicated, the nutrition standards established by the Secretary must be consistent with the most recent DGA, which are the 2010 DGA released on January 31, 2011. The guidelines are available at *http://www.cnpp.usda.gov/DietaryGuidelines.htm*. In accordance with the amendments made by the HHFKA, in developing competitive food

standards, the Secretary was also to consider authoritative scientific recommendations for nutrition standards; existing school nutrition standards, including voluntary standards for beverages and snack foods and State and local standards; and the practical application of the nutrition standards. As part of USDA's review of authoritative scientific recommendations for nutrition standards, the Agency gave consideration to the National Academies' Institute of Medicine's (IOM) 2007 report, *Nutrition Standards for Foods in Schools: Leading the Way Toward Healthier Youth* (available at: *http://www.iom.edu/Reports/2007/Nutrition-Standards-for-Foods-in-Schools-Leading-the-Way-toward-Healthier-Youth.aspx*).

The Department also conducted a broad review of nutrition standards developed by other entities, including USDA's HealthierUS School Challenge (HUSSC) standards, existing State and local school nutrition standards for foods and beverages sold in competition with school meals, and existing voluntary standards and recommendations developed by various organizations such as the National Alliance for Nutrition and Activity and the Alliance for a Healthier Generation. In addition, the Department solicited input from Federal child nutrition program stakeholders, including nutrition and health professionals, academia, industry, interest groups and the public through a variety of channels. The practical application of the competitive food nutrition standards in school settings was a key consideration for the standards.

USDA received a total of 247,871 public comments during the 60-day comment period from February 8, 2013, through April 9, 2013. This total included several single submissions with thousands of identical comments. Approximately 245,665 of these were form letters, nearly all of which were related to 104 different mass mail campaigns. The remaining comments—over 2,200—were unique comments rather than form letters. Comments represented a diversity of interests, including advocacy organizations; health care organizations; industry and trade associations; farm and industry groups; schools, school boards and school nutrition and education associations; State departments of education; consumer groups; and others. Comments were analyzed using computer software that facilitated the identification of the key issues addressed by the commenters.

In general, there was support for the proposed rule. Approximately 17,827 submissions, including a mass mail campaign, expressed general overall support for the proposed rule in its entirety without commenting on specific provisions. Approximately 426 submissions expressed general opposition to the proposed rule in its entirety without commenting on specific provisions. USDA considered all comments in the development of this interim final rule. Given the unprecedented volume and complexity of comments on the proposed rule, USDA prepared a comprehensive comment summary and analysis which includes detailed information on the comments, including the source of the comments. The description and analysis of comments in this preamble focus on general comment themes, most frequent comments, and those that influenced revisions to the proposed rule. The preamble also discusses modifications made to the proposed rule in response to public input. To view all public comments on the proposed rule, go to *www.regulations.gov* and search for public submissions under document number FNS–2011–0019. Once the search results populate, click on the blue text titled, ''Open Docket Folder.'' The comprehensive comment summary and analysis is available as supporting material under the docket folder summary. It is also available at *www.fns.usda.gov/cnd/Governance/Legislation/allfoods.htm*.

USDA greatly appreciates the public comments as they have been essential in developing an interim final rule that is expected to improve the quality of foods sold in schools participating in the NSLP and SBP.

General Requirements

Definitions

The amendments made by the HHFKA stipulate that the nutrition standards for competitive food apply to all foods and beverages sold: (a) Outside the school meals programs; (b) on the school campus; and (c) at any time during the school day. The proposed rule at § 210.11(a) included definitions of *Competitive food, School day,* and *School campus,* as follows:

Competitive food means all food and beverages other than meals reimbursed under programs authorized by the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966 available for sale to students on the *School campus* during the *School day*.

School day means, for the purpose of competitive food standards implementation, the period from the midnight before, to 30 minutes after the end of the official school day.

School campus means, for the purpose of competitive food standards implementation, all areas of the property under the jurisdiction of the school that are accessible to students during the school day.

Another term, *Combination foods* was also proposed to be defined under § 210.11(a) to mean products that contain two or more components representing two or more of the recommended food groups: fruit, vegetable, dairy, protein or grains.

In addition, an *Entrée item* was defined in § 210.11(k)(1) of the proposal as an item that includes only the following three categories of main dish food items:

- A combination food of meat or meat alternate and whole grain rich bread;
- A combination food of vegetable or fruit and meat or meat alternate; or
- A meat or meat alternate alone, with the exception of yogurt, low-fat or reduced fat cheese, nuts, seeds and nut or seed butters.

The preamble provided several examples for each part of the entrée definition.

Almost 6,000 commenters provided input on the proposed definition of *Competitive food*. Many of these commenters generally agreed with the proposed definition. Of the more than 6,000 comments received on the definition of *School day,* many generally agreed with the proposed definition. Numerous commenters suggested the definition should be expanded to include the extended school day and afterschool programs that take place on the school campus. Commenters recommended a range of times, both before and after school, including 30 minutes before the start of the instructional day, instead of the midnight before.

Per amendments by section 208 of the HHFKA, the CNA requires that the competitive food standards apply to foods sold at any time during the school day, which does not include afterschool programs, events and activities. The timeframe for the school day definition starting the ''midnight before'' was proposed to ensure that the competitive food standards would apply during the School Breakfast Program meal service, in recognition of the variety of school schedules and methods of serving breakfast to students.

Almost 3,000 commenters provided input on the proposed definition of *School campus*. Many of these commenters generally agreed with the proposed definition. Several

commenters requested clarification on the applicability of the definition to various locations and activities, including teachers' lounges and similar areas restricted to faculty and staff. The proposed definition of *School campus* includes specific reference to areas that are ''accessible to students'' during the school day. To the extent that teachers' lounges and other similar areas are restricted areas not accessible to students, the competitive food standards in this rule would not apply to foods sold in those areas.

Approximately 850 commenters provided input on the proposed definition of *Entrée item.* Several commenters requested a separate definition of ''breakfast entrée'' to allow grain only, whole grain rich entrées, which are commonly served in the SBP. Including this definition would allow a higher calorie limit for many popular breakfast items such as pancakes, waffles, bagels and cereal, some of which could have difficulty qualifying under the snack/side item limits. The Department acknowledges that the proposed definition of *Entrée item* could present challenges to schools in serving some traditional breakfast items. At this time, the consequences of modifying the proposed definition of *Entrée item* or adding a separate definition of ''breakfast entrée'' are unclear. The Department would appreciate further comment on this issue in the context of the totality of the competitive food standards set forth in this interim final rule, so that we can appropriately address this in future guidance and/or the final rule.

A few commenters recommended that meat snack items, such as beef jerky and meat sticks, be excluded similar to yogurt, cheese, nuts, seeds and nut butters, as these are typically not considered main dishes but rather snacks. USDA agrees and will add an exclusion for meat snack items to the definition.

Accordingly, this interim final rule codifies the proposed definitions of *Combination foods, Competitive food, School day,* and *School campus* at § 210.11(a), without change. In addition, this interim final rule adopts the proposed definition of *Entrée item,* with an additional exception added for meat snacks, and a technical correction to change ''whole grain rich bread'' to ''whole grain rich food'' to ensure that entrées with pasta, rice and other grain items are included as intended. The definition of *Entrée item* is also moved to § 210.11(a) of this interim final rule, as the definition is applicable to several provisions across the competitive food standards.

State and Local Educational Agency Standards

Under § 210.11(b)(1) of the proposed rule, State and/or local educational agencies would have the discretion to establish additional restrictions on competitive food, as long as they are consistent with the provisions set forth in program regulations.

Approximately 10,280 commenters addressed the discretion of States and local school districts to establish more rigorous competitive food standards. Numerous commenters expressly supported the proposed provision. However, a few commenters expressed concern about additional competitive food restrictions created by States and/or individual school districts, arguing that the standards should be as consistent as possible across States. The commenters asserted that having one set of standards would facilitate the development of nutritious formulations by manufacturers which could potentially lower the overall cost.

The ability of State agencies and school districts to establish additional standards that do not conflict with the Federal competitive food requirements is consistent with the intent of section 208 of the HHFKA, and with the operation of the Federal school meal programs in general. That discretion also provides an appropriate level of flexibility to States and school districts to set or maintain additional requirements that reflect their particular circumstances consistent with the development of their local school wellness policies. Any additional restrictions on competitive food established by school districts must be consistent with both the Federal requirements as well as any State requirements.

Accordingly, this interim final rule codifies in § 210.11(b)(1), as proposed, the provision allowing States and local educational agencies to establish additional restrictions on competitive food that are not inconsistent with the Federal requirements.

Nutrition Standards for Competitive Food

In response to section 208 of the HHFKA, the proposed rule at § 210.11(c) included general nutrition standards for foods sold in schools outside of the Federal school meal programs. At a minimum, all competitive food sold to students on the school campus during the school day would be required to meet these competitive food nutrition standards.

General Nutrition Standards for Competitive Food

Under § 210.11(c)(1) and (c)(2) of the proposal, an allowable competitive food item would be required to meet all of the proposed competitive food nutrient standards and:

- Be a grain product that contains 50 percent or more whole grains by weight or have whole grains as the first ingredient; or
- Have as a first ingredient one of the non-grain major food groups as defined by the 2010 DGA: fruits, vegetables, dairy products, protein foods (meat, beans, poultry, seafood, eggs, nuts, seeds, etc.); or
- Contain 10 percent of the Daily Value of a naturally occurring nutrient of public health concern from the DGA (i.e., calcium, potassium, vitamin D or dietary fiber); or
- Be a combination food that contains at least ¼ cup of fruit or vegetable.

If water is the first ingredient listed for a food item, the second ingredient must be one of the food items above.

General Comments

Approximately 209,400 commenters expressed general support for the food requirements in the proposed rule, while approximately 20 commenters expressed general opposition to the food requirements.

Some commenters recommended that USDA remove the general standards for food and only require competitive food to meet the nutrient standards. The Department does not agree. The general standards for competitive food, as proposed, are consistent with the IOM recommendations, and are intended to promote and encourage the consumption of foods in their whole forms as much as possible, as recommended by the DGA. Removing the general standards and requiring that foods meet only the nutrient standards would not support this goal.

Some commenters recommended that USDA require a proportionate increase in, and/or recommended amounts of, food group contributions for entrée-type competitive food items, since entrées are larger and should contribute more to dietary needs than snacks or side dishes. We acknowledge that due to their larger size and composition, entrée items generally contribute more to diets than other items. However, the Department does not agree that a separate, higher general standard for entrées is necessary, since an entrée's portion size and overall nutrient content will be controlled by the standards for calories, fats, sodium and sugar. A separate general standard for entrées

would also add complexity to the determination of whether a food item meets the standards.

More than 1,100 commenters recommended that combination foods be required to contain only ⅛ cup of fruit or vegetable, instead of ¼ cup. The comment reflects USDA's current policy allowing schools to credit ⅛ cup fruit or vegetable toward the total quantity required for school meals. Maintaining the higher ¼ cup fruit/vegetable quantity for combination foods generally supports the availability of more nutritious products and is consistent with the IOM recommendation and the DGA. However, it is possible that combination foods with less than ¼ cup of fruit or vegetable could qualify under the whole grain rich or food group criteria, depending on their composition.

One commenter suggested specifying that ''dairy products'' include non-standard products such as cultured dairy snacks and frozen dairy desserts. In drafting the proposed rule, the Department did not intend to exclude non-standard dairy products such as those mentioned by the commenter. We will ensure that guidance and technical assistance materials in support of this interim final rule will include that clarification.

Based on these comments, this interim final rule does not make any change to these proposed general standards for competitive food, except to correct technical errors with references in the proposed regulatory text regarding the applicability of water as the first ingredient in a product, and to clarify that fruit ''and/or'' vegetable may be present in a combination food. Additional discussion of the general standards related to whole grains and naturally occurring nutrients of concern follows.

Whole Grains

As mentioned above, one of the general standards for competitive food, proposed at paragraphs (c)(2)(ii) and (e) in § 210.11, would require that grain products contain 50 percent or more whole grains by weight, or have whole grains as the first ingredient.

Approximately 25 commenters expressed support for the proposed whole grain standard, stating that this standard would align with the DGA as well as the school meal standard. Other commenters urged amendment of the standard by allowing FDA whole grain health claims to ensure consistency with the standards for school meals. Approximately 40 commenters supported making the standard more stringent, suggesting that 100 percent of grains should be whole grain, not whole grain rich.

Approximately 980 commenters supported making the proposed standard less stringent. Some of these commenters suggested that USDA expand the whole grain rich grain product standard to allow products that contain at least 8 grams of whole grains per serving.

As indicated in the preamble to the proposed rule, this standard is consistent with the DGA recommendations, the whole grain rich requirements for school meals, including FDA health claims, and the HUSSC whole grain rich requirement. The whole grain criteria for competitive food is used as a criterion for determining product allowability, while school meals' whole grain rich criteria determine crediting of the grain portion of menu items toward the grain component of the meal. Allowing the additional measures for grain suggested by some commenters such as ≥ 8 grams of whole grain would not ensure that grain products contain at least 50 percent whole grain and would be inconsistent with the DGA. Therefore, this interim final rule adopts the standard as proposed.

Naturally Occurring Nutrients

One of the general standards for competitive food, proposed at § 210.11(c)(2)(iv), would require an allowable competitive food to contain 10 percent of the Daily Value of a naturally occurring nutrient of public health concern (i.e., calcium, potassium, vitamin D, or dietary fiber). The proposed rule requested comments on whether or not food items that contain only naturally occurring nutrients should be allowed, or whether food items to which specific nutrients of concern have been added should also be allowable.

Approximately 450 commenters expressed support for the proposal to limit non-DGA food group competitive food to only those with ''naturally occurring'' 10 percent Daily Value of nutrients of concern. Numerous commenters reasoned that limiting nutrients to those that are naturally occurring would promote the intake of foods closer to their whole, natural state, which is recommended in the 2010 DGA, and is consistent with the IOM recommendations. Several commenters expressed concern that if the competitive food requirements permitted fortification, unhealthy or less healthy foods would be fortified and made available in schools. Some commenters also argued that crediting nutrients added through fortification could lead food manufacturers to add nutrients to foods that would not usually be sources of a particular nutrient and could lead to the potential for nutrient imbalances. Some commenters suggested that school food service personnel would require training to identify which food items contain naturally occurring nutrients of concern versus those that have been fortified. Several commenters suggested that the regulation specify that the nutrients of concern are based on the most recent DGA so that if future versions of the DGA include different nutrients of concern, USDA would have the authority to update them for competitive food.

A few commenters urged USDA to broaden the list of ''nutrients of concern'' to include vitamins A and C, iron, folic acid, and protein, referencing the FDA definition of ''healthy'' (21 CFR 101.65(d)(2)) and the current Nutrition Facts label.

Approximately 1,240 commenters opposed the proposed restriction to only ''naturally occurring'' nutrients. Several commenters argued that allowing competitive foods to qualify because of fortified nutrients would provide greater flexibility in menu planning and increase the variety of items that schools can offer as competitive foods. Several commenters stated that the current nutrition information on food labels does not distinguish between fortified and naturally occurring nutrients and that there is no standardized labeling for nutrients of concern. These commenters argued that the requirement for nutrients should be aligned with the information that is currently present on food nutrition labels. These same commenters concluded that it would be challenging or impossible for food service staff to determine from food labels what nutrients are naturally occurring and which are added through fortification.

This is a particularly challenging issue. The Department recognizes some of the current difficulties and limitations with determining whether products contain naturally occurring nutrients. We also appreciate the complexity this would create for local educational agencies and schools in identifying allowable competitive food, as well as the challenges for State agencies in monitoring compliance with these standards. In addition, there are existing voluntary standards that have no restriction on adding nutrients to qualify, and therefore some product manufacturers may not be prepared to support a naturally occurring nutrient standard.

However, as indicated in the preamble to the proposed rule, the Department also supports recognizing only naturally occurring nutrient sources as more consistent with the recommendation of the DGA that ''nutrients should come primarily from foods.'' The nutrients of concern referenced in the proposed rule—calcium, potassium, vitamin D, and dietary fiber—are explicitly identified in the 2010 DGA. It is not appropriate for the Department to add other nutrients at this time, but it would be the Department's intent to update the nutrients as future changes occur. As commenters noted, the proposed criterion is also consistent with the recommendations from IOM, which indicated that this approach ''reinforces the importance of improving the overall quality of food intake rather than nutrient-specific strategies such as fortification and supplementation.''

Therefore, in recognition of the current marketplace and implementation limitations but also mindful of important national nutrition goals, this interim final rule implements a phased-in approach to identifying allowable competitive food under the general standard. For the initial implementation period in School Year 2014–15, through June 30, 2016, the general food standard will include a criterion that an allowable competitive food may contain 10 percent of the Daily Value of a nutrient of public health concern (i.e., calcium, potassium, vitamin D, or dietary fiber). The specified nutrient may be naturally occurring, which is encouraged, or may be added to the product. Effective July 1, 2016, the criterion for 10 percent of the Daily Value of a nutrient of public health concern will be removed as a general criterion. At that time, competitive food must qualify on the basis of being whole grain rich, having one of the non-grain main food groups as the first ingredient (or second if water if the first ingredient), or a combination food with at least ¼ cup fruit and/or vegetable. This approach will allow three years for product manufacturers to reformulate their products, if desired, to qualify under the other criteria of the general standards. It will also provide a more straightforward method for schools to identify allowable products, both initially and in the long-term. Ultimately this will more closely align the competitive food standards with the DGA, as required by the HHFKA. Should the 2015 DGA identify additional nutrients of concern applicable to school-age children, the Department anticipates allowing these additional nutrients to qualify products until that criterion is removed on July 1, 2016.

Summary of Changes to the General Nutrition Standards

Accordingly, this interim final rule modifies the proposed general standards for competitive food to require that an allowable competitive food item must meet all of the competitive food nutrient standards *and:*

- Be a grain product that contains 50 percent or more whole grains by weight or have whole grains as the first ingredient; *or*
- Have as a first ingredient one of the non-grain major food groups: Fruits, vegetables, dairy, protein foods (meat, beans, poultry, seafood, eggs, nuts, seeds, etc.); *or*
- Be a combination food that contains at least ¼ cup of fruit and/or vegetable; *or*
- Through June 30, 2016, contain 10 percent of the Daily Value of a nutrient of public health concern from the DGA (i.e., calcium, potassium, vitamin D or dietary fiber).

If water is the first ingredient listed for a food item, the second ingredient must be one of the food items listed above. These provisions are found in paragraphs (c)(1) and (c)(2) in § 210.11 of this interim final rule.

Exemptions From Some or All of the Nutrition Standards for Menu Items Provided as Part of the NSLP/SBP

The proposed rule at § 210.11(c)(3) identified two alternatives by which any menu item (both entrées and side dishes) provided as part of the NSLP and/or SBP school meal would be exempt from all or some of the proposed competitive food nutrition standards. Under both proposed alternatives, grain based dessert products would be required to meet all competitive food standards, and all menu items would be required to be served in the same or smaller portion sizes as the NSLP and SBP.

Under proposed Alternative A1, all menu items provided as part of the NSLP or SBP reimbursable meal would be exempt from all of the proposed competitive food standards *except the standards established for fat and sugar*. (The fat and sugar standards are discussed later in this preamble.)

Under proposed Alternative A2, all menu items provided as part of the NSLP or SBP reimbursable meal would be exempt from all of the proposed competitive food standards, *provided such menu items are served within specified timeframes*. Two alternatives (Alternatives B1 and B2) were proposed regarding the timing of allowable service of the exempted menu items. The proposed alternatives would allow an exemption to the proposed nutrient standards for competitive food for NSLP and SBP menu items served:

- *On the same day* that the items were served in the school meals program (proposed Alternative B1); or
- *Within four operating days* of service in the programs (proposed Alternative B2).

The Department received a wide variety of comments on the proposed exemptions for NSLP/SBP menu items.

More than 209,000 commenters suggested that NSLP/SBP menu items should not receive any exemption from the competitive food standards. Many suggested that allowing exemptions would introduce ''loopholes'' for items sold in the à la carte lines. Others asserted that the nutritional benefits of the school meal are diminished when items from the meal are sold individually. Several of these commenters warned that the exemptions would undermine the integrity of the competitive food standards.

Approximately 740 commenters suggested that NSLP/SBP menu items should be exempted from all competitive food standards. Some of these commenters specifically opposed restrictions on fat, sugar, sodium and the frequency of allowable sale of NSLP/SBP menu items, which they asserted would decrease flexibility and increase food costs for schools. Some commenters supported the idea that because foods in reimbursable meals have already been determined to be a nutritious part of a school meal, they should not be subjected to a second set of nutrition standards in order to be served as a competitive food.

Approximately 25 commenters expressed support for proposed Alternative A1 (NSLP/SBP menu items sold à la carte exempt from all competitive food standards except the fat and sugar standards). Several commenters recommended that if NSLP/SBP menu items are exempted, Alternative A1 should be chosen over Alternative A2 because students could purchase those foods à la carte at any time but Alternative A1 would promote limited fat and sugar intake.

Approximately 935 commenters expressed support for proposed Alternative A2 (NSLP/SBP menu items sold à la carte exempt from all competitive food standards). These commenters cited reasons for their support including flexibility in menu planning for school food authorities, positive messaging to students about

healthy foods, and consistency between à la carte and reimbursable meal requirements. Several of the commenters that supported proposed Alternative A2 did so with the recommendation that there be no frequency restrictions for service of the à la carte menu items. Some of these commenters suggested that not allowing the service of NSLP/SBP menu items would send a confusing message that particular foods are healthful when they are part of a meal but not when they are sold separately. Another commenter recommended that only NSLP/SBP entrées be exempted from the competitive food standards, and not side dishes.

Approximately 40 commenters expressed support for proposed Alternative B1 (allowing an exemption to the nutrient standards for NSLP/SBP menu items on the day of service). Several commenters suggested that this alternative would offer consistency between the à la carte offering and the school meal offerings. Other commenters suggested that schools be allowed to serve NSLP/SBP menu items on the day the items are offered as well as the day after.

Approximately 80 commenters expressed support for proposed Alternative B2 (allowing an exemption to the nutrient standard for NSLP/SBP menu items served within four operating days of their service in the meal). Commenters suggested that proposed Alternative B2 would provide the most flexibility for menu planners and would reduce food waste.

Approximately 960 commenters expressed the view that there should be no frequency restrictions on the service of NSLP/SBP menu items, citing implementation difficulties such inventory control and tracking and maintaining student participation. Other commenters suggested that compliance with the meal pattern would ensure that students are consuming nutritious foods.

The Department appreciates the diverse public comment on this provision. Any exemption to the competitive food standards for NSLP/SBP menu items must ensure that improvements from updated school meal standards are not undermined and also take into account implementation by program operators and messaging to students. This interim final rule adopts an exemption for NSLP/SBP entrée items only. Side dishes served à la carte would be required to meet all applicable competitive food standards. The exemption for the entrée items is available on the day the entrée item is served in NSLP/SBP, and the following school day. Entrée items are provided an exemption, but side dishes are not, in an attempt to balance significant commenter opposition to any exemptions for NSLP/SBP menu items and needed menu planning flexibilities. The approach adopted in this interim final rule supports the concept of school meals as being healthful, and provides flexibility to program operators in planning à la carte sales and handling leftovers. The ''day after'' exemption is provided primarily to accommodate leftovers. We anticipate that this approach, along with the recent changes to school meal standards will result in healthier menu items in meals than in the past, including entrées.

Additionally, providing flexibility for schools to sell à la carte those entrée items that are served as part of the reimbursable meal on the day of service greatly mitigates potential operational disruption in the cafeteria that may occur from students being confused about whether particular foods being served to other students can be purchased individually. This approach also mitigates potential confusion among parents, students and schools that a particular entrée item is healthful when sold as part of the reimbursable meal but not when the same entrée item is sold separately. That said, USDA will closely monitor this exemption during implementation to determine the overall nutrient profile of products being offered under the exemption, as well as any food safety impacts related to leftovers served à la carte. Should the exemption undermine the overall goal of the competitive food standards for healthier products for sale in schools, we will consider a stricter standard.

Accordingly, this interim final rule, in § 210.11(c)(3)(i), provides an exemption to the competitive food standards for NSLP and SBP entrée items that are offered on the same day or the school day after they are offered in the NSLP or SBP. Exempt entrées that are sold as competitive food must be offered in the same or smaller portion sizes as the NSLP and SBP, and with the same accompaniments.

Fruits and Vegetables

Consistent with the DGA and IOM recommendations, the proposed rule at § 210.11(d) would exempt from the competitive food nutrition standards fresh, frozen and canned fruits and vegetables with no added ingredients except water or, in the case of fruit, packed in 100 percent fruit juice or extra light syrup.

Over 900 commenters asserted that the proposed exemption for fruits and vegetables should be expanded, including a recommendation that USDA expand the exemption to include fruit packed in light syrup. These commenters and others also recommended expanding the exemption to allow certain canned vegetables to which a small amount of sugar has been added to maintain the structural integrity of the vegetable. A few commenters supported the allowance of frozen fruit with added sugar. Some commenters expressed the need to include dried fruit with no added ingredients in the proposed nutrient standard exemption.

USDA agrees that the fruit and vegetable nutrient exemption should be expanded to include fruit packed in light syrup, consistent with what is allowed in school meals. The Department also agrees that this exemption should include canned vegetables to which a small amount of sugars has been added to maintain the structural integrity of the vegetable, e.g., corn and peas, as is allowed in USDA's Special Supplemental Nutrition Program for Women, Infants and Children (WIC). We would like to clarify that frozen fruit with added sugar is also exempt, if it can be considered to be packed in extra light syrup or light syrup. The Department prefers to address an exemption for dried fruit under the sugar standard, since including dried fruit under the general nutrient exemption for fruits and vegetables may result in servings that are high in calories due to the nature of dried fruit.

Accordingly, this interim final rule codifies in § 210.11(d) an exemption to the nutrient standards for fresh, frozen and canned fruits and vegetables with no added ingredients except water or, in the case of fruit, packed in 100 percent fruit juice, extra light syrup, or light syrup; and for canned vegetables that contain a small amount of sugar for processing purposes, to maintain the quality and structure of the vegetable.

Nutrient Standards

The proposed rule included standards for total fat, saturated fat, trans fat, total sugars, calories, and sodium. These standards were proposed to apply to the competitive food ''per portion as packaged'' or ''per portion.'' Over 206,000 commenters expressed support for the proposed nutrient standards for competitive food, while approximately 1,050 expressed general opposition. A few commenters suggested that the phrase ''per portion as packaged'' needs clarification because there is a difference between a ''portion'' and a ''serving.'' One commenter stated that per portion as packaged means the

entire package of food sold, not a serving within the package.

The intent of the proposed language ''per portion as packaged'' and ''per portion'' was to apply the competitive food standards to the item sold to the student, as noted by the commenter, and not to each ''serving'' in a package. Some packaged items may include more than one ''serving'', as indicated on the Nutrition Facts label. We also understand that some items provided as a competitive food are not ''packaged'' by a manufacturer but rather are scratch prepared in the school and served to the student. For clarity, we are modifying the regulatory text for the nutrient standards to use the term ''per item as packaged or served'' instead of ''per portion as packaged'' or ''per portion.'' This language more effectively reflects how the standards must be applied.

Total Fat, Saturated Fat and Trans Fat

To qualify as an allowable competitive food, the proposal at § 210.11(f)(1) would require that not more than 35 percent of the total calories per portion as packaged be derived from fat. Exemptions to the total fat requirement, in proposed § 210.11(f)(2), would include:

- Reduced fat cheese; and
- Nuts and seeds and nut/seed butters (excluding combination products that contain nuts, nut butters or seeds or seed butters with other ingredients such as peanut butter and crackers, trail mix, chocolate covered peanuts, etc.); and
- Products that consist of only dried fruit with nuts and/or seeds with no added nutritive sweeteners or fat; and
- Seafood *with no added fat*.

For saturated fat, the proposal at § 210.11(g)(1) would require that less than 10 percent of the total calories per portion of a food be derived from saturated fat. The proposal included an exemption to the saturated fat standard, in paragraph (g)(2), for reduced fat cheese.

Under proposed § 210.11(h), the trans fat content of a competitive food must be zero grams trans fat per portion as packaged (not more than 0.5 g per portion).

Several thousand commenters expressed support for the proposed limits on total fat, saturated fat, and trans fat; many also expressed specific support for the proposed exemptions from the fat standards. Approximately 130 commenters were opposed to the proposed restriction on total fat; approximately 70 commenters were opposed to the proposed restriction on saturated fat; and a few commenters opposed the proposed trans fat restriction. These commenters argued in favor of making the restrictions less stringent or eliminating the standards entirely.

Some commenters wanted USDA to consider adding an exemption for nuts and seeds and nut/seed butters to the saturated fat standard, in addition to the proposed total fat standard exemption. The Department agrees with providing a saturated fat exemption for nuts and seeds and nut/seed butters, given the healthy fat profile and positive nutrition benefits of these products.

Numerous commenters urged USDA to expand the exemption for reduced fat cheeses to include all cheeses, citing the importance of increasing children's access to dairy products. Many of the commenters in support of the exemption for reduced fat cheese asked USDA not to extend the exemption to combination products that include reduced-fat cheese (e.g., cheese and crackers). A few commenters recommended that USDA extend the fat exemptions to part-skim cheese (mozzarella), which is lower in fat than full fat cheese but may not necessarily meet the FDA criteria for the reduced fat claim.

In response, USDA looked closely at the fat content of cheeses, including part-skim cheeses, to determine if additional exemptions to the fat standards are warranted. Based on our examination, we agree that extending an exemption to the total fat and saturated fat standards for part-skim mozzarella cheese is appropriate, as there is an FDA standard of identity for part-skim mozzarella cheese. In addition, there is a similar fat profile for part-skim mozzarella compared to many reduced fat cheeses. Other part-skim cheese may be exempt if it also meets the FDA requirement as a reduced fat cheese. The reduced-fat cheese (and now part-skim mozzarella) exemptions do not apply to combination foods.

Another commenter recommended that protein foods which supply at least 10 percent Daily Value for protein be exempt from the total fat and saturated fat limits. The Department does not agree that such an exemption from the fat standards is appropriate. To support the DGA, meat and poultry should be consumed in lean forms to decrease the intake of solid fat. Nuts and seeds and nut/seed butters and seafood, which have been exempted, contain oils rather than solid fats.

Accordingly, this interim final rule codifies in § 210.11(f) the total fat and saturated fat standards and exemptions as proposed, with additional exemptions to the total fat and saturated fat standards for part-skim mozzarella cheese, an additional exemption to the saturated fat standard for nuts and seeds and nut/seed butters, and clarification that the standards apply to the item as packaged or served. This language also clarifies that the exemptions for cheese and nuts and seeds and nut/seed butters do not apply to combination foods. The trans fat standard is adopted in this interim final rule as proposed, in § 210.11(g).

Total Sugars

The proposed rule at § 210.11(i)(1) provided two alternatives for comment regarding total sugars in foods. Under proposed Alternative C1, total sugars contained in a competitive food could not be more than 35 percent of *calories* per portion. Under proposed Alternative C2, not more than 35 percent of the *weight* per portion could be derived from total sugars.

Regardless of which measure (total sugars by calories or weight) is utilized, the proposed rule at § 210.11(i)(2) would provide the following exemptions to the total sugar standard:

- Dried whole fruits or vegetables; dried whole fruit or vegetable pieces; and dehydrated fruits or vegetables with no added nutritive sweeteners;
- Products that consist of only dried fruit with nuts and/or seeds with no added nutritive sweeteners or fat; and
- Flavored and unflavored nonfat and low-fat yogurt with no more than 30 grams of total sugars per 8 ounce serving.

More than 2,500 commenters expressed general support for a sugar restriction for competitive food. Approximately 70 commenters supported proposed Alternative C1 (total sugar by calories), citing consistency with IOM and other public health recommendations. Some commenters stated that Alternative C1 would be easier to implement because the calculation is simpler to perform. A number of commenters argued that a standard based on calories would be better than limiting sugars to 35 percent by weight, which would allow a number of sugary foods to be sold that would otherwise be excluded by a limit based on percent of calories, e.g., those with high water content such as ice pops, fruit snacks, ice cream, pudding, granola bars, and snack cakes.

More than 1,100 commenters expressed support for proposed Alternative C2 (total sugars by weight). These commenters argued that this is the standard many schools and food manufacturers have been using, and that it is consistent with other standards such as USDA's HUSSC and the Alliance for a Healthier Generation, which many schools have already

implemented. Many commenters stated that this alternative would allow greater flexibility and would permit more products that are favorites among students, such as low-fat ice cream, sweetened frozen fruit, and yogurt parfaits. Several commenters expressed support for Alternative C2 because they believe it would be easier to implement. A few commenters asserted that it would be easier for school food service personnel to assess a product's conformance to the sugar standard as a percentage of the product's weight because it would only involve calculations based on information provided on the Nutrition Facts label.

Many commenters suggested USDA should set the sugar standard based on added sugars, rather than total sugars. These commenters argued that added sugars are what science shows should be limited in children's diets. However, these commenters acknowledged that added sugars are not specified on the Nutrition Facts label, which would make it difficult for local schools to determine. Consequently, some of these commenters urged USDA to work with FDA to ensure that added sugars are listed on the revised Nutrition Facts label.

In response, USDA agrees with these commenters that a sugar standard based on added sugars is preferable but that it would be very difficult for local program operators to implement and State agencies to monitor since the current Nutrition Facts label does not differentiate between naturally occurring and added sugars. If added sugars information is required on the Nutrition Facts label in the future, USDA would anticipate updating the standards for competitive food to incorporate that standard.

The interim final rule adopts Alternative C2, which requires that 35 percent or less of the weight of the food come from total sugars. We acknowledge that this standard generally allows more products to qualify, but the portion sizes of these and all foods would be limited by the calorie and fat standards. Sugar by weight is also a standard used by some voluntary standards. State agencies and school districts could choose to implement a sugar standard based on calories, as long as it is at least as restrictive as the regulatory standard (i.e., no allowable product under the calorie measure could exceed 35 percent sugar by weight). As mentioned earlier, any additional restrictions on competitive food established by school districts must be consistent with both the Federal requirements as well as any State requirements.

Approximately 350 commenters provided input on the proposed exemptions to the sugar standard. Many of these commenters expressed support for the sugar exemptions as proposed. Approximately 130 commenters addressed the exemption for dried fruits/vegetables. Numerous commenters expressed general support for the exemption for dried fruits/vegetables with no added nutritive sweeteners. Many commenters suggested expanding the sugar exemptions to allow certain dried fruits with added nutritive sweeteners where it is required for processing and palatability. However, many other commenters did not support an expansion of the exemption for dried fruits with added caloric sweeteners. A few commenters requested that processed fruit and vegetable snacks (e.g., fruit strips or fruit drops) be included under the proposed exemption for dried fruit, as many are processed with fruit juice concentrate.

USDA supports an additional limited exemption for dried fruit with added nutritive sweeteners only when the added sweeteners are required for processing and/or palatability of the product, such as dried cranberries, tart cherries and blueberries. The portion sizes of these dried fruits would be limited by the calorie standards. The Department, however, does not agree that processed fruit and vegetable snacks should be included under either dried fruit exemption. Since these snack type products are not whole dried fruit pieces, the fruit concentrate (added sugar) used to make these products is often the primary ingredient. These products could still qualify without the exemption as a competitive food if they meet all of the standards, including a fruit or vegetable as the first ingredient.

Approximately 360 commenters addressed the proposed exemption of flavored and unflavored non-fat and low-fat yogurts from the sugar limit. Most of these commenters expressed support for the proposed exemption, based on a desire to increase the availability of popular dairy products that children are likely to eat. Several commenters recommended that the 30 grams per 8 ounce limit for total sugars in yogurt be scaled proportionately by serving size (e.g., 22 grams total sugar for a 6 ounce portion). Several commenters proposed more restrictive standards for yogurt products to receive an exemption from the sugar limit, while a few commenters proposed less restrictive standards.

The intention of the proposed exemption for yogurt was that the total sugars limit be scaled according to serving size. Since this interim final rule adopts a sugar standard based on the weight of the product, as discussed above, an exemption for yogurt is unnecessary and is removed in this interim final rule. However, USDA encourages local program operators to select yogurt with lower amounts of sugar whenever possible. Ingredient lists reveal that many popular drinkable yogurts have significant levels of added sugars instead of sugars conveyed naturally from fruit or dairy. USDA will gather additional information as competitive food standards are implemented and may address standards for drinkable yogurt in a future rulemaking.

Accordingly, this interim final rule requires, in § 210.11(h)(1), that the total sugar content of a competitive food must be not more than 35 percent of *weight* per item as packaged or served. Section 210.11(h)(2) includes the exemptions to the total sugar standard that were proposed, except for the yogurt exemption which is not retained. This section also includes an exemption for dried fruit with added nutritive sweeteners that are required for processing and/or palatability purposes. USDA will issue future guidance on determining which dried fruits with added nutritive sweeteners for processing and/or palatability qualify for the exemption.

Calories and Sodium

Under the proposed rule at § 210.11(j), snack items and side dishes sold à la carte could contain no more than 200 calories and 200 mg of sodium per portion as served, including the calories and sodium in any accompaniments, and must meet all other nutrient standards for non-entrée items.

Under proposed § 210.11(k), entrée items sold à la carte could contain no more than 350 calories and 480 mg sodium per portion as served, including any accompaniments, and meet all other nutrient standards.

As indicated in the *Definitions* section of this preamble, an entrée item was defined in § 210.11(k)(1) of the proposal, and would apply in determining the calorie and sodium limits.

Calories

Almost 2,600 commenters expressed general support for calorie restrictions for competitive food, while approximately 30 commenters generally opposed the proposed calorie restrictions.

Approximately 200,000 commenters suggested separate calorie limits by grade, similar to the structure of the school meal program, reasoning that

children have different calorie needs as they grow. Some of these commenters stated that many schools across the country have already successfully implemented tiered calorie maximums for snack foods as part of the Alliance for a Healthier Generation's Healthy Schools Program.

More than 1,000 commenters opposed the proposed calorie limits for entrees, while approximately 165 opposed the proposed limits for snack items. Commenters said the proposed limits were too stringent and would limit student access to many food products. Some of these commenters stated that the calorie limit for entrée items is inconsistent with USDA's HUSSC criteria, and is not required for entrees served as part of the NSLP. Other commenters expressed concern that manufacturers would have to expend resources to repackage or reformulate products to meet a 200 calorie limit for snack items, stating that many manufacturers' current packaging for school districts is just slightly over 200 calories. Some commenters provided specific suggestions for alternative calorie limits for snacks, ranging from 240 to 300 calories, and for entrées, ranging from 400 to 500 calories.

This interim final rule retains the proposed calorie limits for snacks/side dishes (200 calories per item as packaged or served), and entrée items (350 calories per item as packaged or served), which are consistent with IOM recommendations and some voluntary standards. The Department does not agree that higher limits are appropriate, as suggested by some commenters. In addition, we appreciate that separate calorie limits by grade levels for snacks would align with existing voluntary standards that many schools have adopted, and would be more tailored to the nutritional needs of children of different ages. However, separate calorie limits for different grade levels would also add complexity for local program operators with schools of varying grade levels. State agencies or school districts could choose to implement varying calorie limits based on grades, provided the maximum level does not exceed the limit in this interim final rule. Please note that the calorie limit for entrée items would apply to all entrées that do not meet the exemption for NSLP/SBP entrée items.

Sodium

Over 2,600 commenters expressed support for the proposed limits on sodium of 200 mg per portion as served for snacks/side dishes and 480 mg per portion as served for entrée items. Some of these commenters cited studies that they asserted show a growing prevalence of high blood pressure in American children linked to obesity rates, high sodium level intakes, and high calorie diets.

More than 900 commenters generally opposed the proposed sodium restrictions. Approximately 80 commenters specifically opposed the proposed sodium limit for entrées, while approximately 90 opposed the proposed limits for snack items. Many suggested the sodium limits be raised and made consistent with the NSLP/SBP standards or with USDA's HUSSC standards, citing difficulty for manufacturers to reduce sodium levels while maintaining palatability and low food costs. Several commenters recommended that the sodium reductions should be phased in gradually to allow taste preferences and manufacturers time to adjust. A few commenters suggested that additional assessments of health and student acceptance be conducted or reviewed prior to setting sodium requirements. Some commenters provided suggestions for higher sodium limits, ranging from 230 mg to 360 mg for snacks and 550 mg to 650 mg for entrées. One commenter, a manufacturer, wanted USDA to add an exemption to the sodium limit for natural reduced fat cheese and reduced fat, reduced sodium pasteurized processed cheese.

The Department's proposed standards for sodium were based on the IOM recommendations. The proposed ''per portion as served'' standards for competitive food were considered in the context of overall sodium limits for school meals, the first of which take effect in School Year 2014–15, the same school year these competitive food standards are implemented. USDA acknowledges that sodium reduction is an issue that impacts the broader marketplace, not just schools, and understands that sodium reduction is a process that will take time. However, it is an important health issue that must be addressed. We also understand that there are existing voluntary standards for competitive food that have a higher sodium limit of 230 mg for snacks/side dishes, which means there are existing products that have been formulated to meet the higher standard available to schools. Therefore, we are setting an initial limit for sodium for snacks and side dishes of 230 mg per item as packaged or served, for the first two years of implementation of these standards. As of July 1, 2016, the sodium limit for snacks and side dishes will be reduced to 200 mg per item as packaged or served. This phased in approach will ensure product availability for schools for initial implementation and provide ample time for manufacturers to adjust to meet the lower limit. We are not changing the proposed entrée limit of 480 mg per item as packaged and served, as entrées served in school meals will be covered under the NSLP/SBP entrée item exemption, in § 210.11(c)(3)(i). We are also not providing an exemption to the sodium standard for cheese, as we are concerned given the nutrient profile of cheese that this would result in high sodium products as competitive food.

Summary of Changes to Calories and Sodium Limits

Accordingly, this interim final rule in § 210.11(i) requires that snack items and side dishes sold à la carte must have not more than 200 calories and 230 mg of sodium per item as packaged or served, including accompaniments, and must meet all other nutrient standards. Effective July 1, 2016, these snack items and side dishes must have not more than 200 calories and 200 mg of sodium per item as packaged or served. Section 210.11(j) requires that entrée items sold à la carte, other than those that meet the exemption for NSLP/SBP entrée items, must have not more than 350 calories and 480 mg of sodium per item as packaged or served, including accompaniments, and must meet all other nutrient standards.

Accompaniments

The proposed rule at § 210.11(n) limited the use of accompaniments to competitive food, such as cream cheese, jelly, butter, salad dressing, etc., by requiring that all accompaniments to a competitive food item be pre-portioned and included in the nutrient profile as part of the food item served.

More than 1,000 commenters opposed the requirement that accompaniments be pre-portioned as being costly and impractical.

About 20 commenters supported requiring accompaniments to be included in the nutrient profile as part of the food item served. Some of these commenters urged USDA to amend the proposed requirement to include an average serving size of the appropriate accompaniments when evaluating the nutrient profile for an item. Other commenters urged USDA to provide technical assistance to schools on strategies to limit accompaniments that are high in sodium, fats, and sugars.

About 470 commenters did not support pre-portioning or inclusion of accompaniments in the nutrient profile of the competitive food.

In response to these comments, USDA acknowledges that pre-portioning of

accompaniments could add some cost and complication to competitive food service in some schools. We maintain, however, as many commenters did, that it is important to account for the dietary contribution of accompaniments in determining whether a food item may be served as a competitive food. Therefore, this rule removes the proposed requirement for pre-portioning of competitive food accompaniments but retains the requirement that accompaniments be included in the nutrient profile of foods. Schools may determine the average serving size of the accompaniments at the site of service (e.g., school district). This is similar to the approach schools have used in conducting nutrient analysis of school meals in the past. USDA will provide guidance and technical assistance as needed during implementation.

Accordingly, this interim final rule requires, in § 210.11(l) that the accompaniments to a competitive food item must be included in the nutrient profile as a part of the food item served in determining if an item meets the nutrition standards for competitive food. The contribution of the accompaniments may be based on the average serving size of the accompaniment used per item.

Chewing Gum

The proposed rule did not address chewing gum. Several commenters recommended that USDA provide an exemption from the competitive food standards for sugar-free chewing gum, claiming it has a proven impact on dental and oral health. Some of these commenters also suggested that States should retain the authority to establish more restrictive standards governing the sale of sugar-free gum in their schools should they chose to do so for reasons unrelated to health or nutrition.

USDA agrees that sugar-free chewing gum should be provided an exemption from the competitive food standards. Clinical studies have shown that chewing sugarless gum for 20 minutes following meals can help prevent tooth decay. State agencies and school districts may choose not to allow the sale of sugar-free gum, for a variety of reasons.

Accordingly, this interim final rule includes in § 210.11(c)(3)(ii) an exemption to the competitive food standards for sugar-free chewing gum.

Nutrition Standards for Beverages

The proposed rule at paragraphs (b)(2) and (m) of § 210.11 established standards for allowable beverage types for elementary, middle and high school students. At all grade levels, water, low fat and nonfat milk, and 100 percent juice would be allowed, in specified maximum container sizes which varied by grade level. The proposed rule would also allow additional beverages for high school students, specifically calorie-free and low-calorie (less than 40 or 50 calories per 8 ounces) beverages, with and without carbonation. These additional beverages for high school students would not be allowed in the meal service area during meal service. This approach was designed to recognize the wide range of beverages available to high school students in the broader marketplace and the increased independence such students have, relative to younger students, in making consumer choices. The proposed beverage requirements in § 210.11(m) included:

Elementary School

- Plain water (no size limit);
- Low fat milk, plain (not more than 8 fluid ounces);
- Non fat milk, plain or flavored (not more than 8 fluid ounces);
- Nutritionally equivalent milk alternatives as permitted by the school meal requirements (not more than 8 fluid ounces); and
- 100% fruit/vegetable juice (not more than 8 fluid ounces).

Middle School

- Plain water (no size limit);
- Low fat milk, plain (not more than 12 fluid ounces);
- Non fat milk, plain or flavored (not more than 12 fluid ounces);
- Nutritionally equivalent milk alternatives as permitted by the school meal requirements (not more than 12 fluid ounces); and
- 100% fruit/vegetable juice (not more than 12 fluid ounces).

High School

- Plain water (no size limit);
- Low fat milk, plain (not more than 12 fluid ounces);
- Non fat milk, plain or flavored (not more than 12 fluid ounces);
- Nutritionally equivalent milk alternatives as permitted by the school meal standards (not more than 12 fluid ounces); and
- 100% fruit/vegetable juice (not more than 12 fluid ounces);

Additional beverages proposed to be allowed for sale in high school, but not in the meal service area during the meal service:

- Calorie-free, flavored and/or carbonated water (not more than 20 fluid ounces);
- Other beverages (not more than 20 fluid ounces) that comply with the FDA requirement for bearing a ''calorie free'' claim of less than 5 kcals/serving; and
- Other beverages in ≤ 12 oz servings. Two ''other beverage'' alternatives were proposed:
  - Allow beverages with not more than 40 calories per 8 fluid ounce serving or 60 calories per 12 fluid ounce serving. (proposed Alternative D1)
  - Allow beverages with not more than 50 calories per 8 fluid ounce serving or 75 calories per 12 ounce fluid serving. (proposed Alternative D2)

Over 10,000 commenters expressed general support for the proposed beverage requirements, while only approximately 55 commenters expressed general opposition. Many commenters provided specific suggestions related to the proposed beverage requirements. Discussion of these comments and USDA's response follows.

Grade Groupings

A few commenters suggested that USDA use only two grade groups for the beverage standards—elementary and secondary—to ease implementation. Some commenters stated that it would be difficult and/or costly to administer the proposed beverage requirements in combined grade campuses, such as 7–12 or K–12. In response, USDA appreciates that implementation could be more difficult in schools with overlapping grade groups, but considers it important to maintain the three grade groupings proposed. These groupings reflect IOM's recommendations and appropriately provide additional choices to high school students, based on their increased level of independence. USDA will provide technical assistance and facilitate the sharing of best practices during implementation.

Water

Some commenters encouraged USDA to change ''plain water'' to ''water with no additives.'' Several commenters urged USDA to allow carbonated water without additives at all grade levels with no portion size limit. One commenter recommended that the standards allow for water with carbonation and/or natural flavors but not sweeteners (whether caloric or non-caloric) at all grade levels. Some commenters, including advocacy organizations, asked USDA to clarify that water could include added fluoride.

In response, the nutritional differences between carbonated water without additives and water are insignificant. Therefore, USDA agrees that this rule should not restrict access on portion size at any grade levels. However, we are not allowing natural

flavors or sweeteners under this standard for all grade levels; these beverages would likely qualify as allowable beverages for high school students. As for terminology, USDA is retaining the use of the term ''plain water,'' as it accurately describes the intent of what may be provided in unlimited quantities at all grade levels. We recognize that some bottled waters have added minerals including fluoride, which is acceptable.

Milk

Some commenters suggested replacing the term ''plain milk'' with ''unflavored milk.'' USDA agrees that unflavored milk (e.g., milk with no sweeteners) is a more accurate term than plain milk, and it is also consistent with terminology used in the school meal patterns. Therefore, we will modify the regulatory text to use the term ''unflavored milk.''

Several commenters provided input on flavored milk. A few commenters requested that USDA allow low fat flavored milk, in addition to nonfat flavored milk. To address the sugar content in flavored milk, commenters made several suggestions. One suggestion would establish a sugar maximum of no more than 28 grams of sugar per 8 fluid ounces of milk. Another suggestion would have USDA provide schools with information on how to select flavored milk that contains minimum levels of added sugars. USDA was also encouraged to provide a calorie limit for flavored milk (no more than 130 calories per 8 fluid ounces) to help limit calories and added sugar intake.

USDA does not support allowing low fat flavored milk. It is not an allowable milk type under the school meal patterns, based on IOM's school meal recommendations to help control calories. USDA recognizes that some flavored milk (even nonfat versions) can be high in calories and added sugars, but we are not supportive of requiring a calorie or sugar limit for flavored milk at this time. Nonfat flavored milk is allowed in the school meal patterns without any sugar or calorie caps. In general, schools that wish to offer nonfat flavored milk must select products that are lower in calories and added sugars, in order to stay within the school meal calorie ranges. The milk offered with the school meal is usually the same milk that is offered for sale to students à la carte. In addition, over time many manufacturers have reformulated flavored milk to be lower in calories and added sugar. We will continue to monitor this issue as the competitive food standards are being implemented to determine if a future calorie cap and/or sugar limit for flavored milk is warranted. We will also provide technical assistance as necessary to assist schools in selecting flavored milk with lower sugar levels.

Juice

Many commenters supported the proposal to require 100 percent juice, as well as the proposed portion size limits. Several of these commenters recommended allowing diluted juices, with and without carbonation, at all grade levels. Some commenters encouraged USDA to allow juice diluted with water, but only in high schools. Some commenters suggested a calorie cap for all juices that are sold, and similarly other commenters suggested smaller maximum serving sizes for 100 percent juice.

Beverages combining full-strength juice and water or carbonated water are increasingly popular in the marketplace. Allowing these blends with juice results in a product with fewer calories and less sugar than a comparable amount of natural unsweetened 100 percent juice, and provides additional options for schools. Therefore, this interim final rule allows 100 percent fruit and/or vegetable juice diluted with water, with or without carbonation and with no added sweeteners, at all grade levels. The portion size limit for each grade level would be the same as the maximum juice portion size—i.e., 8 fluid ounces for elementary schools, and 12 fluid ounces for middle and high schools. We do not agree that is it necessary to add a calorie cap for full-strength juice, as calories are controlled by the portion size limit.

Other Beverages for High School

USDA received a significant number of comments on the proposed standards for other beverages allowed in high school.

A few commenters wanted low-calorie beverages to be available in elementary and middle schools as well as high schools, while others opposed these beverages at any grade level.

A few commenters also requested that USDA modify the proposed language regarding FDA's ''calorie free'' claim, to avoid inconsistent treatment of very low calorie beverages based on labeling decisions made by manufacturers and allowed by FDA. The suggested modification would specify beverages could contain less than 5 calories per 8 fluid ounces, or less than or equal to 10 calories per 20 fluid ounces.

Several commenters expressed support for establishing a more stringent calorie restriction for low-calorie beverages in high schools. A few commenters expressed opposition to sports drinks in schools, stating these beverages contribute to excess calorie consumption and are not needed for hydration. Approximately 30 commenters supported proposed Alternative D1 (allowing no more than 40 calories per 8 fluid ounces and no more than 60 calories per 12 fluid ounces), 12 ounces maximum. A few commenters requested technical changes to the proposed language for clarity and consistency. Several commenters suggested a limit of 40 calories ''per container,'' instead of the standards that were proposed. These commenters reasoned that the FDA defines low-calorie beverages as those with fewer than or equal to 40 calories per Reference Amount Customarily Consumed (RACC).

More than 500 commenters supported proposed Alternative D2 (allowing no more than 50 calories in 8 fluid ounces and no more than 75 calories in 12 fluid ounces), 12 ounces maximum. Several commenters recommended that USDA adopt a modified version of Alternative D2 that would reflect the fact that FDA rounding rules require a beverage with 75 calories in a 12 ounce portion to be labeled as having 80 calories per 12 fluid ounces.

In response, USDA appreciates the input provided by commenters on the proposed standards for other beverages allowed in high school. In this interim final rule, we are allowing calorie-free beverages with a maximum container size of 20 fluid ounces, as proposed but with the technical changes requested by commenters. We are also adopting proposed Alternative D1 for lower-calorie beverages, which allows up to 40 calories per 8 ounces and 60 calories per 12 ounces, with the maximum proposed 12 ounce limit. This standard allows a great variety of popular beverage choices to be available for sale in high schools, while also limiting the calories these beverages could provide. Limiting the maximum container size to 12 ounces for these lower calories beverages also reinforces the important concept of appropriate serving sizes for items with calories.

Restrictions on the Sale of Other Beverages in High School—''Time and Place'' Rule

Approximately 1,300 commenters addressed proposed ''time and place'' restrictions for the sale of other beverages in high school. Numerous commenters opposed the distinction in the proposed rule between beverages allowed to be sold during meal times in meal service areas (i.e., water, milk and

juice) and those available only outside of meal times and meal service areas (other beverages in high school). These commenters argued that if an alternative beverage is allowed under the competitive food standards, it should be allowed regardless of the point of service. They reasoned that allowing the sale of lower-calorie and calorie-free beverages but not during the meal periods would send a mixed message to students regarding whether such beverages are a part of a healthy diet or should be avoided. Some of these commenters also stated that this provision would drive revenue from school nutrition programs into the alternative areas of the schools because students would go elsewhere to purchase those beverages.

USDA agrees with commenters that the distinction on when and where beverages can be sold in high schools during the school day may be unnecessary. The beverage standards adopted in this interim final rule allow a variety of beverage choices in high school, while limiting their calories. Therefore, we are removing the ''time and place'' restrictions for ''other'' beverages in high schools, as set forth in the proposed rule. Therefore, this rule does not restrict the sale of any allowable beverage, at any grade level, throughout the school day anywhere on the school campus. However, USDA will monitor this provision to ensure that the sale of such competitive beverages in the food service area does not negatively impact consumption of milk, an excellent source of calcium. USDA will continue monitoring milk sales and consumption in schools in periodic studies. State agencies or school districts could choose to prohibit sale of these other beverages in food service areas.

Summary of Changes to Nutrition Standards for Beverages

Accordingly, this interim final rule codifies, in § 210.11(m)(1) and (m)(2), the proposed nutrition standards for beverages for elementary schools and middle schools, with the addition of plain carbonated water with no size limit; 100 percent juice diluted with water (with or without carbonation and with no added sweeteners) in the proposed size limit for juice for each grade group; and a change in terminology from plain milk to unflavored milk.

Section 210.11(m)(3) of this interim final rule adopts the proposed nutrition standards for water, milk and juice in high schools, with the addition of plain carbonated water with no size limit; 100 percent juice diluted with water (with or without carbonation and with no added sweeteners) in no more than 12 ounces; and a change in terminology from plain milk to unflavored milk.

In addition, § 210.11(m)(3) allows, in high schools, calorie-free, flavored water, with or without carbonation (no more than 20 fluid ounces); other beverages that are labeled to contain less than 5 calories per 8 fluid ounces, or less than or equal to 10 calories per 20 fluid ounces (no more than 20 fluid ounces); and other beverages that are labeled to contain no more than 40 calories per 8 fluid ounces or 60 calories per 12 fluid ounces (no more than 12 fluid ounces).

Caffeine

The proposed rule at § 210.11(l) would require foods and beverages available in elementary and middle schools to be caffeine free, with the exception of trace amounts of naturally occurring caffeine substances. This is consistent with IOM recommendations. However, the proposed nutrition standards for beverages would permit caffeine for high school students, and the proposed rule requested commenter input on this issue.

Over 350 commenters supported the proposed caffeine restrictions for elementary and middle schools. Approximately 120 commenters thought the standard for these lower grade levels should be less restrictive. Some commenters requested guidance on what constitutes ''trace amounts of naturally occurring'' caffeine. More than 400 commenters supported allowing caffeine in high schools, while 75 commenters opposed allowing caffeine for high school students at all, citing that it is not consistent with IOM's recommendation. A number of commenters, including advocacy organizations, also highlighted their particular concern over the growing popularity and consumption of energy drinks because these often have very high levels of caffeine. One of these commenters cited potential adverse health and safety effects of energy drinks on students.

USDA is concerned, as are some commenters, that some foods and beverages with very high levels of caffeine may not be appropriate to be sold in schools, even at the high school level. Although the American Academy of Pediatrics discourages the consumption of caffeine and other stimulants by children and adolescents, the FDA has not set a daily caffeine limit for children. However, FDA recently announced that it will investigate the safety of caffeine in food products, particularly its effects on children and adolescents. The FDA announcement cites a proliferation of products with caffeine that are being aggressively marketed to children, including ''energy drinks.'' FDA is working with the IOM to convene a public workshop in the near future to explore these issues, including determining a safe level for caffeine consumption and the potential consequences to children of caffeinated products in the food supply.

Given the lack of authoritative recommendations at this time, this interim final rule will not prohibit caffeine for high school students. However, USDA acknowledges commenters' concerns and encourages schools to be mindful of the level of caffeine in food and beverages when selecting products for sale in schools, especially when considering the sale of high caffeine products such as energy drinks. USDA will continue to monitor research and recommendations on caffeine in children as we develop a final rule. We will also provide guidance to program operators on what constitutes trace amounts of naturally occurring caffeine, for use at the elementary and middle school levels.

Accordingly, this interim final rule codifies the caffeine provisions, as proposed, in § 210.11(k).

Non-nutritive sweeteners

The proposal did not explicitly address the issue of non-nutritive sweeteners; however, the proposal would allow calorie-free and low-calorie beverages in high schools, which implicitly would allow beverages including non-nutritive sweeteners.

Approximately 40 commenters addressed the use of non-nutritive sweeteners in food products. Some commenters opposed allowing artificially sweetened beverages. For example, some commenters opposed the sale of diet sodas, whereas others stated that there is little evidence regarding the advisability of intake of sugar-sweetened beverages versus intake of non-nutritive sweeteners in beverages. In contrast, some commenters supported the use of non-nutritive sweeteners. USDA appreciates commenter input but is not explicitly addressing in the regulatory text of this interim final rule the use of non-nutritive sweeteners. Local program operators can decide whether to offer items for sale with non-nutritive sweeteners.

Other Requirements

Fundraisers

Proposed § 210.11(b)(5) would require that food and beverage items sold

during the school day meet the nutrition standards for competitive food, but would allow for special exemptions for the purpose of conducting infrequent school-sponsored fundraisers. Commenters were asked to address two proposed alternatives to establishing the limitations on the frequency of specially exempted fundraisers. Under the proposed alternatives, the frequency would be specified:

- By the State agency during such periods that schools are in session (proposed Alternative E1); or
- By the State agency and approved by USDA during such periods that schools are in session (proposed Alternative E2).

In either case, the proposed rule required that no specially exempted fundraiser foods or beverages would be sold in competition with school meals in the food service area during meal service.

As stated in the preamble to the proposed rule, the proposal would not limit the sale of food items that meet the proposed nutrition requirements (as well as the sale of non-food items) at fundraisers. In addition, the proposed standards would not apply to food sold during non-school hours, weekends and off-campus fundraising events such as concessions during after-school sporting events.

Approximately 85 commenters supported proposed Alternative E1 allowing State agencies the discretion to determine the allowed frequency of exempted fundraisers. Commenters argued that State agencies possess the necessary knowledge, understanding or resources to make decisions about what ''limited number'' of fundraisers is appropriate for their communities. Several commenters requested clarifying that if a State agency does not specify an acceptable exempted fundraiser frequency, it would be implied that no exemptions are granted.

Approximately 800 commenters expressed support for proposed Alternative E2 which would allow State agencies to set the frequency of exempted fundraisers, with USDA approval, citing that this would better ensure consistent application of nutrient standards across all fundraisers. Some commenters suggested that USDA should set the number or standards for exempt fundraisers per year for purposes of consistency. A few commenters provided more specific recommendations for the frequency of fundraisers.

More than 600 commenters suggested that there should be no exemptions for fundraisers from the competitive food standards because fundraiser foods compete with school meals and providing exemptions would blur the message of good nutrition practices.

Approximately 550 commenters provided comments regarding the place and/or time that specially exempted fundraisers could be sold. Numerous commenters suggested that USDA prohibit sales by exempt fundraisers across the entire school campus instead of only food service areas during meal service.

Several commenters expressed concern over the potential loss of revenue if fundraisers are limited; other commenters were concerned about the effects of the proposed fundraiser limitations on schools, clubs and student organizations that rely on revenue from fundraising.

Some commenters requested clarification that the competitive food standards did not apply to fundraisers in which the food was not intended to be consumed on the school campus (e.g., catalog sales or frozen pizzas and cookie dough).

In response, USDA believes that the most appropriate approach to specifying the standards for exempt fundraisers is to allow State agencies to set the allowed frequency (proposed Alternative E1). If a State agency does not specify the exemption frequency, no fundraiser exemptions may be granted. As noted in the preamble to the proposed rule, USDA's expectation is that State agencies will ensure that the frequency of such exempt fundraisers on school grounds during the school day does not reach a level to impair the effectiveness of the competitive food requirements in this rule. It is not USDA's intent that the competitive food standards in this interim final rule apply to fundraisers in which the food sold is clearly not for consumption on the school campus during the school day. It is important to note that school districts may implement more restrictive competitive food standards, including those related to the frequency with which exempt fundraisers may be held in their schools, and further restrictions on the areas and times when exempt fundraisers may occur.

Accordingly, § 210.11(b)(4) of this interim final rule specifies that competitive food and beverage items sold during the school day must meet the nutrition standards for competitive food, and that a special exemption is allowed for the sale of food and/or beverages that do not meet the competitive food standards for the purpose of conducting an infrequent school-sponsored fundraiser. Such specially exempted fundraisers must not take place more than the frequency specified by the State agency during such periods that schools are in session. Finally, no specially exempted fundraiser foods or beverages may be sold in competition with school meals in the food service area during the meal service.

Availability of Water During the Meal Service

The proposed rule at § 210.10(a)(1) would require schools to make potable water available to children at no charge in the place where lunches and afterschool snacks are served during the meal service. The proposed rule encouraged, but did not require potable water to be served in the SBP. The proposal responded to amendments made to Section 9(a)(5) of the NSLA, 42 U.S.C. 1758(a)(5), by section 203 of the HHFKA which requires schools participating in the school lunch program to make available to children free of charge, potable water for consumption in the place where meals are served during meal service and which was effective as of October 1, 2010.

Approximately 490 commenters addressed implementation issues related to this provision. Approximately 7,000 commenters addressed other issues. Many of these commenters expressed support for the requirement for schools to make potable water readily accessible to children at no charge during the school meal service. Many commenters urged USDA to strengthen the proposed water requirements to include breakfast food service. Several commenters opposed requiring that potable water be available in schools in the afterschool snack service, citing concern that some groups outside of school food service may have logistical difficulty complying. Many commenters suggested that USDA specify that schools must make potable water available ''readily accessible without restriction'' in addition to being ''available'' (e.g., if only one water source is available, cups should be provided).

USDA agrees with many commenters that the potable water requirement be added to the breakfast meal service. We acknowledge, however, the variety of models of serving school breakfast including kiosks and breakfast in the classroom. In recognition of these alternative approaches to serving breakfast, we are only requiring the availability of free potable water during the SBP breakfast meal service when breakfast is served in the cafeteria. We encourage schools to provide water in other settings to the extent possible. In addition, we understand that afterschool

snack service could present logistical difficulties in compliance. Therefore, we are not requiring that free potable water be made available during afterschool programs, though we would strongly encourage program operators to do so, to the extent possible, particularly if milk or juice is not offered as part of the snack.

USDA issued an implementation memorandum entitled *Child Nutrition Reauthorization 2010: Water Availability During National School Lunch Program Meal Service,* on April 14, 2011 (SP 28–2011). On July 12, 2011, the memorandum was revised to provide more detailed guidance in the form of a series of questions and answers regarding the implementation of the water requirement. This memorandum is available on the FNS Web site at *http://www.fns.usda.gov/cnd/governance/policy.htm.* In that memorandum, we indicated that water should be available ''without restriction,'' to ensure program operators implement the provision as intended. The words ''without restriction'' are included in this interim final rule, and the memorandum will be updated to reflect the addition of breakfast when it is served in the cafeteria.

Please note that this provision, as revised, will become effective 60 days after publication of this interim final rule, as the HHFKA potable water provision was effective as of October 1, 2010, and program operators have been implementing the requirement for lunch meal service since that time.

Accordingly, this interim final rule, in § 210.10(a)(1), requires that schools make potable water available and accessible without restriction to children at no charge in the place where lunches are served during the meal service. In addition, § 220.8(a)(1) requires that when breakfast is served in the cafeteria, schools must make potable water available and accessible without restriction to children at no charge.

Recordkeeping Requirements

Under proposed § 210.11(b)(3), local educational agencies and school food authorities would be required to maintain records documenting compliance with the proposed requirements. Local educational agencies would be responsible for maintaining records documenting compliance with the competitive food nutrition standards for food sold in areas that are outside of the control of the school food service operation. Local educational agencies also would be responsible for ensuring any organization designated as responsible for food service at the various venues in the school (other than the school food service) maintains records documenting compliance with the competitive food nutrition standards. The school food authority would be responsible for maintaining records documenting compliance with the competitive food nutrition standards for foods sold in meal service areas during meal service periods. Required records would include, at a minimum, receipts, nutrition labels and/or product specifications for the items available for sale.

Many commenters expressed concerns about these recordkeeping requirements. Some suggested recordkeeping is an unfunded mandate; others considered it costly, unrealistic and/or not necessary. Yet others recommended minimizing the recordkeeping on non-school groups. A number of commenters representing school food service were concerned that the local educational agency would require school food service to be responsible for recordkeeping on behalf of school food service as well as other entities/organizations within the local educational agency. These commenters were particularly concerned that additional recordkeeping responsibilities would compromise their efforts to implement the updated school meal pattern requirements. Additionally, they were concerned that school food service could not affect the requirements throughout the local educational agency since they have no authority over other school organizations. Some commenters suggested the responsibility should be at the local educational agency, not at individual schools. Finally, some commenters suggested a delayed implementation of the recordkeeping requirements, including an opportunity to study the impact of the requirements.

The Department appreciates that this regulation will create some new challenges initially, as schools seek to improve the school nutrition environment. However, evaluating records is essential to the integrity of the competitive food standards. To determine whether a food item is an allowable competitive food, the local educational agency designee(s) must assess the nutritional profile of the food item. Absent an evaluation of the nutritional profile, the local educational agency has no way of knowing whether a food item meets the nutrition standards set forth in this interim final rule. The recordkeeping requirement simply requires the local educational agency to retain the reviewed documentation (e.g., the nutrition labels, receipts, and/or product specifications).

Perhaps the larger issue raised by commenters is who is responsible for this activity. The Department does not necessarily expect the responsibility to rest solely with the nonprofit school food service. School food service personnel are expected to have a clear understanding of the nutrition profile of foods purchased using nonprofit school food service funds for reimbursable meals, à la carte offerings, etc. Retaining receipts, nutrition labels or product specifications for foods purchased with nonprofit school food service funds is a part of doing business. Yet their authority and responsibilities are typically limited to the nonprofit school food service. Local educational agencies are responsible for ensuring that all entities involved in food sales within a school understand that the local educational agency as a whole must comply with these requirements.

The Department appreciates that sorting through who is responsible will initially require planning and cooperation which could be facilitated by the local school wellness policy designee(s). Section 204 of the HHFKA amended the NSLA by adding section 9A (42 U.S.C. 1758b) which requires each local educational agency to (a) establish a local school wellness policy which includes nutrition standards for all foods available on each school campus, and (b) designate one or more local educational agency officials or school officials, to ensure that each school complies with the local school wellness policy. State agencies were advised of the section 204 requirements in FNS Memorandum, *Child Nutrition Reauthorization 2010: Local School Wellness Policies,* issued July 8, 2011 (SP 42–2011).

The Department acknowledges the first year of implementation may be challenging as groups work together to establish a healthy school nutrition environment; however, if the local school wellness designee(s), school food service and other entities and groups work together to share information on allowable foods, we believe that implementation in future years will be greatly streamlined. As always, State agencies and the Department will provide technical assistance to facilitate implementation of the competitive food nutrition standards. Further, since implementation is not required until July 1, 2014, local educational agencies have time to sort out implementation issues and ensure all parties are well trained. Delayed implementation combined with the opportunities for public comment provided by this

interim final rule, have the added benefit of providing additional information which will inform the final rule and future research agendas.

Finally, the Department would like to address the comment suggesting this requirement is an unfunded mandate. The Department provides cash and donated food assistance to States and schools participating in the NSLP and SBP to strengthen and expand food service programs for children. In exchange, State agencies and participating local educational agencies/school food authorities agree to comply with the regulations set forth in 7 CFR 210 and 220.

Accordingly, the interim final rule at 210.11(b)(2), codifies the provision, as proposed, with one minor technical change. The proposed rule stated the school food authority is responsible for maintaining records documenting compliance with these standards in meal service areas during meal service periods. The interim final rule modifies this language to state that the school food authority is responsible for maintaining records for foods served under the auspices of the nonprofit school food service. This change acknowledges that nonprofit school food service activity may extend beyond meal service areas.

Compliance

Proposed § 210.18(h)(7) would require State agencies to ensure that local educational agencies comply with the nutrition standards for competitive food and retain documentation demonstrating compliance with the competitive food service and standards.

A number of commenters, largely school food service personnel, expressed concerns about how monitoring would occur for foods sold by groups outside of the school food service. Some commenters believed technical assistance would be insufficient and raised questions about means to effect compliance, e.g., some sort of fiscal action. Other commenters expressed concerns about the need to train and educate non-school food service personnel as to how to comply with the regulations.

The Department agrees that training will be needed to ensure compliance with the nutrition standards. As mentioned under *Recordkeeping,* the Department envisions local educational agency designees, potentially the local school wellness coordinator(s), taking the lead in developing performance or compliance standards and training for all local educational personnel tasked with selling competitive food on the school campus during the school day. The Department and State agencies will also offer training to ensure local educational agencies are able to comply in the most efficient manner possible.

School food service operations are routinely monitored by State agencies. State agencies conduct administrative reviews of school nutrition program operations once every three years. However, the HHFKA expanded the scope of the Department's responsibilities to include the school nutrition environment, not just school nutrition program operations. The Department now has responsibilities regarding the development and implementation of local school wellness policies, as required by the amendments made to the NSLA by section 204 of the HHFKA. In addition, the Department now has oversight and authority of foods sold outside of the school nutrition programs on the school campus during the school day, as required by the amendments made to the NSLA by section 208 of the HHFKA.

The Department will be addressing the scope of these extended monitoring responsibilities in a forthcoming proposed rule addressing administrative review requirements. Interested parties will have an opportunity to comment on the Department's approach to monitoring during the public comment period following publication of the proposed administrative review rule. The Department would like to assure commenters that we see technical assistance and training as the first approach to non-compliance, however, we recognize that egregious, repeated cases of non-compliance may require a more aggressive approach. In this regard, section 303 of the HHFKA amended section 22 of the NSLA (42 U.S.C. 1769c) to provide the Department with the authority to impose fines against any school or school food authority failing to comply with program regulations. This authority will be addressed in a forthcoming proposed rule addressing a number of integrity issues related to local educational agencies administering the Child Nutrition Programs. As with the proposed administrative rule, interested parties will have an opportunity to address these issues during a public comment period following publication of that proposed integrity rule.

Accordingly, § 210.18(h) is adopted as proposed.

Special Situations

The proposed rule would have required all local educational agencies and schools participating in the NSLP and SBP to meet the competitive food nutrition standards.

Several commenters noted the competitive food nutrition standards may be difficult for small schools, residential child care institutions (RCCIs) and culinary programs to administer. Commenters noted small or medium-sized schools may not have sufficient resources to carry out the required calculations or comply with the proposed recordkeeping requirements. In the case of RCCIs, one commenter noted that existing State regulations for juvenile detention centers may obviate the need for USDA nutrition standards for competitive foods. Several commenters recommended that foods made and sold by career centers and culinary arts programs be exempted from the competitive food standards, as the foods made in these programs may not meet the new standards and, therefore, could not be sold at student-run cafes. Alternatively, the proposed standards could limit the skills development necessary for careers in the food industry because the foods prepared would exceed the proposed standards. Yet other commenters argued there should be no difference between standards applying to the nonprofit school food service and other food service operations in the schools, such as school stores, culinary arts programs and vending machines. The competitive food standards should ''level the playing field'' between the nonprofit school food service and other school food sellers, including culinary arts programs.

Regarding small schools and RCCIs, the Department firmly believes the overall health and well-being of students in small entities is just as important as that of students in large entities. For this reason, the interim final rule continues to apply to all schools participating in the NSLP and SBP, including small schools and RCCIs. However, we do appreciate that these entities may have staffing limitations that make implementation more challenging. We look to the State agency to provide guidance to these entities, possibly sharing observations on allowable products and practices employed by other school districts in the State to meet the requirements. Schools with limited resources are likely to offer a limited number of competitive foods for sale which may facilitate meeting the requirements in these situations.

Career centers and culinary arts programs present a more challenging issue. These programs often make and sell foods to students. These programs are providing vocational training for culinary art careers. Students are

preparing to enter the workforce where the nutritional standards and requirements may vary widely from those required under the NSLP and SBP. Applying the nutrition standards for competitive food to these programs may limit the skill development necessary for careers in the food industry. Section 12(c) of the NSLA (42 U.S.C. 1760(c)) and section 11(a) of the CNA (42 U.S.C. 1780(a)) prohibit the Secretary from imposing any requirement with respect to teaching personnel, curriculum, instructions, methods of instruction, and materials for instruction in any school. However, section 10 of the CNA, as amended by section 208 of the HHFKA requires any food sold outside of the school meal programs, on the school campus and at any time during the school day to meet the competitive food nutrition standards set forth in this interim final rule. Therefore, in recognition of the potential conflict of legislative intent, the Department is willing to consider each situation on a case by case basis, and provide a waiver where appropriate. State agencies are advised to contact FNS' Regional Offices as situations arise.

Related Information

Implementation

State agencies and local educational agencies must implement the competitive food provisions of this interim final rule beginning on July 1, 2014, as specified in the DATES section of this preamble. Amendments made by section 208 of the HHFKA made it clear that the Department must allow State and local educational agencies at least one full school year from the date of publication of this interim final rule to implement the competitive food provisions. For this reason, the interim final rule retains the existing competitive food requirements which included a prohibition on the sale of foods of minimal nutritional value in the food service areas during the meal periods (hereafter termed ''foods of minimal nutritional value regulation''). Prior to August 27, 2013, these requirements were found at 7 CFR 210.11.

State and local educational agencies may begin implementing the competitive food provisions of this interim final rule prior to July 1, 2014; provided that those provisions complement and do not conflict with the foods of minimal nutritional value regulation which remains in effect through June 30, 2014.

To effect these changes, the foods of minimal nutritional value regulation (entitled *Competitive food services*) is being redesignated as § 210.11a in this rule. The new interim competitive food nutrition standards are added to § 210.11. The Department intends to remove § 210.11a and its corresponding Appendix B in the final rule. Similar changes are made to the breakfast program regulations. Until such time as the final rule is published, the Department added paragraph § 210.11a(c), which limits the effective period for the foods of minimal nutritional value regulation through June 30, 2014. Thus, when the new interim regulations take effect, the old regulations expire.

SUMMARY OF INTERIM FINAL RULE COMPETITIVE FOOD STANDARDS

Food/nutrient	Standard	Exemptions to the standard
General Standard for Competitive Food.	To be allowable, a competitive FOOD item must: ..... (1) Meet all of the proposed competitive food nutrient standards; and (2) Be a grain product that contains 50% or more whole grains by weight or have whole grains as the first ingredient*; *or* (3) Have as the first ingredient* one of the non-grain main food groups: fruits, vegetables, dairy, or protein foods (meat, beans, poultry, seafood, eggs, nuts, seeds, etc.); *or* (4) Be a combination food that contains at least ¼ cup fruit and/or vegetable; or (5) Contain 10% of the Daily Value (DV) of a nutrient of public health concern (i.e., calcium, potassium, vitamin D, or dietary fiber). Effective July 1, 2016 this criterion is obsolete and may not be used to qualify as a competitive food. * If water is the first ingredient, the second ingredient must be one of the above.	• Fresh and frozen fruits and vegetables with no added ingredients except water are exempt from all nutrient standards. • Canned fruits with no added ingredients except water, which are packed in 100% juice, extra light syrup, or light syrup are exempt from all nutrient standards. • Canned vegetables with no added ingredients except water or that contain a small amount of sugar for processing purposes to maintain the quality and structure of the vegetable are exempt from all nutrient standards.
NSLP/SBP Entrée Items Sold à la Carte.	Any entrée item offered as part of the lunch program or the breakfast program is exempt from all competitive food standards if it is served as a competitive food on the day of service or the day after service in the lunch or breakfast program.	
Grain Items	Acceptable grain items must include 50% or more whole grains by weight, or have whole grains as the first ingredient.	
Total Fats	Acceptable food items must have ≤ 35% calories from total fat as served.	• Reduced fat cheese (including part-skim mozzarella) is exempt from the total fat standard. • Nuts and seeds and nut/seed butters are exempt from the total fat standard. • Products consisting of only dried fruit with nuts and/or seeds with no added nutritive sweeteners or fats are exempt from the total fat standard. • Seafood with no added fat is exempt from the total fat standard. Combination products are not exempt and must meet all the nutrient standards.

SUMMARY OF INTERIM FINAL RULE COMPETITIVE FOOD STANDARDS—Continued

Food/nutrient	Standard	Exemptions to the standard
Saturated Fats	Acceptable food items must have <10% calories from saturated fat as served.	• Reduced fat cheese (including part-skim mozzarella) is exempt from the saturated fat standard. • Nuts and seeds and nut/seed butters are exempt from the saturated fat standard. • Products consisting of only dried fruit with nuts and/or seeds with no added nutritive sweeteners or fats are exempt from the saturated fat standard. Combination products are not exempt and must meet all the nutrient standards.
Trans Fats	Zero grams of trans fat as served (≤0.5 g per portion).	
Sugar	Acceptable food items must have ≤35% of weight from total sugar as served.	• Dried whole fruits or vegetables; dried whole fruit or vegetable pieces; and dehydrated fruits or vegetables with no added nutritive sweeteners are exempt from the sugar standard. • Dried whole fruits, or pieces, with nutritive sweeteners that are required for processing and/or palatability purposes (i.e., cranberries, tart cherries, or blueberries) are exempt from the sugar standard. • Products consisting of only dried fruit with nuts and/or seeds with no added nutritive sweeteners or fats are exempt from the sugar standard.
Sodium	Snack items and side dishes sold à la carte: ≤230 mg sodium per item as served. Effective July 1, 2016 snack items and side dishes sold à la carte must be: ≤200 mg sodium per item as served, including any added accompaniments. Entrée items sold à la carte: ≤480 mg sodium per item as served, including any added accompaniments.	
Calories	Snack items and side dishes sold à la carte: ≤ 200 calories per item as served, including any added accompaniments. Entrée items sold à la carte: ≤350 calories per item as served including any added accompaniments.	
Accompaniments	Use of accompaniments is limited when competitive food is sold to students in school. The accompaniment must be included in the nutrient profile as part of the food item served and meet all proposed standards.	
Caffeine	Elementary and Middle School: foods and beverages must be caffeine-free with the exception of trace amounts of naturally occurring caffeine substances. High School: foods and beverages may contain caffeine.	
Beverages	Elementary School • Plain water or plain carbonated water (no size limit); • Low fat milk, unflavored (≤8 fl oz); • Non fat milk, flavored or unflavored (≤8 fl oz), including nutritionally equivalent milk alternatives as permitted by the school meal requirements; • 100% fruit/vegetable juice (≤8 fl oz); and • 100% fruit/vegetable juice diluted with water (with or without carbonation), and no added sweeteners (≤8 fl oz). Middle School • Plain water or plain carbonated water (no size limit); • Low-fat milk, unflavored (≤12 fl oz); • Non-fat milk, flavored or unflavored (≤12 fl oz), including nutritionally equivalent milk alternatives as permitted by the school meal requirements; • 100% fruit/vegetable juice (≤12 fl oz); and • 100% fruit/vegetable juice diluted with water (with or without carbonation), and no added sweeteners (≤12 fl oz).	

SUMMARY OF INTERIM FINAL RULE COMPETITIVE FOOD STANDARDS—Continued

Food/nutrient	Standard	Exemptions to the standard
	High School • Plain water or plain carbonated water (no size limit); • Low-fat milk, unflavored (≤12 fl oz); • Non-fat milk, flavored or unflavored (≤12 fl oz), including nutritionally equivalent milk alternatives as permitted by the school meal requirements; • 100% fruit/vegetable juice (≤12 fl oz); • 100% fruit/vegetable juice diluted with water (with or without carbonation), and no added sweeteners (≤12 fl oz); • Other flavored and/or carbonated beverages (≤20 fl oz) that are labeled to contain ≤5 calories per 8 fl oz, or ≤10 calories per 20 fl oz; and • Other flavored and/or carbonated beverages (≤12 fl oz) that are labeled to contain ≤40 calories per 8 fl oz, or ≤60 calories per 12 fl oz.	
Sugar-free Chewing Gum ...	Sugar-free chewing gum is exempt from all of the competitive food standards and may be sold to students at the discretion of the local educational agency.	

Procedural Matters

Issuance of an Interim Final Rule and Date of Effectiveness

USDA, under the provisions of the Administrative Procedure Act at 5 U.S.C. 553(b)(B), finds for good cause that it is impracticable to issue a final rule at this time and thus is issuing an interim final rule, as authorized by section 208 of the Healthy, Hunger-Free Kids Act of 2010, Public Law 111–296, enacted on December 13, 2010. On February 8, 2013, USDA published a proposed rule to implement section 208 of the Healthy, Hunger-Free Kids Act of 2010 (78 FR 9530). The rule provided for a 60-day comment period, which ended on April 9, 2013. This interim final rule reflects comments received during that period. Section 208 requires that implementation of this statutory provision shall take effect at the beginning of the school year that is not earlier than one year and not later than two years following the date of the publication of an interim final or final rule. USDA recognizes that the significant, statutorily established, implementation delay will provide federal and state partners a lengthy period in which to provide technical assistance and administrative support to SFAs working toward compliance. At this time, as provided for in the **DATES** section, USDA invites public comment on this interim final rule. USDA will consider amendments to the rule based on comments submitted during the 120-day comment period. The agency will address comments and affirm or amend the interim final rule in a final rule.

Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This interim final rule has been designated an ''economically significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Analysis

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). The interim final rule directly regulates the 54 State education agencies and 3 State Departments of Agriculture that operate the NSLP pursuant to agreements with USDA's Food and Nutrition Service. While State agencies are not considered small entities as State populations exceed the 50,000 threshold for a small government jurisdiction, many of the service-providing institutions that work with them to implement the program do meet definitions of small entities.

The requirements established by this interim final rule will apply to school districts, which meet the definitions of ''small governmental jurisdiction'' and other establishments that meet the definition of ''small entity'' in the Regulatory Flexibility Act. An Initial Regulatory Flexibility Act analysis is included as an Appendix to this rule.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost/benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures by State, local, or Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule. Because data is not available to meaningfully estimate the quantitative impacts of this rule on school food authority revenues, we are not certain that this rule is subject to the requirements of sections 202 and 205 of the UMRA. That said, it is possible that the rule's requirements could impose costs on State, local, or Tribal governments or to the private sector of $100 million or more in any one year. FNS therefore conducted a regulatory impact analysis that includes a cost/benefit analysis and describes and explains six alternatives to the interim final rule, substantially meeting the

requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The NSLP is listed in the Catalog of Federal Domestic Assistance under No. 10.555. The SBP is listed in the Catalog of Federal Domestic Assistance under No. 10.553. For the reasons set forth in the final rule in 7 CFR part 3015, Subpart V and related notice (48 FR 29115, June 24, 1983), these programs are included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Executive Order 13132

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132. USDA has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. This rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under Section 6(b) of the Executive Order, a federalism summary impact statement is not required.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless specified in the **DATES** section of the final rule. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed this rule in accordance with Departmental Regulations 4300–4, ''Civil Rights Impact Analysis,'' and 1512–1, ''Regulatory Decision Making Requirements.'' After a careful review of the rule's intent and provisions, FNS has determined that this rule is not intended to limit or reduce in any way the ability of protected classes of individuals to receive benefits on the basis of their race, color, national origin, sex, age or disability nor is it intended to have a differential impact on minority owned or operated business establishments and woman-owned or operated business establishments that participate in the Child Nutrition Programs.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR part 1320), requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current, valid OMB control number. This rule does contain information collection requirements subject to approval by OMB under the Paperwork Reduction Act of 1995.

A 60-day notice was embedded into the proposed rule, ''*7 CFR Parts 210 and 220 National School Lunch Program and School Breakfast Program: Nutrition Standards for All Foods Sold in School as Required by the Healthy Hunger Free Kids Act of 2010,*'' published in the **Federal Register** at 78 FR 9530 on February 8, 2013, which provided the public an opportunity to submit comments on the information collection burden resulting from this rule. The information collection requirements associated with this interim final rule have been submitted for approval to the Office of Management and Budget (OMB). FNS will publish a document in the **Federal Register** once these requirements have been approved.

FNS is requesting 927,634 burden hours for recordkeeping to document compliance with the new nutrition standards. The estimated average number of respondents for this rule is 122,662 (57 State agencies, 20,858 school food authorities, and 101,747 schools). The following table reflects the estimated burden associated with the new information collection requirements.

ESTIMATED ANNUAL BURDEN FOR 0584–NEW, 7 CFR PART 210 NATIONAL SCHOOL LUNCH PROGRAM AND SCHOOL BREAKFAST PROGRAM: NUTRITION STANDARDS FOR ALL FOODS SOLD IN SCHOOL

	Section	Estimated number of record-keepers	Records per record-keeper	Average annual records	Average burden per record	Annual burden hours
Recordkeeping:						
SA shall ensure that the LEA complies with the nutrition standards for competitive foods and retains documentation demonstrating compliance	7 CFR 210.18(h)(7)	57	122	6,954	0.25	1,739
LEAs and SFAs shall be responsible for maintaining records documenting compliance with the competitive food standards	7 CFR 210.11(b)(3)	20,858	1	20,858	20	417,160
Organizations responsible for competitive food service at various venues in schools shall maintain records	7 CFR 210.11(b)(3)	101,747	1	101,747	5	508,735
Total Recordkeeping Burden		122,662	1.0562	129,559	7.1599	927,634

E-Government Act Compliance

The Food and Nutrition Service is committed to complying with the E-Government Act of 2002, 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.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects 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. In Spring 2011, FNS offered opportunities for consultation with Tribal officials or their designees to discuss the impact of the Healthy, Hunger-Free Kids Act of 2010 on tribes or Indian Tribal governments. The consultation sessions were coordinated by FNS and held on the following dates and locations:

1. HHFKA Webinar & Conference Call—April 12, 2011
2. Mountain Plains—HHFKA Consultation, Rapid City, SD—March 23, 2011
3. HHFKA Webinar & Conference Call—June, 22, 2011
4. Tribal Self-Governance Annual Conference in Palm Springs, CA—May 2, 2011
5. National Congress of American Indians Mid-Year Conference, Milwaukee, WI—June 14, 2011

The five consultation sessions in total provided the opportunity to address Tribal concerns related to school meals. There were no comments about this regulation during any of the aforementioned Tribal consultation sessions.

Currently, FNS provides regularly scheduled quarterly consultation sessions as a venue for collaborative conversations with Tribal officials or their designees. The most recent specific discussion of the Nutrition Standards for Foods Sold in Schools proposed rule was included in the consultation conducted on February 13, 2013. No questions or comments were raised specific to this rulemaking at that time.

Reports from these consultations are part of the USDA annual reporting on Tribal consultation and collaboration. FNS will respond in a timely and meaningful manner to Tribal government requests for consultation concerning this rule.

Regulatory Impact Analysis Summary

A Regulatory Impact Analysis (RIA) was developed for this proposal, which is summarized below. The full RIA is included as an Appendix to this rule.

Need for Action

The interim final rule responds to two provisions of the Healthy, Hunger-Free Kids Act of 2010. Section 208 of HHFKA amended Section 10 of the Child Nutrition Act of 1966 to require the Secretary to establish science-based nutrition standards for all foods sold in schools during the school day.

Response to Comments

The full Regulatory Impact Analysis, which appears as an Appendix, includes a brief discussion of comments on the costs and benefits of the proposed rule submitted by school officials, public health organizations, industry representatives, parents, students, and other interested parties. The analysis also contains a discussion of how USDA modified the interim final rule in response, and the effect of those modifications on the costs and benefits of the rule.

Benefits

The primary purpose of the rule is to ensure that nutrition standards for competitive foods are consistent with the most recent DGA recommendations, effectively holding competitive foods to the same standards as the rest of the foods sold at school during the school day. These standards, combined with recent improvements in school meals, will help promote diets that contribute to students' long-term health and well-being. And they will support parents' efforts to promote healthy choices for children at home and at school.

Obesity has become a major public health concern in the U.S., with one-third of U.S. children and adolescents now considered overweight or obese (Beydoun and Wang 2011 [1]), with current childhood obesity rates four times higher in children ages six to 11 than they were in the early 1960s (19 vs. 4 percent), and three times higher (17 vs. 5 percent) for adolescents ages 12 to 19.[2] Research focused specifically on the effects of obesity in children indicates that obese children feel they are less capable, both socially and athletically, less attractive, and less worthwhile than their non-obese counterparts.[3] Further, there are direct economic costs due to childhood obesity: $237.6 million (in 2005 dollars) in inpatient costs [4] plus annual prescription drug, emergency room, and outpatient costs of $14.1 billion.[5]

Because the factors that contribute both to overall food consumption and to obesity are so complex, it is not possible to define a level of disease or cost reduction expected to result from implementation of the rule. There is some evidence, however, that competitive food standards can improve children's dietary quality.

- Taber, Chriqui, and Chaloupka (2012 [6]) concluded that California high school students consumed fewer calories, less fat, and less sugar at school than students in other States. Their analysis ''suggested that California students did not compensate for consuming less within school by consuming more elsewhere'' (p. 455).
- Schwartz, Novak, and Fiore, (2009 [7]) determined that healthier competitive food standards decreased student consumption of low nutrition items with no compensating increase at home.
- Researchers at Healthy Eating Research and Bridging the Gap found that ''[t]he best evidence available indicates that policies on snack foods and beverages sold in school impact children's diets and their risk for obesity. Strong policies that prohibit or restrict the sale of unhealthy competitive foods and drinks in schools are associated with lower proportions of

[1] Beydoun, M.A. and Y. Wang. 2011. Socio-demographic disparities in distribution shifts over time in various adiposity measures among American children and adolescents: What changes in prevalence rates could not reveal. *International Journal of Pediatric Obesity,* 6:21–35. As cited in Food Labeling: Calorie Labeling of Articles of Food in Vending Machines NPRM. 2011. Preliminary Regulatory Impact Analysis, Docket No. FDA–2011–F–0171.

[2] Ogden et al. *Prevalence of Obesity Among Children and Adolescents: United States, Trends 1963–1965 Through 2007–2008.* CDC–NHCS, NCHS Health E-Stat, June 2010. On the web at *http://www.cdc.gov/nchs/data/hestat/obesity_child_07_08/obesity_child_07_08.htm.*

[3] Riazi, A., S. Shakoor, I. Dundas, C. Eiser, and S.A. McKenzie. 2010. Health-related quality of life in a clinical sample of obese children and adolescents. Health and Quality of Life Outcomes, 8:134–139. Samuels & Associates. 2006. Competitive Foods. Policy Brief prepared by Samuels & Associates for The California Endowment and Robert Wood Johnson Foundation. Available at: *http://www.healthyeatingactivecommunities.org/downloads/.*

[4] Trasande, L., Y. Liu, G. Fryer, and M. Weitzman. 2009. Trends: Effects of Childhood Obesity on Hospital Care and Costs, 1999–2005. *Health Affairs,* 28:w751–w760.

[5] Cawley, J. 2010. The Economics of Childhood Obesity. *Health Affairs,* 29:364–371. As cited in Food Labeling: Calorie Labeling of Articles of Food in Vending Machines NPRM. 2011. Preliminary Regulatory Impact Analysis, Docket No. FDA–2011–F–0171.

[6] Taber, D.R., J.F. Chriqui, and F. J. Chaloupka. 2012. Differences in Nutrient Intake Associated With State Laws Regarding Fat, Sugar, and Caloric Content of Competitive Foods. *Archives of Pediatric & Adolescent Medicine,* 166:452–458.

[7] Schwartz, M.B., S.A. Novak, and S.S. Fiore. 2009. The Impact of Removing Snacks of Low Nutritional Value from Middle Schools. *Health Education & Behavior,* 36:999–1011.

overweight or obese students, or lower rates of increase in student BMI'' (Healthy Eating Research and Bridging the Gap, 2012, p. 3 [8]).

A recent, comprehensive, and groundbreaking assessment of the evidence on the importance of competitive food standards conducted by the Pew Health Group concluded that a national competitive foods policy would increase student exposure to healthier foods, decrease exposure to less healthy foods, and would also likely improve the mix of foods that students purchase and consume at school. Researchers concluded that these kinds of changes in food exposure and consumption at school are important influences on the overall quality of children's diets.

Although nutrition standards for foods sold at school alone may not be a determining factor in children's overall diets, they are critical to providing children with healthy food options throughout the entire school day. Thus, these standards will help to ensure that the school nutrition environment does all that it can to promote healthy choices, and help to prevent diet-related health problems. Ancillary benefits could derive from the fact that improving the nutritional value of competitive foods may reinforce school-based nutrition education and promotion efforts and contribute significantly to the overall effectiveness of the school nutrition environment in promoting healthful food and physical activity choices.[9]

Costs

Any rule-induced benefit of healthier eating by school children would be accompanied by costs, at least in the short term. Healthier food may be more expensive than unhealthy food—either in raw materials, preparation, or both—and this greater expense would be distributed among students, schools, and the food industry. Moreover, students who switch to less-preferred foods and beverages could experience a utility loss. If students do not switch to healthier foods, they may incur travel or other costs related to obtaining their preferred choices from a location less convenient than school. Regardless of student response, the proposed rule would also impose administrative costs on schools and their food authorities.

Transfers

The rule requires schools to improve the nutritional quality of foods offered for sale to students outside of the Federal school lunch and school breakfast programs. The new standards apply to foods sold à la carte, in school stores or vending machines, and, with limited exceptions, through in-school fundraisers sponsored by students, parents, or other school-affiliated groups. Upon implementation of the rule, students will face new food choices from these sources. The new choices will meet standards for fat, saturated fat, sugar, and sodium, and have whole grains, low fat dairy, fruits, vegetables, or protein foods as their main ingredients. Our analysis examines a range of possible behavioral responses of students and schools to these changes. To estimate potential effects on school revenue, we look to the experience of school districts that have adopted or piloted competitive food reforms in recent years.

The practice of selling foods in competition with federally reimbursable program meals and snacks is widespread. In SY 2004–2005, 82 percent of all schools—and 92 percent of middle and high schools—offered à la carte foods at lunch. Vending machines were available in 39 percent of all schools, including 13 percent of elementary schools, 72 percent of middle schools, and 87 percent of high schools (Fox, et al., 2012; Volume 1, p. 3–42).

The limited information available indicates that many schools have successfully introduced competitive food reforms with little or no loss of revenue and in a few cases, revenues from competitive foods increased after introducing healthier foods. In some of the schools that showed declines in competitive food revenues, losses from reduced sales were fully offset by increases in reimbursable meal revenue. In other schools, students responded favorably to the healthier options and competitive food revenue declined little or not at all.

But not all schools that adopted or piloted competitive food standards fared as well. Some of the same studies and reports that highlight school success stories note that other schools sustained some loss after implementing similar standards. While in some cases these were short-term losses, even in the long-term the competitive food revenue lost by those schools was not offset (at least not fully) by revenue gains from the reimbursable meal programs.

Our analysis examines the possible effects of the rule on school revenues from competitive foods and the administrative costs of complying with the rule's competitive foods provisions. The analysis uses available data to construct model-based scenarios that different schools may experience in implementing the rule. While these vary in their impact on overall school food revenue, each scenario's estimated impact is relatively small (+0.5 percent to −1.3 percent). In comparison, the regulations implementing the school food service revenue provisions of HHFKA would increase average overall school food revenue by roughly six percent. That said, the data behind the scenarios are insufficient to assess the frequency or probability of schools experiencing the impacts shown in each.

List of Subjects

7 CFR Part 210

Grant programs-education; Grant programs-health; Infants and children; Nutrition; Reporting and recordkeeping requirements; School breakfast and lunch programs; Surplus agricultural commodities.

7 CFR Part 220

Grant programs-education; Grant programs-health; Infants and children; Nutrition; Reporting and recordkeeping requirements; School breakfast and lunch programs.

Accordingly, 7 CFR parts 210 and 220 are amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

■ 1. The authority citation for 7 CFR part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.''

■ 2. In § 210.1, the second sentence of paragraph (b) is revised to read as follows:

§ 210.1 General purpose and scope.

* * * * *

(b) * * * It specifies Program responsibilities of State and local officials in the areas of program administration, preparation and service of nutritious lunches, the sale of competitive foods, payment of funds, use of program funds, program monitoring, and reporting and recordkeeping requirements.

■ 3. In § 210.10, amend paragraph (a)(1)(i) by adding a sentence at the end to read as follows:

[8] Healthy Eating Research and Bridging the Gap. 2012. Influence of Competitive Food and Beverage Policies on Children's Diets and Childhood Obesity. Available at *http://www.healthyeatingresearch.org/images/stories/her_research_briefs/Competitive_Foods_Issue_Brief_HER_BTG_7-2012.pdf.*

[9] Pew Health Group and Robert Wood Johnson Foundation. 2012. Health Impact Assessment: National Nutrition Standards for Snack and à la Carte Foods and Beverages Sold in Schools. Available online: *http://www.pewhealth.org/uploadedFiles/PHG/Content_Level_Pages/Reports/KS%20HIA_FULL%20Report%20062212_WEB%20FINAL-v2.pdf.*

§ 210.10 Meal requirements for lunches and requirements for afterschool snacks.

(a) * * *

(1) * * *

(i) * * * Schools must make potable water available and accessible without restriction to children at no charge in the place(s) where lunches are served during the meal service.

* * * * *

§ 210.11 [Redesignated as § 210.11a]

■ 4. Redesignate § 210.11 as § 210.11a and dd new § 210.11 to read as follows:

§ 210.11 Competitive food service and standards.

(a) *Definitions.* For the purpose of this section:

(1) *Combination foods* means products that contain two or more components representing two or more of the recommended food groups: fruit, vegetable, dairy, protein or grains.

(2) *Competitive food* means all food and beverages other than meals reimbursed under programs authorized by the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966 available for sale to students on the *School campus* during the *School day.*

(3) *Entrée item* means an item that is either:

(i) A combination food of meat or meat alternate and whole grain rich food; or

(ii) A combination food of vegetable or fruit and meat or meat alternate; or

(iii) A meat or meat alternate alone with the exception of yogurt, low-fat or reduced fat cheese, nuts, seeds and nut or seed butters, and meat snacks (such as dried beef jerky).

(4) *School campus* means, for the purpose of competitive food standards implementation, all areas of the property under the jurisdiction of the school that are accessible to students during the school day.

(5) *School day* means, for the purpose of competitive food standards implementation, the period from the midnight before, to 30 minutes after the end of the official school day.

(b) *General requirements for competitive food.* (1) *State and local educational agency policies.* State agencies and/or local educational agencies must establish such policies and procedures as are necessary to ensure compliance with this section. State agencies and/or local educational agencies may impose additional restrictions on competitive foods, provided that they are not inconsistent with the requirements of this part.

(2) *Recordkeeping.* The local educational agency is responsible for the maintenance of records that document compliance with the nutrition standards for all competitive food available for sale to students in areas under its jurisdiction that are outside of the control of the school food authority responsible for the service of reimbursable school meals. In addition, the local educational agency is responsible for ensuring that organizations designated as responsible for food service at the various venues in the schools maintain records in order to ensure and document compliance with the nutrition requirements for the foods and beverages sold to students at these venues during the school day as required by this section. The school food authority is responsible for maintaining records documenting compliance with these for foods sold under the auspices of the nonprofit school food service. At a minimum, records must include receipts, nutrition labels and/or product specifications for the competitive food available for sale to students.

(3) *Applicability.* The nutrition standards for the sale of competitive food outlined in this section apply to competitive food for all programs authorized by the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966 operating on the school campus during the school day.

(4) *Fundraiser restrictions.* Competitive food and beverage items sold during the school day must meet the nutrition standards for competitive food as required in this section. A special exemption is allowed for the sale of food and/or beverages that do not meet the competitive food standards as required in this section for the purpose of conducting an infrequent school-sponsored fundraiser. Such specially exempted fundraisers must not take place more than the frequency specified by the State agency during such periods that schools are in session. No specially exempted fundraiser foods or beverages may be sold in competition with school meals in the food service area during the meal service.

(c) *General nutrition standards for competitive food.* (1) *General requirement.* At a minimum, all competitive food sold to students on the school campus during the school day must meet the nutrition standards specified in this section. These standards apply to items as packaged and served to students.

(2) *General nutrition standards.* To be allowable, a competitive food item must:

(i) Meet all of the competitive food nutrient standards as outlined in this section; and

(ii) Be a grain product that contains 50 percent or more whole grains by weight or have as the first ingredient a whole grain; or

(iii) Have as the first ingredient one of the non-grain major food groups: fruits, vegetables, dairy or protein foods (meat, beans, poultry, seafood, eggs, nuts, seeds, etc.); or

(iv) Be a combination food that contains ¼ cup of fruit and/or vegetable; or

(v) For the period through June 30, 2016, contain 10 percent of the Daily Value of a nutrient of public health concern based on the most recent Dietary Guidelines for Americans (i.e., calcium, potassium, vitamin D or dietary fiber). Effective July 1, 2016, the criterion in this paragraph is obsolete and may not be used to qualify as a competitive food; and

(vi) If water is the first ingredient, the second ingredient must be one of the food items in paragraphs (c)(2)(ii), (iii) or (iv) of this section.

(3) *Exemptions.* (i) *Entrée items offered as part of the lunch or breakfast program.* Any entrée item offered as part of the lunch program or the breakfast program under 7 CFR Part 220 is exempt from all competitive food standards if it is offered as a competitive food on the day of, or the school day after, it is offered in the lunch or breakfast program. Exempt entrée items offered as a competitive food must be offered in the same or smaller portion sizes as in the lunch or breakfast program. Side dishes offered as part of the lunch or breakfast program and served à la carte must meet the nutrition standards in this section.

(ii) *Sugar-free chewing gum.* Sugar-free chewing gum is exempt from all of the competitive food standards in this section and may be sold to students on the school campus during the school day, at the discretion of the local educational agency.

(d) *Fruits and vegetables.* (1) Fresh, frozen and canned fruits and vegetables with no added ingredients except water or, in the case of fruit, packed in 100 percent fruit juice or light syrup or extra light syrup, are exempt from the nutrient standards included in this section.

(2) Canned vegetables that contain a small amount of sugar for processing purposes, to maintain the quality and structure of the vegetable, are also exempt from the nutrient standards included in this section.

(e) *Grain products.* Grain products acceptable as a competitive food must

include 50 percent or more whole grains by weight or have whole grain as the first ingredient. Grain products must meet all of the other nutrient standards included in this section.

(f) *Total fat and saturated fat.* (1) *General requirements.* (i) The total fat content of a competitive food must be not more than 35 percent of total calories from fat per item as packaged or served, except as specified in paragraphs (f)(2) and (3) of this section.

(ii) The saturated fat content of a competitive food must be less than 10 percent of total calories per item as packaged or served, except as specified in paragraph (f)(3) of this section.

(2) *Exemptions to the total fat requirement.* Seafood *with no added fat* is exempt from the total fat requirement, but subject to the saturated fat, trans fat, sugar, calorie and sodium standards.

(3) *Exemptions to the total fat and saturated fat requirements.* (i) Reduced fat cheese and part skim mozzarella cheese are exempt from the total fat and saturated fat standards, but subject to the trans fat, sugar, calorie and sodium standards. This exemption does not apply to combination foods.

(ii) Nuts and Seeds and Nut/Seed Butters are exempt from the total fat and saturated fat standards, but subject to the trans fat, sugar, calorie and sodium standards. This exemption does not apply to combination products that contain nuts, nut butters or seeds or seed butters with other ingredients such as peanut butter and crackers, trail mix, chocolate covered peanuts, etc.

(iii) Products that consist of only dried fruit with nuts and/or seeds with no added nutritive sweeteners or fat are exempt from the total fat, saturated fat and sugar standards, but subject to the trans fat, calorie and sodium standards.

(g) *Trans fat.* The trans fat content of a competitive food must be zero grams trans fat per portion as packaged or served (not more than 0.5 grams per portion).

(h) *Total sugars.* (1) *General requirement.* The total sugar content of a competitive food must be not more than 35 percent of *weight* per item as packaged or served, except as specified in paragraph (h)(2) of this section.

(2) *Exemptions to the total sugar requirement.* (i) Dried whole fruits or vegetables; dried whole fruit or vegetable pieces; and dehydrated fruits or vegetables with no added nutritive sweeteners are exempt from the sugar standard, but subject to the total fat, saturated fat,, trans fat, calorie and sodium standards. There is also an exemption from the sugar standard for dried fruits with nutritive sweeteners that are required for processing and/or palatability purposes;

(ii) Products that consist of only dried fruit with nuts and/or seeds with no added nutritive sweeteners or fat are exempt from the total fat, saturated fat, and sugar standards, but subject to the calorie, trans fat, and sodium standards; and

(i) *Calorie and sodium content for snack items and side dishes sold à la carte.* Snack items and side dishes sold à la carte must have not more than 200 calories and 230 mg of sodium per item as packaged or served, including the calories and sodium contained in any added accompaniments such as butter, cream cheese, salad dressing, etc., and must meet all of the other nutrient standards in this section. Effective July 1, 2016, these snack items and side dishes must have not more than 200 calories and 200 mg of sodium per item as packaged or served.

(j) *Calorie and sodium content for entrée items sold à la carte.* Entrée items sold à la carte other than those exempt from the competitive food nutrition standards in paragraph (c)(3)(i) of this section must have not more than 350 calories and 480 mg of sodium per item as packaged or served, including the calories and sodium contained in any added accompaniments such as butter, cream cheese, salad dressing, etc., and must meet all of the other nutrient standards in this section.

(k) *Caffeine.* Foods and beverages available to elementary and middle school-aged students must be caffeine-free, with the exception of trace amounts of naturally occurring caffeine substances. Foods and beverages available to high school-aged students may contain caffeine.

(l) *Accompaniments.* The use of accompaniments is limited when competitive food is sold to students in school. The accompaniments to a competitive food item must be included in the nutrient profile as a part of the food item served in determining if an item meets all of the nutrition standards for competitive food as required in this section. The contribution of the accompaniments may be based on the average amount of the accompaniment used per item at the site.

(m) *Beverages.* (1) *Elementary schools.* Allowable beverages for elementary school-aged students are limited to:

(i) Plain water or plain carbonated water (no size limit);

(ii) Low fat milk, unflavored (no more than 8 fluid ounces);

(iii) Non fat milk, flavored or unflavored (no more than 8 fluid ounces);

(iv) Nutritionally equivalent milk alternatives as permitted in § 210.10 and § 220.8 of this chapter (no more than 8 fluid ounces); and

(v) 100 percent fruit/vegetable juice, and 100 percent fruit and/or vegetable juice diluted with water (with or without carbonation and with no added sweeteners) (no more than 8 fluid ounces).

(2) *Middle schools.* Allowable beverages for middle school-aged students are limited to:

(i) Plain water or plain carbonated water (no size limit);

(ii) Low fat milk, unflavored (no more than 12 fluid ounces);

(iii) Non fat milk, flavored or unflavored (no more than 12 fluid ounces);

(iv) Nutritionally equivalent milk alternatives as permitted in § 210.10 and § 220.8 of this chapter (no more than 12 fluid ounces); and

(v) 100 percent fruit/vegetable juice, and 100 percent fruit and/or vegetable juice diluted with water (with or without carbonation and with no added sweeteners) (no more than 12 fluid ounces).

(3) *High schools.* Allowable beverages for high school-aged students are limited to:

(i) Plain water or plain carbonated water (no size limit);

(ii) Low fat milk, unflavored (no more than 12 fluid ounces);

(iii) Non fat milk, flavored or unflavored (no more than 12 fluid ounces);

(iv) Nutritionally equivalent milk alternatives as permitted in § 210.10 and § 220.8 of this chapter (no more than 12 fluid ounces);

(v) 100 percent fruit/vegetable juice, and 100 percent fruit and/or vegetable juice diluted with water (with or without carbonation and with no added sweeteners) (no more than 12 fluid ounces);

(vi) Calorie-free, flavored water, with or without carbonation (no more than 20 fluid ounces);

(vii) Other beverages that are labeled to contain less than 5 calories per 8 fluid ounces, or less than or equal to 10 calories per 20 fluid ounces (no more than 20 fluid ounces); and

(viii) Other beverages that are labeled to contain no more than 40 calories per 8 fluid ounces or 60 calories per 12 fluid ounces (no more than 12 fluid ounces).

(n) *Implementation date.* This section is to be implemented beginning on July 1, 2014.

■ 5. In newly redesignated § 210.11a and add paragraph (c) to read as follows:

§ 210.11a Competitive food services.

* * * * *

(c) *Effective date.* This section remains in effect through June 30, 2014.

■ 6. In § 210.18, paragraph (h)(6) is added to read as follows:

§ 210.18 Administrative reviews.

* * * * *

(h) * * *

(6) *Competitive food standards.* The State agency must ensure that the local educational agency and school food authority comply with the nutrition standards for competitive food and retain documentation demonstrating compliance with the competitive food service and standards.

■ 7. Appendix B to Part 210 is amended by adding paragraph (c) to read as follows:

Appendix B to Part 210—Categories of Foods of Minimal Nutritional Value

* * * * *

(c) Appendix B remains in effect through June 30, 2014.

PART 220—SCHOOL BREAKFAST PROGRAM

■ 8. The authority citation for 7 CFR part 220 continues to read as follows:

Authority: 42 U.S.C. 1773, 1779, unless otherwise noted.

§ 220.2 [Amended]

■ 9. In § 220.2, remove the definitions of ''Competitive foods'' and ''Foods of minimal nutritional value''.

■ 10. In § 220.8, amend paragraph (a)(1) by adding a sentence at the end to read as follows:

§ 220.8 Meal requirements for breakfasts.

(a) * * *

(1) * * * When breakfast is served in the cafeteria, schools must make potable water available and accessible without restriction to children at no charge.

* * * * *

§ 220.12 [Redesignated as § 220.12a].

■ 11. Redesignate § 220.12 as § 220.12a and add new § 220.12 to read as follows:

§ 220.12 Competitive food services.

School food authorities must comply with the competitive food service and standards requirements specified in § 210.11 of this chapter.

■ 12. In newly redesignated § 220.12a, add paragraphs (c) and (d) to read as follows:

§ 210.12a Competitive food services.

* * * * *

(c) *Definitions.* For the purpose of this section:

(1) *Competitive foods* means any foods sold in competition with the School Breakfast Program to children in food service areas during the breakfast period; and

(2) *Foods of minimal nutritional value* means:

(i) In the case of artificially sweetened foods, a food which provides less than five percent of the Reference Daily Intake (RDI) for each of eight specified nutrients per serving; and

(ii) In the case of all other foods, a food that provides less than five percent of the RDI for each of eight specified nutrients per 100 calories and less than five percent of the RDI for each of eight specified nutrients per serving. The eight nutrients to be assessed for this purpose are protein, vitamin A, vitamin C, niacin, riboflavin, thiamin, calcium and iron. Categories of foods of minimal nutritional value are listed in appendix B of this part.

(d) *Effective date.* This section remains in effect through June 30, 2014.

13. Appendix B to Part 220 is amended by adding paragraph (c) to read as follows:

Appendix B to Part 220—Categories of Foods of Minimal Nutritional Value.

* * * * *

(c) Appendix B remains in effect through June 30, 2014.

Dated: June 21, 2013.

Kevin W. Concannon,

Under Secretary, Food, Nutrition, and Consumer Services.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix A

Regulatory Flexibility Analysis—Interim Final Rule

Nutrition Standards for All Foods Sold In School

Agency: Food and Nutrition Service, USDA.

Background: The Regulatory Flexibility Act (RFA) requires agencies to consider the impact of their rules on small entities and to evaluate alternatives that would accomplish the same objectives without undue burden when the rules impose a significant economic impact on a substantial number of small entities. Inherent in the RFA is the desire to remove barriers to competition and encourage consideration of ways to tailor regulations to the size of the regulated entities.

The RFA does not require that agencies necessarily minimize a rule's impact on small entities if there are significant, legal, policy, factual, or other reasons for the rule's impacts. The RFA requires only that agencies determine, to the extent feasible, the rule's economic impact on small entities, explore regulatory alternatives for reducing any significant economic impact on a substantial number of such entities, and explain the reasons for their regulatory choices.

I. Reasons That Action Is Being Considered

This interim final rule sets forth provisions to implement section 208 of Public Law 111–296, the Healthy, Hunger-Free Kids Act of 2010 (HHFKA). Section 208 amends Section 10 of the Child Nutrition Act of 1966 (42 U.S.C. 1779) (CNA) to give the Secretary of Agriculture new authority to establish science-based nutrition standards for all foods sold outside of the Federal child nutrition programs on the school campus during the school day. The Act also specifies that the nutrition standards shall apply to all foods sold (a) outside the school meal programs; (b) on the school campus; and (c) at any time during the school day.

II. Objectives of, and Legal Basis for, the Interim Final Rule

As stated above, the legal basis for the interim final rule are the amendments made to the CNA by HHFKA. The objectives of this rule are to establish nutrition standards for all foods and beverages sold to students in schools other than meals served through child nutrition programs authorized under the NSLA or the CNA and to improve the health and well being of the Nation's school-aged children.

III. Number of Small Entities to Which the Interim Final Rule Will Apply

Small entities include independently owned and operated small businesses [10] or not-for profit organizations that are not dominant in their fields. Small businesses or non-profits that fall below certain size standards established by SBA (in terms of annual receipts or number of employees) are presumed not to be dominant in their fields.[11] Small entities also include small governmental jurisdictions (including school districts) with populations under 50,000.

The interim final rule directly regulates the 54 State education agencies and 3 State Departments of Agriculture that operate the NSLP pursuant to agreements with USDA's Food and Nutrition Service. In turn, its provisions apply to school food authorities (SFAs) and non-SFA school groups that sell competitive foods and beverages to students during the school day. While State agencies are not considered small entities as State populations exceed the 50,000 threshold for a small government jurisdiction, many of the service-providing institutions that work with them to implement the program do meet definitions of small entities:[12]

[10] Small businesses for purposes of the RFA are ''small business concerns'' as defined by the Small Business Act. These include independently owned and operated firms that are not dominant in their field of operation.

[11] ''Guide to SBA's Definitions of Small Business,'' *http://www.sba.gov/content/guide-size-standards*, accessed 06/03/2013. Small business concerns for purposes of the RFA.

[12] For purposes of this analysis we refer to business ''establishments'' that serve the school market. Establishments are the smallest units of a firm; large firms may include multiple establishments. We use statistics for establishments rather than larger corporate entities to avoid understating the number of small business entities that may be indirectly affected by the interim final rule. SBA Office of Advocacy, *A Guide for*

Continued

• More than 20,000 SFAs, consisting of about 100,000 schools and residential child care institutions (RCCIs) participate in the NSLP. Many schools provide competitive foods through à la carte menus, vending machines, school stores, snack bars, fundraisers, or some combination of these sources. Within individual schools, a variety of school groups (e.g., student clubs, parent teacher organizations, or parent ''booster'' organizations supporting activities such as sports, music, and enrichment activities) earn revenue from competitive foods. Census data indicate that 90 percent of U.S. school districts had populations under 50,000 in 2010.[13]

• Vending machine operators are not regulated by the rule but are indirectly affected. Most of these businesses are likely small entities. Vending machine operators with annual receipts below $10 million are presumed not to be dominant in their field.[14] Census data indicate that 97 percent of vending machine establishments that operated for the entire year of 2007 generated less than $10 million in revenue.[15]

• Like vending machine operators, food manufacturers are not directly regulated. Food manufacturers are a diverse group, consisting of large national firms as well as regional and even local food producers. The rule does not define a set of products that can be sold in schools. Instead, it sets standards that may be satisfied by a wide variety of snack items, beverages, entrees, and side dishes. SFAs will turn to the food industry for pre-packaged items that are ready for sale to students, as well as for ingredients that will be used in foods prepared in schools. These foods and ingredients will be provided by establishments in nearly all subsectors of the food manufacturing industry. Without data on the relative share of the school market served by establishments in these subsectors, USDA cannot say very much about the impact on small entities. SBA size standards for the food manufacturing industry range from 500 to 1,000 employees per establishment, depending on industry subsector.[16] Establishments with employment below these thresholds are presumed not to be dominant in their fields. For the food manufacturing industry as a whole (NAICS code 311), more than 98 percent of establishments employ fewer than 500 people.[17]

• Beverage manufacturers are indirectly affected in the same way as food manufacturers. The rule establishes standards that can and will be met by a variety of products from many manufacturers, some that market their products nationally, and others with a more limited regional or local presence. The SBA's size standard for beverage manufacturers is 500 employees.[18] Almost 97 percent of soft drink manufacturing establishments and essentially all bottled water manufacturing establishments employ fewer than 500 people.[19]

• Food service management companies (FSMCs) that prepare or serve reimbursable school meals under contract to SFAs are indirectly affected by the rule to the extent that they also provide schools with à la carte or other competitive foods. Nineteen percent of public school SFAs contracted with FSMCs in school year (SY) 2009–2010 for all or part of their food service operations.[20] Food service contractors with annual receipts below $35.5 million are presumed not to be dominant in their field.[21] Of 21,000 food service contractors that operated for the entire year in 2007, no fewer than 98 percent generated less than $35.5 million.[22]

IV. Projected Reporting, Recordkeeping and Other Compliance Requirements

School Food Authorities and Other School Groups

An estimated 95 percent of competitive school food sales accrue to SFAs; the remaining five percent accrues to other school groups such as student clubs, parent teacher organizations, or parent ''booster'' organizations. If SFAs, other school groups, and the food industry are able to satisfy current student demand for competitive foods with new options that meet the interim final rule standards, then there may be no change in competitive food sales or competitive food revenue. Although the evidence base is limited, it demonstrates that competitive food reforms can be implemented by SFAs with little or no loss of revenue. In some cases, revenues from competitive food sales have increased after introducing healthier foods. In some cases, decreases in competitive food sales have been offset by increases in school meal participation. In other cases, schools have experienced a decline in overall school food revenue.

The available data do not allow us to estimate the potential school revenue effect with any certainty. Instead, we have prepared a series of estimates that represent a range of plausible outcomes given the variety of experiences observed in several case studies.[23] At one end of this range, we calculate that a four percent increase in competitive food revenues would result in a +0.5 percent increase in school food revenue over five years. At the other end of the range, we calculate that the standards in the interim final rule could reduce school food revenues by −1.3 percent. (Additional detail is provided in the Regulatory Impact Analysis for this rule.)

Case studies that consider the impacts of competitive food nutrition standards on SFA revenues find that reductions in competitive food revenue are often fully offset by increases in reimbursable meal revenue as students redirect their demand for competitive foods to the reimbursable school meal programs. In other instances, the lost competitive food revenue was not offset (at least not fully) by revenue gains from the reimbursable meal programs.

Most SFAs have a number of options and some flexibility within available revenue streams and operations that can help minimize lost revenue. For example, about half of all SFA revenues are from Federal payments for reimbursable meals. SFAs can increase revenues to the extent that schools successfully encourage greater meal participation. In addition, the revenue impacts presented here are from a baseline that increased substantially at the start of SY 2011–2012, on implementation of interim regulations for Sections 205 and 206 of HHFKA. Section 206 is intended to ensure that the revenue from competitive food sales is aligned with competitive food costs.[24] The requirements of Section 206 are estimated to increase competitive food revenue by 35 percent, while the scenarios presented in the RIA for this rule anticipate far smaller competitive food revenue effects. The combined effect of HHFKA Section 206 and this rule remains a net increase in SFA competitive food revenue under all of the RIA scenarios.[25]

Government Agencies: How to Comply with the Regulatory Flexibility Act, May 2012. *http://www.sba.gov/content/guide-government-agencies-how-comply-with-regulatory-flexibility-act-0.*

[13] U.S. Census, Small Area Income and Poverty Estimates, *http://www.census.gov/did/www/saipe/data/interactive/#.* The percent of SFAs with populations under 50,000 almost certainly exceeds 90 percent since there are more SFAs than school districts.

[14] ''U. S. Small Business Administration Table of Small Business Size Standards Matched to North American Industry Classification System Codes'', (SBA Size Standards, 2013), *http://www.sba.gov/sites/default/files/files/size_table_01072013(1).pdf,* accessed 06/03/2013.

[15] NAICS 454210 ''vending machine operators.'' U.S. Census Bureau, 2007 Economic Census, accessed through the American Fact Finder Guided Search Web site, *http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml*, 06/03/2013. Because we are comparing 2007 revenues against SBA's 2013 revenue standard, 97 percent may overstate the share of vending machine operator establishments that meet the SBA definition of small entities.

[16] SBA Size Standards, 2013

[17] NAICS 311 ''vending machine operators.'' U.S. Census Bureau, 2007 Economic Census, accessed through the American Fact Finder Guided Search Web site, *http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml*, 06/04/2013.

[18] SBA Size Standards, 2013

[19] NAICS codes 312111 and 312112 ''soft drink manufacturing'' and ''bottled water manufacturing.'' U.S. Census Bureau, 2007 Economic Census, accessed through the American Fact Finder Guided Search Web site, *http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml*, 06/04/2013. For beverage manufacturers, our use of the Census's ''establishment'' size data, rather than firm-level data likely overstates the percentage of small entities that produce beverages for the school market given the importance of large national firms in this industry sector.

[20] U.S. Department of Agriculture, Food and Nutrition Service, Office of Research, Nutrition and Analysis, School Nutrition Dietary Assessment Study–IV, Vol. I, 2012 (SNDA–IV), p. 2–24, *http://www.fns.usda.gov/Ora/menu/Published/CNP/FILES/SNDA-IV_Vol1Pt1.pdf.*

[21] SBA Size Standards, 2013.

[22] NAICS code 72231, ''food service contractors.'' U.S. Census Bureau, 2007 Economic Census. Accessed through *http://factfinder2.census.gov/faces/nav/jsf/pages/guided_search.xhtml*, 06/03/2013. 98 percent is the share of establishments with 2007 receipts under $10 million, the top revenue category on the Census table.

[23] These are described in detail in the Regulatory Impact Analysis (RIA) for the interim final rule.

[24] **Federal Register**, Vol. 76, No. 117, pp. 35301–35318.

[25] The same is not true of competitive food revenue of non-SFA school groups. Competitive food revenue that does not accrue to the foodservice account is not subject to regulation under Section 206.

Unlike SFAs, other school groups cannot make up lost revenues through school meal sales. The interim final rule mitigates the impact on such groups by providing an exception for infrequent fundraisers that do not meet the rule's competitive food standards. Alternatively, these groups may explore fundraising options that include foods that do meet the interim final rule standards or find other modes of fundraising that do not include competitive foods.

Industry Groups

Manufacturers, wholesalers, foodservice management companies, and distributors, including vending machine operators, are not directly regulated under the rule but may be affected indirectly to the extent that schools will need to purchase a different mix of foods to satisfy the requirements of the rule.

Vending machine operators served an estimated 18,000 primary and secondary schools in the U.S. in 2009.[26] For 2009, the vending industry estimated that primary and secondary schools accounted for just two percent of total vending machine dollar sales. Although the school market is a relatively small one for the vending industry as a whole, it makes up a significant part of some vending machine operators' businesses.[27] Some vending machine operators will be challenged by the changes contained in the rule. Whether small or large, many vending machine operators will need to modify their product lines to meet the requirements of the rule. Similarly, food service management companies that provide à la carte foods to schools under contract to SFAs will need to provide a different mix of foods that conform to the changes in the rule.

Although industry will incur some costs to produce and deliver products to schools that meet the interim final rule standards, some of that cost has already been incurred. Many States and school districts have already adopted their own competitive food standards, some aligned with guidelines developed by the Alliance for a Healthier Generation (Alliance). The food industry has responded to these State and local standards by changing their product mix, and by producing a variety of new or reformulated products. One recent study found that between 2004 and 2009, the beverage industry reduced calories shipped to schools by 90 percent, with a total volume reduction in full-calorie soft drinks of over 95 percent.[28] As noted by some commenters on the proposed rule, the vending machine industry has taken an active role in supporting schools that have adopted State or local competitive food standards consistent with the Alliance guidelines. USDA made some changes to the interim final rule that move the rule closer to the Alliance guidelines as well as to NSLP requirements and USDA's HealthierUS School Challenge standards (HUSSC). These changes will help reduce industry's costs of providing foods to schools that comply with the interim final rule standards.

Administrative Costs

The interim final rule requires that State agencies ensure that all schools, SFAs, and other food groups comply with its competitive food standards. State agencies must also retain documentation demonstrating compliance. Schools, SFAs, and other food groups are responsible for maintaining records documenting compliance with competitive food standards. It is anticipated that the administrative cost to 57 State agencies, 102,000 schools, and 21,000 SFAs and local educational agencies will total $126 million over five years (or about $247 per school per year on average).

Distributional Impacts

A key characteristic associated with a school's dependence on competitive food revenue is grade level. High schools are more likely to offer competitive foods than are elementary schools. This is true of à la carte foods, foods sold through vending machines, and foods sold in school stores or snack bars.[29] Competitive food revenue is also associated with a school's mix of low and high income students. According to SNDA–III, schools serving at least one-third of their meals at full price to higher income students obtain more than seven times as much revenue from competitive food sales as schools serving a larger percentage of free and reduced-price (and hence lower-income) students.[30] Other factors that may be associated with student access to competitive food sources and school revenue from competitive foods include whether students have the option of leaving campus during the school day, and whether schools grant students the right to leave the cafeteria during meal times. Generally, student mobility privileges increase with grade level.[31] These factors are not necessarily associated with school or SFA size.

The most important source of competitive food revenue is à la carte sales. Sales from vending machines are less common, accounting for only about five percent of all competitive food sales. In general, small schools are less likely than larger schools to have vending machines accessible to students: just 36 percent of schools with fewer than 500 students had vending machines in SY 2004–2005. That increases to 48 percent of schools with 500 to 1,000 students and 78 percent of schools with more than 1,000 students.[32]

V. Response to Public Comments on the Initial Regulatory Flexibility Analysis

In order to maximize stakeholder input in the comment process, USDA developed and presented two or more alternatives for several of the key provisions of the proposed rule. USDA anticipated that commenters would help clarify the relative merits of each of the alternatives, as well as identify critical concerns. USDA used this input from commenters to help guide the development of the interim final rule. The ultimate goal was to develop an interim final rule that adheres to the requirements of the statutory mandate while limiting adverse impacts on affected groups and facilitating implementation of the new standards.

USDA received more than 247,000 comments on the proposed rule from school and school food authority officials, industry representatives, parents, students, child health advocates, and other interested parties. Although very few comments mentioned the Initial Regulatory Flexibility Analysis by name, many comments addressed the economic impact of the rule on directly and indirectly regulated individuals or businesses. This section of the analysis describes the issues raised by the commenters, USDA's response to those comments, and changes made to the rule that limit its impact on small entities.

Given that almost all SFAs and schools, and many or most industry establishments that serve the school market are small entities, USDA's response to these concerns is appropriate for discussion in this analysis. However, because the industry groups affected by the rule are not directly regulated by it, our analysis of the effects of the rule on industry, and USDA action taken in response to those comments, is not required by the Regulatory Flexibility Act. Nevertheless, we include a discussion of the comments raised by industry, and USDA action in response to those comments, as recommended by the SBA.[33]

SFA and school officials, non-SFA school groups, and representatives of food manufacturing, vending, and food service management industries expressed concern that Federal competitive food standards would reduce the sale of competitive foods in schools and the impact the revenue generated by those sales. Commenters raised several points in this regard. Among the most common were:

[26] VendingTimes.com, Census of the Industry, 2010 Edition, p. 4. *http://www.vendingtimes.com/Media/E-CommerceProductCatalog/VendingTimes_Census2010.pdf*, accessed 06/04/2013.

[27] This point was raised by several individuals and industry representatives who submitted comments on USDA's proposed rule.

[28] Wescott R., B. Fitzpatrick, and E. Philips. 2012. Industry Self-Regulation to Improve Student Health: Quantifying Changes in Beverage Shipments to Schools. *American Journal of Public Health,* published online August 16, 2012.

[29] U.S. Department of Agriculture, Food and Nutrition Service, Office of Research and Analysis, School Nutrition Dietary Assessment Study IV, Vol. I, by Mary Kay Fox, et al., 2012, p. 3–32.

[30] Unpublished ERS analysis of data from: U.S. Department of Agriculture, Food and Nutrition Service, 2007, School Nutrition Dietary Assessment Study-III, Vol. I by Mathematica Policy Research, Inc., (SNDA–III)

[31] U.S. Department of Agriculture, Food and Nutrition Service, Office of Research and Analysis, School Nutrition Dietary Assessment Study IV, Vol. I, by Mary Kay Fox, et al., 2012, p. 3–4.

[32] U.S. Department of Agriculture, Food and Nutrition Service, 2007, School Nutrition Dietary Assessment Study-III, Vol. I by Mathematica Policy Research, Inc., p. 88.

[33] ''Although it is not required by the RFA, the Office of Advocacy believes that it is good public policy for the agency to perform a regulatory flexibility analysis even when the impacts of its regulation are indirect. An agency should examine the reasonably foreseeable effects on small entities that purchase products or services from, sell products or services to, or otherwise conduct business with entities directly regulated by the rule.'' SBA Office of Advocacy, *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act,* May 2012. *http://www.sba.gov/content/guide-government-agencies-how-comply-with-regulatory-flexibility-act-0*

• The rule would reduce the number and variety of compliant competitive food products available for sale,

• Students will replace their competitive school food purchases with food brought from home or purchased off campus, and revenue lost from competitive food sales will not be offset by increased participation in the reimbursable meal programs, and

• Compliance with the new standards will be administratively costly.

We discuss each of these separately below.

Product Availability

Commenters indicated that many popular competitive food items will not meet the new standards and will no longer be allowed for sale in à la carte lines, vending machines, or school stores. Both school and industry officials are concerned that the availability, variety, and appeal of compliant products is insufficient to meet student demand. These officials fear that students, especially older students, will respond by purchasing fewer competitive foods and beverages at school.

Comments from some industry representatives and school officials focused on the investments that they have already made to meet State or local competitive food standards, or to meet USDA's HUSSC standards. As we discuss in Section III of the Regulatory Impact Analysis (RIA) prepared for the interim final rule, USDA recognizes the value in aligning the rule's competitive food requirements with existing or emerging standards to the extent that those standards are consistent with the statutory mandate behind the rulemaking. USDA made several changes to the proposed rule standards that more closely align the interim final rule with existing NSLP standards, guidelines developed by the Alliance for a Healthier Generation, and USDA's HUSSC requirements. These include:

• Increasing the proposed rule's sodium limit on snacks and non-program side dishes from 200 mg per portion as packaged to 230 mg (through June 2016),

• Exempting nuts/seeds and nut/seed butters from the rule's total and saturated fat standards,

• Exempting part skim mozzarella cheese from the total and saturated fat standards,

• Allowing full strength juice diluted with added water (or carbonated water), and

• Allowing fruit packed in light syrup.

In addition, the interim final rule adopts the proposed rule's 35 percent by weight standard for sugar over the alternate 35 percent of calories standard.

Each of these changes further aligns the interim final rule with existing NSLP requirements, voluntary HUSSC standards, and Alliance for a Healthier Generation guidelines. The effect of these changes is to increase the number of already available healthy products, many already for sale in schools that meet interim regulations. This will tend to reduce the risk that SFAs will lose revenue due to the lack of readily available, market-tested products that meet interim final rule standards.

For food manufacturers, greater alignment of the interim final rule with existing standards will ensure a continued market for existing products that they may have developed specifically to meet those standards. Similarly, for distributors such as vending machine operators, greater alignment with existing standards will eliminate some of the cost associated with adjusting to a different set of product specifications (such as finding new products to carry, and developing relationships with new producers).

In comments submitted to USDA on the proposed rule, the National Automatic Merchandising Association (NAMA) urged USDA to adopt standards that consistent with the vending industry's voluntary Fit Pick® program. That program promotes vending machine snack items that meet certain nutritional standards. One of the industry's two Fit Pick® packages promotes foods whose calories from fat, calories from saturated fat, percent of sugar by weight, total calories per serving, and sodium per serving match the guidelines developed by the Alliance for a Healthier Generation. NAMA notes that the vending industry's Fit Pick program is ''popular and successful'' within the industry. With regard to the Alliance standards, NAMA notes that

''These standards are already widely used in schools and provide more flexibility while assuring that the items that are sold on school campuses meet established nutritional guidelines. Fit Pick® would provide the USDA with an option that provides flexibility for the industry and lessens the impact on small business on both the revenue and expense sides. This would provide a program that the industry and schools are familiar with, therefore creating a simpler and more cost-effective implementation process.''

By moving closer to the Alliance standards, USDA's interim final rule responds directly to concerns about the cost of implementation faced by vending machine operators, particularly small businesses.

Other school groups that rely on competitive food sales as fundraisers benefit along with SFAs to the extent that they can choose from a wider variety of foods to sell.

Loss of Competitive Food Sales to Other Student Options

A reduction in competitive food sales following the implementation of Federal standards is a concern of both schools and industry that rely on that revenue. The changes discussed above that better align several of the rule's nutrient and food standards with existing standards and guidelines helps to guarantee that a wide variety of market-tested products will be available on implementation. Along with school-based strategies to win student acceptance of healthier competitive foods,[34] schools should have an easier time retaining existing competitive food revenues to the extent that industry is able to offer a variety of appealing choices.

USDA also modified the proposed rule's provision regarding the sale of beverages other than milk, plain water, and 100 percent fruit and vegetable juice in the cafeteria during meal service periods. Although the proposed and interim final rules allow the sale of a wider selection of beverages to high school students, the proposed rule would have kept those beverages out of meal service areas during a meal service. Commenters were concerned about the effect of that ''time and place'' restriction on SFA revenues. The proposed rule restriction had the potential to discourage some high school students from even entering the cafeteria at meal time and considering a reimbursable meal or à la carte foods as an option to food brought from home or purchased off campus. The interim final rule's elimination of that restriction removes a potential barrier to SFA efforts to maintain existing levels of competitive food revenue, or to replace lost competitive food revenue with revenue from reimbursable meals. Higher in-school sales of competitive foods or program meals also benefits the food service industries that sell food to schools.

Administrative Costs

As we note in the RIA, the proposed and the interim final rules impose some new recordkeeping requirements on school officials. These recordkeeping requirements are necessary to document compliance and ensure that the benefits of the rule are fully realized, and they are retained in the interim final rule with only one small technical change. However, the changes that USDA made to the interim final rule to align several provisions with existing NSLP standards, HUSSC requirements, or Alliance for a Healthier Generation guidelines will help reduce transition and compliance costs for many schools.

VI. Significant Alternatives

Each of the following alternatives is discussed more fully in the RIA. What follows is a summary of that broader discussion with particular focus on the economic and administrative impact on the small entities directly regulated or indirectly affected by the rule.

Exemption for Reimbursable Meal Entrées

The proposed rule presented two basic alternatives for the treatment of entrées and side dishes that are served as part of a reimbursable meal. Under the first alternative, these items could be served à la carte as long as they met the rule's fat and sugar standards that apply to all other competitive foods. Under the second alternative, NSLP entrées and sides (except grain-based desserts) would be exempt from all of the rule's competitive food requirements if served à la carte on same day that they are part of a reimbursable meal (alternative B1) or within four days of service as part of a reimbursable meal (alternative B2).

The interim final rule adopts a variation on the second alternative. Entrées (but not side dishes) served as part of a reimbursable meal will be exempt from the rule's competitive food requirements on the day they are served as part of the meal and the following day. USDA recognizes that being able to serve leftover entrées the next day is an important tool for menu planning and cost control. The

[34] The Regulatory Impact Analysis discusses strategies that schools around the country have employed successfully to limit or eliminate revenue losses after implementing State or local competitive food standards.

interim final rule provision attempts to balance those administrative and cost concerns against the need to make sure that an exemption from competitive food standards for reimbursable meal entrées does not undermine the broader health related goals of the rule. For that reason, USDA did not adopt alternative B2.

The interim final rule provision offers somewhat greater administrative simplicity compared to the other alternative considered by USDA. That alternative would have required a nutrient analysis of reimbursable meal items before they could be sold à la carte in order to measure their compliance with the rule's fat and sugar standards.

School-Sponsored Fundraisers

The proposed rule offered two alternatives for establishing limits on the frequency of exempt fundraisers. One would have allowed States to set limits subject to USDA approval. The other would grant full discretion to the States.

After consideration of comments from interest groups and school officials, USDA opted to allow States to set their own limits on the frequency of exempt fundraisers without USDA review.[35] Eliminating USDA review will not directly affect school or SFA administrative costs, although it will reduce administrative costs at the State agency and Federal levels. However, to the extent that offering State agencies somewhat greater discretion in making this decision, it may offer some relief to schools and SFAs. Full State discretion allows State administrators' to tailor their policies, and adjust them when necessary (without having to wait for Federal review) to address unanticipated inefficiencies or cost issues at the local level. The time and administrative expense of USDA review might discourage fine-tuning of established policies.

Total Sugar

The proposed rule solicited public comment on two alternate sugar standards for competitive foods. These would have limited total sugar content to either 35 percent of calories or 35 percent of weight. Both standards would have placed a meaningful check on the amount of sugar allowed in competitive foods while providing exceptions for certain fruit and vegetable snacks and yogurt. After considering arguments in favor of each of these standards, USDA adopted the sugar by weight standard for the interim final rule.

Administrative burden and product availability were among the factors that weighed most heavily in this decision. Commenters who favored the 35 percent by weight standard argued that

- It was consistent with standards already in place through voluntary programs such HUSSC and the Alliance for a Healthier Generation,
- Sugar is commonly reported by weight by industry and others,
- Calculators for sugar by weight already exist to aid school food service professionals in their calculations,
- The sugar as a percent of calories standard would negatively affect food service revenues; and
- Sugar by weight allows greater flexibility in the products available to students.

The first four of these points suggest that the sugar by weight standard will be less costly to implement for both the schools and industry that have already invested in that standard. Schools that are new to competitive food reform will also benefit from the sugar by weight standard to the extent that industry has already developed products designed to meet the demand of HUSSC schools and schools that follow Alliance guidelines.

The alternate percent of calories standard, by contrast, would have added to some schools' cost of compliance with the rule. It would have been most disruptive and potentially costly to schools that have already established relationships with suppliers and distributors who provide the schools with products intended to meet the sugar by weight standard.

The net effect on industry of choosing the weight standard over the calorie standard is unclear. Manufacturers and distributors that have already invested in supplying schools with products that meet the sugar by weight standard may realize the greatest immediate benefit. Comments from representatives of the vending industry point to that industry's voluntary efforts to support schools that follow Alliance guidelines on competitive foods, and urged USDA to adopt standards consistent with those guidelines. The interim final rule's sugar standard, in combination with some of the other changes to the rule, aligns the rule with more of the existing products that meet the sugar by weight and other Alliance guidelines. Manufacturers as well as distributors of such products may see additional demand once all schools implement the rule.

Not all sectors of the food industry favored the sugar by weight standard. Compared to the alternate sugar as a percent of calories standard, the weight standard may be more difficult to meet for sugar-sweetened products with low moisture content, where the ratio of fat to sugar may mean the difference between compliance and non-compliance. Because a gram of fat has more than twice as many calories as a gram of sugar, snack products and desserts with a relatively high fat content (from nuts or chocolate, for example) may be less likely to meet the interim final rule's weight-based sugar standard although they might have met the alternative calorie-based standard.[36] Where product reformulation is an option, manufacturers of non-compliant snacks may choose to incur those costs.

Naturally Occurring Ingredients and Fortification

Competitive foods that do not satisfy one of the interim final rule's food group requirements may be sold in school if they contain at least 10 percent of the daily value of one of several nutrients of concern (i.e., calcium, potassium, vitamin D, and fiber), but only through June 2016. Beginning July 1, 2016 this criterion will be obsolete and may not be used to qualify an item as an allowable competitive food.

The primary alternative considered by USDA was the proposed rule's handling of nutrients of concern. The proposed rule would have allowed products that met the 10 percent threshold, but only through the use of naturally occurring ingredients. In addition, the proposed rule would have made this option permanent.

USDA's decision to modify the proposed rule provision was driven primarily by concerns other than cost or administrative burden. However, in the critical early months of implementation, the interim final rule offers one administrative cost advantage relative to the proposed rule. Because the 10 percent threshold need not be met with only naturally occurring ingredients, the interim final rule potentially allows a number of existing fortified foods to be sold as competitive foods. This may reduce costs and positively impact SFA competitive food revenues by ensuring the widest availability of compliant products during a 24-month transition to an entirely food-based set of standards.

Low Calorie Beverages in High Schools

The proposed rule offered two alternatives for public comment on lower-calorie beverages for high school students. The first would have permitted up to 40 calories per 8 fl oz serving (and 60 calories per 12 fl oz). The second would have allowed up to 50 calories per 8 fl oz serving (and 75 calories per 12 fl oz). The higher 50 calorie limit would have permitted the sale of national brand sports drinks in their standard formulas. The lower 40 calorie limit would have allowed only reduced-calorie versions of those drinks. The interim final rule adopts the lower 40 calorie limit as the better alternative to limit the consumption of added sugar in beverages sold in school, and to further advance the public health goals of the rule.

This decision was driven by the health benefits of the lower calorie standard. Although the 40 calorie standard in the interim final rule does not go as far as recommended by some public health groups, it will have a substantial effect on the types of sweetened beverages offered in high schools.[37] In particular, the 40 calorie standard falls below the sugar content of popular sports drinks in their standard formula.

Food and foodservice industry representatives, as well as some school administrators, favored the higher calorie

[35] FNS will provide guidance to ensure that State policies are consistent with the legislative requirement that exemptions for fundraisers are ''infrequent'' (Pub. L. 111–296).

[36] Certain varieties of trail mix, granola bars, and whole grain cookies sometimes fall into this group. Two examples from the USDA's National Nutrient Database for Standard Reference (release 24) are product IDs 25056 (chocolate coated granola bar) and 18533 (iced oatmeal cookie).

[37] Both the standard adopted for the interim final rule as well as the 50 calorie alternative, would end the sale of sweetened beverages in elementary and middle schools.

limit. The beverage industry has invested in developing and marketing products that meet the Alliance for a Healthier Generation's 66 calorie per 8 fl oz guideline, and may have been better positioned to meet a 50 calorie standard than the interim final rule's 40 calorie standard. There may be fewer products currently available that meet or can be reformulated to meet the interim final rule standard. If so, then the immediate transition to the interim final rule may be more challenging for manufacturers, distributors, and vending machine operators, as well as SFAs, student organizations, and other non-SFA school groups that rely on the sale of such beverages. However, while some businesses may face a reduced market for their products, at least in the short term, manufacturers and distributors of competing lower calorie products have an opportunity to increase sales.

Caffeinated Beverages

Consistent with IOM recommendations, the proposed rule required that beverages served to elementary and middle school students be caffeine free or include only small amounts of naturally occurring caffeine. The proposed rule, however, did not put caffeine restrictions on products for high school students; a departure from the IOM guidelines. Many of the comments from health professionals and school officials expressed concern about the effects of large amounts of caffeine on adolescents and suggested that the Department either disallow caffeinated beverages at the high school level entirely, or at least provide some guidelines for caffeine limits. After considering these comments, and because of the lack of an accepted standard for caffeine consumption by high school-aged students, USDA retains the proposed rule standard. The interim final rule retains maximum flexibility for high schools, allowing the continued sale of beverages containing caffeine. At the same time, in response to concerns expressed by health professionals, USDA encourages schools to consider the high caffeine content of beverages such as energy drinks before considering their sale. To the extent that caffeinated products generate revenue for schools, the interim final rule will have a lesser economic impact on SFAs and other school groups than the primary alternative considered by USDA.

Appendix B

Regulatory Impact Analysis

Agency: Food and Nutrition Service, USDA.

Title: Nutrition Standards for All Foods Sold in School.

Nature of Action: Interim Final Rule.

Need for Action: Section 208 of the Healthy, Hunger-Free Kids Act of 2010 requires the U.S. Department of Agriculture (USDA) to establish science-based nutrition standards for all foods sold in schools during the school day, outside the school meal programs. The standards in this interim final rule are intended to complement USDA's efforts to ensure that *all* foods sold at school—whether provided as part of a school meal or sold in competition with such meals—are aligned with the latest dietary recommendations. The standards will work in concert with recent improvements in school meals to support and promote diets that contribute to students' long-term health and well-being. The standards will support efforts of parents to promote healthy choices for children, at home and at school.

Affected Parties: All parties involved in the operation and administration of programs authorized under the National School Lunch Act or the Child Nutrition Act that operate on the school campus during the school day. These include State education agencies, local school food authorities, local educational agencies, schools, students, and the food production, distribution, and service industry.

Abbreviations:

DGA Dietary Guidelines for Americans
FDA Food and Drug Administration
FMNV Foods of Minimal Nutritional Value
FY Fiscal Year
GAO Government Accountability Office
HHFKA Healthy, Hunger-Free Kids Act
IOM Institute of Medicine
LEA Local Educational Agency
NSLP National School Lunch Program
SBP School Breakfast Program
SFA School Food Authority
SLBCS–II School Lunch and Breakfast Cost Study II
SNDA–III School Nutrition Dietary Assessment III
SNDA–IV School Nutrition Dietary Assessment IV
SY School Year
USDA United States Department of Agriculture

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I. Introduction

A. Overview

There has been increasing public interest in the rising prevalence of overweight and obesity in the United States, particularly among children. The school nutrition environment is a significant influence on children's health and well-being. Recent studies have shown that children typically consume between 26 and 35 percent of their total daily calories at school, and as much as 50 percent for children who participate in both school lunch and breakfast programs (Fox 2010; Guthrie, et al., 2009).

In response to these concerns, the Healthy Hunger-Free Kids Act (HHFKA) of 2010 required USDA to establish science-based nutrition standards for all foods sold in schools during the school day. The standards are intended to complement the Department's efforts to ensure that *all* foods sold at school—whether provided as part of a school meal or sold in competition with such meals—are aligned with the latest dietary recommendations.

The interim competitive food standards will work in concert with recent improvements in school meals to support and promote diets that contribute to students' long-term health and well-being. Congress highlighted the relationship between school meal improvements and standards for other school foods, noting that the prevalence of ''unhealthy [competitive] foods in our schools not only undermines children's health but also undermines annual taxpayer investments of over $15.5 billion in the National School Lunch and School Breakfast Programs'' (Senate Report 111–178, p. 8).

The benefits sought through this rulemaking focus on improving the food choices that children make during the school day. A growing body of evidence tells us that giving school children healthful food options will help improve these choices. A recent, comprehensive, and groundbreaking assessment of the evidence by the Pew Health Group and Robert Wood Johnson Foundation (2012) concluded that:

- A national competitive foods policy would increase student exposure to healthier foods and decrease exposure to less healthy foods, and
- Increased access to a mix of healthier food options is likely to improve the mix of

foods that students purchase and consume at school (Pew, RWJF, 2012, p. 61).[38]

Researchers for Healthy Eating Research and Bridging the Gap, Robert Wood Johnson Foundation-sponsored research programs examining environmental influences on youth diets and obesity, concluded that strong policies that prohibit or restrict the sale of unhealthy competitive foods and drinks in schools improve children's diets and reduce their risk for obesity (Healthy Eating Research and Bridging the Gap, 2012, p. 3).

Because setting national standards will change the range of food products sold in schools, they may affect the revenues schools earn from these foods, as well as participation in school meals. The evidence on the overall impact of competitive food standards on school revenues is mixed. However, a number of schools implementing such standards have reported little change, and some increases, in net revenues.[39]

B. Background

Children generally have two options for school food purchases: (1) Foods provided under the National School Lunch Program (NSLP), the School Breakfast Program (SBP), or other child nutrition programs authorized under the National School Lunch Act or the Child Nutrition Act, and (2) competitive foods purchased à la carte in school cafeterias or from vending machines at school. NSLP is available to over 50 million children each school day; an average of 31.6 million children per day ate a reimbursable lunch in fiscal year (FY) 2012.[40] Additional children are served by the Child and Adult Care Food and the Summer Food Service Programs that operate from NSLP and SBP participating schools. While meals served through these programs are required to meet nutritional standards based on the most recent *Dietary Guidelines for Americans* (DGA), competitive foods are subject to far fewer Federal dietary standards. Existing regulations address only the place and timing of sales of foods of minimal nutritional value (FMNV).[41]

The sale of food in competition with Federal reimbursable program meals and snacks is widespread. In school year (SY) 2009–2010, 86 percent of all schools—and 90 percent or more of middle and high schools—offered à la carte foods at lunch. Vending machines were available in 37 percent of all schools, including 13 percent of elementary schools, 67 percent of middle schools, and 85 percent of high schools (Fox, et al., 2012, Volume 1, p 3–32).[42] Revenues from competitive foods, however, are far smaller on average than revenues from USDA-funded school meals. In SY 2005–2006, an average 84 percent of public school food authority (SFA) revenue was derived from reimbursable school meals, from a combination of USDA subsidies, State and local funds, and student meal payments. The remaining 16 percent was derived from non-reimbursable food sales (USDA 2008, p xii).[43] Half of secondary school students consume at least one snack food per day at school, an average of 273 to 336 calories per day. This amount is significant considering that an extra 110 to 165 calories per day may be responsible for rising rates of childhood obesity (Fox et al. 2009, Wang et al. 2006).

Many observers, including parents and military leaders, have expressed concerns about the competitive foods available to children at school (Gordon, et al., 2007; Christeson, Taggart, and Messner-Zidell, 2010; Christeson, et al., 2012). In response, a number of States have implemented competitive food standards. In 2004, GAO reported that 21 States had created standards that went beyond existing Federal standards. In 2010, the School Nutrition Association reported that the number of States with competitive food policies had increased to 36.[44] [45] In a 2012 assessment of competitive food standards across the U.S., the Centers for Disease Control and Prevention (CDC) reported that 39 States had established competitive food policies as of October 2010 (CDC, 2012, p. 6).[46] Finally, a 2012 study conducted for FNS found that at least half of States had competitive food standards for foods sold à la carte, in vending machines, in school stores, and in snack bars, and almost half had nutrition standards for foods sold in bake sales (Westat, 2012, p., 5–25).

The Pew Health Group and Robert Wood Johnson Foundation recently reviewed data on the types of snack foods and beverages sold in secondary schools via vending machines, school stores, and snack bars.[47] The data were extracted from a biennial assessment from the CDC that uses surveys of principals and health education teachers to measure policies and practices across the nation. Key findings show:

- The availability of snack foods in secondary schools varies tremendously from state to state, and this variation is likely the result of a disparate patchwork of policies at the state and local levels. Fewer than five percent of school districts have food and beverage policies that meet or exceed the 2010 Dietary Guidelines for Americans.
- ''Under this patchwork of policies, the majority of our nation's children live in states where less healthy snack food choices are readily available (p. 3).''

Overall, the availability of healthy snacks such as fruits and vegetables is limited. The vast majority of secondary schools in 49 states *do not* sell fruits and vegetables in snack food venues (Pew Health Group, 2012).

C. Baseline Competitive Food Revenue

As shown in Table 1, we estimate that overall revenue in SFAs will be about $35 billion to $37 billion each fiscal year between 2015 and 2018.[48] Overall revenue includes the value of Federal reimbursements for NSLP and SBP meals,[49] student payments, and State and local contributions. These estimates are derived from the relationship between Federal reimbursements and total SFA revenue estimated in the School Lunch and Breakfast Cost Study (SLBCS–II) (USDA 2008).

USDA's most recent budget projections forecast a total of $16.8 billion in Federal meal reimbursements in FY 2014. We use

[38] The Pew Health Group and the Robert Wood Johnson Foundation publication is a formal Health Impact Assessment (HIA), prepared in accordance with North American HIA Practice Standards and National Research Council Guidelines. The HIA reviewed and synthesized exiting research findings on the potential impacts on children's health and the effects on school revenue as a result of competitive school food policies. The researchers also conducted interviews with experts in the public health community, academia, industry, educators, school administrators, parents, and students.

[39] See Pew, RWJF, 2012, chapter 4, for a recent review of the literature on the revenue impacts of State and local competitive food policies.

[40] *http://www.fns.usda.gov/pd/slsummar.htm.*

[41] FMNV include carbonated beverages, water ices, chewing gum, hard candy, jellies and gums, marshmallow candies, fondant, licorice, spun candy, and candy-coated popcorn. The current policy restricts the sales of FMNV during meal service in food service areas. See 7 CRF 210.11.

[42] SNDA–IV found the top five most commonly offered à la carte lunch items were milk, juice and water, snacks, fruit, and vegetables. For vending machines, the most commonly offered items were juice and water, other beverages (for example, carbonated and energy drinks, coffee and tea, etc.) snacks, and baked goods.

[43] These revenue figures are averages. Some SFAs receive substantially greater shares of total revenue from competitive foods. Schools at or above the 75th percentile in terms of percent of revenue from competitive foods generated an average 34 percent of total revenue from competitive foods. Those at or above the 90th percentile generated an average 40 percent of revenue from competitive foods.

[44] GAO–04–673. April 2004. The GAO identified 23 States, but 2 of the 23 had only created committees to assess competitive food issues. The report considered both timing of competitive foods sales and the types of products offered. In terms of timing, of the 21 States with competitive food policies, 14 limited access to competitive foods at times associated with meal periods, 5 limited competitive food sales during the entire school day, and 2 States varied the standards by the type of school. In terms of the types of foods, 6 of the 21 States limited access to all competitive foods, 8 limited access only to FMNV, and 7 States limited selected competitive foods. Seventeen of the States limited access at all grade levels, while the remaining 4 States had policies that applied only to selected schools. GAO also found that within States, individual schools and districts had policies that were stricter than the State standards.

[45] Similar to the GAO report, a report from the School Nutrition Association (SNA) indicates 23 States had competitive food policies on or before 2004. There is at least one difference among the States identified by GAO and those identified by SNA, but it is not clear how many other discrepancies may exist.

[46] Two of these States had not established standards at the time of the report's publication, though legislation in both States requires the establishment of standards. CDC included State laws, regulations, and policies enacted or passed since October 2010. We use the term policy to generically refer to all three.

[47] ''Out of Balance: A Look at Snack Foods in Secondary Schools across the States,'' The Pew Health Group and the Robert Wood Johnson Foundation (2012). The report examines data contained in N.D. Brener et al., ''School Health Profiles 2010: Characteristics of Health Programs Among Secondary Schools in Selected U.S. 21 Sites,'' U.S. Department of Human Services, Centers for Disease Control and Prevention (2011).

[48] The FY 2014 baselines in Table 1 are partial year figures; they include revenues from July 2014, the effective date of the rule's competitive food standards, through the end of the fiscal year.

[49] estimates prepared for the FY 2014 President's Budget

findings from the SLBCS–II about the relationship between Federal meal reimbursements and overall SFA revenue to derive an estimate of $32.5 billion in SFA revenue in FY 2014, and then adjust this upward for HHFKA impacts[50] to a total of $34.4 billion in SFA revenue in that year.

Our estimate of competitive food revenues under current policies and practices also uses SLBCS–II[51], which showed that SFA competitive food revenue accounted for 15.8 percent of overall SFA revenue prior to HHFKA. For FY 2014, we begin with the estimated $32.5 billion in SFA revenue that excludes the effects of HHFKA on Federal meal reimbursements and student payments for program meals and competitive foods. For FY 2014, that implies baseline SFA competitive food revenues of $5.1 billion.[52] We add an estimated $1.3 billion increase in competitive food revenue from HHFKA Section 206 to get an adjusted $6.5 billion in SFA competitive food revenue.[53]

To estimate the proportions of these revenues generated by à la carte sales and vending machines, we use SNDA–III data to show that about 98.3 percent of SFA competitive food revenue was generated by sales of à la carte foods; virtually all of the rest, 1.7 percent, was generated by vending machine sales.[54]

Data from SNDA–III indicate that 95 percent of competitive food revenue accrues to SFA accounts; just five percent of competitive food revenue accrues to non-SFA student, parent and other school group accounts.[55] Our estimate of competitive food revenue generated by these groups in FY 2014 is $270 million.[56] If none of the competitive food revenue raised by non-SFA school groups comes from à la carte, then à la carte sales accounted for roughly 93 percent (= 0.98 × 0.95) of total SFA and non-SFA competitive food revenue.

We inflate these figures for 2015 through 2018 based on the assumptions in the President's Budget. Because the rule will take effect in July 2014, the start of SY 2014–2015, we reduce the FY 2014 figures in Table 1 to include only the last three months of the fiscal year—about 14 percent of the full-year figures.[57]

TABLE 1—BASELINE COMPETITIVE FOOD AND OVERALL SFA REVENUE

	Fiscal Year (millions)					
	2014*	2015	2016	2017	2018	Total
Baseline SFA revenue (all sources)	$4,781	$35,039	$35,713	$36,436	$37,273	$149,243
Baseline competitive food revenue	$935	$6,923	$7,091	$7,282	$7,432	$29,663
SFA revenue	$897	$6,649	$6,812	$7,000	$7,143	$28,501
à la carte	882	6,536	6,697	6,881	7,022	28,017
vending and other sources	15	113	116	119	121	485
Other school group revenue	$38	$274	$278	$283	$289	$1,162
à la carte	0	0	0	0	0	0
vending and other sources	38	274	278	283	289	1,162

*The FY 2014 figures include July–September only which is 13.9 percent of the FY 2014 full year estimate.

Other school groups generate their competitive food revenue from periodic fundraisers, vending machines, snack bars, and school stores. These groups include student clubs, parent teacher organizations, or parent organizations supporting sports, music, and other enrichment activities. Much of the non-SFA competitive food revenue is controlled by school principals for special school events, sports, or general fundraising.

Given the implementation of Section 206 and significant State and local school food initiatives adopted since SY 2004–2005, our baseline estimate of competitive food revenue generated by other school groups is uncertain.

D. Previous Recommendations and Existing Standards

Although HHFKA established Federal authority for comprehensive nutrition standards for all foods in school, efforts to define and implement such standards have been underway for a number of years. Our analysis briefly describes these activities to provide additional context for the interim final rule.

1. Institute of Medicine Recommendations

In 2005, Congress directed CDC to commission the Institute of Medicine (IOM) to develop a set of nutrition standards for competitive school foods (House Report 108–792). *Nutrition Standards for Foods in Schools: Leading the Way toward Healthier Youth* is the result of the work done by the IOM and contains its recommendations for nutrient and other standards. The committee began by identifying a set of guiding principles based on the premise that maintaining a healthy weight is important for children and noting the important role that schools play in children's lives. These

[50] The estimated increase in SFA revenues in 2014 from these provisions is $581 million for reimbursable meals, and $1.3 billion for competitive food revenue, for a total increase of about $1.9 billion. See 76 **Federal Register** 35301–35318, especially p. 35305.

[51] For purposes of this analysis we assume that the revenue generated from competitive food sales has increased at the same rate as the growth in SFA revenue from reimbursable paid lunches. For years after FY 2012, we assume that baseline competitive food revenue will increase at the same rate as the projected increase in SFA revenue from reimbursable paid lunches contained in the FY 2014 President's Budget.

[52] $32.5 billion × 15.8% = $5.1 billion.

[53] HHFKA Section 206 is a competitive food pricing reform designed to ensure that revenues generated from competitive foods are at least equal to their share of SFA food costs. Section 206 is intended to correct a historic subsidy of competitive foods with revenue from reimbursable meals. Where necessary to meet this requirement, SFAs are required to raise prices charged to students for competitive foods. The $1.3 billion adjustment for Section 206 in this paragraph is USDA's estimate of the net impact of those price increases on SFA revenues. See 76 **Federal Register** 35301–35318, Table 2.

[54] ERS analysis of unpublished data from the third School Nutrition Dietary Assessment Study, SNDA–III, (Gordon, et al., 2007).

[55] ERS analysis of unpublished SNDA–III data. Note that SNDA–III may underestimate other school group revenues to the extent that these groups share in revenue from school stores that sell food or engage in separate fundraising events. SNDA–III reports that 44 percent of schools allow student group fundraisers, but 75 percent of those schools tend to hold them less than once per week. Just 14 percent of schools operated snack bars or school stores that might generate revenue for non-SFA school groups. For this reason, we believe that our estimates capture the larger share of revenue raised by these groups. According to SNDA–III's principals' surveys, 44 percent of schools sold competitive foods in vending machines and through periodic fundraisers in SY 2004–2005. Just 11 percent of schools sold competitive foods in school stores, and just 3 percent sold competitive foods in school snack bars. See Gordon, et al., 2007, vol. 1, pp. 77–79.

[56] Because other school groups do not generate revenue from à la carte sales, we start with the SFA competitive food revenue excluding our estimate of the SFA competitive food revenue increase from HHFKA, which is almost entirely from à la carte sales. Our FY 2014 competitive food baseline for other school groups is therefore: [($32.5 billion × 15.8 percent) ÷ 0.95] × .05 = $270 million.

[57] The FY 2014 figures in Table 1 are 13.9 percent of our full year FY 2014 estimates. 13.9 percent is the ratio of paid reimbursable lunches served from July through September 2012 to the number of paid reimbursable lunches served from October 2011 through September 2012. We use paid reimbursable lunches, rather than total lunches or total Federal reimbursements, as the best proxy (among available administrative data) for the share of competitive foods purchased in the last three months of the fiscal year. An unpublished ERS analysis of SNDA–III data found that schools with the greatest share of children eligible for paid meals generate far more competitive food revenue than schools with higher percentages of free or reduced-price eligible children. For SFA revenue, the figure in Table 1 is equal to $34.4 billion × 13.9 percent, or $4.8 billion.

principles then guided the IOM in advocating that all foods available in schools be required to meet nutrition standards (IOM, 2007a, p. 3).

The committee set out its recommendations, first arguing that Federal nutrition programs be the primary source of foods and beverages at school and second, that nutrition standards based on the Dietary Guidelines for Americans (DGA) be implemented for all foods and beverages offered to all school-age children (IOM, 2007a). These recommendations were followed by a discussion of a two-tier system consisting of foods and beverages to be encouraged (Tier 1) and a second tier consisting of snack foods that do not meet Tier 1 criteria but still meet the recommendations for fats, sugars, and sodium set forth in the DGA. Following the IOM recommendations, à la carte entrées would be required to be on the NSLP menu and meet Tier 1 criteria with two exceptions: the amount of allowed sodium would increase from 200 milligrams (mg) to no more than 480 mg, and the 200 calorie limit imposed on Tier 1 foods would not apply; à la carte entrées would have to meet the calorie content of comparable NSLP entrée items.

2. Voluntary Standards

USDA's *HealthierUS School Challenge* (HUSSC), and the Alliance for a Healthier Generation's *Healthy Schools Program* offer two models of voluntary standards adopted by many schools across the country.

HUSSC began in 2004 as a way to promote healthier school environments through nutrition and physical activity, with four award levels: bronze, silver, gold, and gold of distinction. HUSSC includes standards for competitive foods that are similar to the standards in the proposed rule. At all award levels, competitive foods and beverages must meet the following standards:

- No more than 35 percent of calories from total fat (excluding nuts, seeds, nut butters and reduced-fat cheese),
- Less than 0.5 grams (g) trans fats per serving,[58]
- No more than 10 percent saturated fat (reduced-fat cheese is exempt),
- Total sugar at or below 35 percent by weight (includes naturally occurring and added sugars. Fruits, vegetables, and milk are exempt),
- Portion sizes may not exceed the serving size of the food served in school meals and no other competitive foods may exceed 200 calories (as packaged).
- Only lowfat or nonfat milk and USDA approved alternative dairy beverages may be offered,
- Milk serving size is limited to 8-fluid ounces,
- 100 percent fruit and vegetable juices with no sweeteners or non-nutritive sweeteners, and
- Water that is non-flavored, non-sweetened, non-carbonated, non-caffeinated, without non-nutritive sweeteners is allowed.

Variable standards, depending on award level, include:

- For bronze and silver awards, competitive food standards apply to foods sold in the meal service area during meal periods.
- For gold and gold of distinction awards, competitive food standards apply anywhere in the school and at any time during the school day.
- For bronze, silver, and gold awards, sodium cannot exceed 480 mg for snack foods or 600 mg for entrées.
- For gold of distinction awards, sodium cannot exceed 200 mg for snack foods or 480 mg for entrées.

By May 2013, over 6,500 schools in 49 States and the District of Columbia had become certified HUSSC schools, and all of these schools, regardless of award level, have already moved at least part way to the interim competitive food standards.[59]

Similar to HUSSC, the Alliance for a Healthier Generation's Healthy Schools Program is comprised of schools that voluntarily adopt Alliance competitive food standards. According to an Alliance fact sheet,[60] the competitive food standards are:

- No more than 35 percent of calories from total fat,
- No more than 10 percent of calories from saturated fat,
- 0 g trans fat,
- No more than 35 percent sugar by weight,
- No more than 230 mg sodium for snacks and no more than 480 mg sodium for dairy products, soups, and vegetables with dips, and
- Graduated calories for elementary, middle and high schools (150, 180, and 200 calories, for elementary, middle, and high schools respectively).

The Alliance for a Healthier Generation also recommends schools serve whole grain products; fresh, canned, or frozen fruit (in fruit juice or light syrup); and non-fried vegetables. As with the HUSSC schools, the more than 15,000 schools currently participating in the Alliance for a Healthier Generation program have also moved their competitive food standards towards those in the interim final rule.[61]

3. Competitive Food Standards in Five Largest States

The five States with the largest numbers of students enrolled in NSLP-participating schools are California, Florida, Illinois, New York, and Texas. These States account for 37 percent of all students enrolled nationally in NSLP participating schools (18.9 million students). All five of these States have had some level of school competitive food policies in place since 2004 or earlier. Thus, school districts in these States have already confronted some of the challenges of transitioning students toward improved competitive foods and have dealt with the consequences of changes in overall revenues.

In *California,* elementary children may purchase only milk (2% or less), soy, rice, other nondairy milk, fruit or vegetable juices that are at least 50 percent juice with no added sweeteners, and water with no added sweeteners. Generally, foods must not have more than 35 percent of calories from fat, 10 percent of calories from saturated fat, 0 calories from trans fat, and no more than 35 percent sugar by weight. Foods must also have no more than 175 calories per individual food item. Nuts, nut butters, seeds, eggs, cheese packaged for individual sale, fruit, vegetables that have not been deep fried, and legumes are also allowed for purchase. These standards apply regardless of the time of day.

Secondary school children may purchase water, milk (2% or less), soy, rice, and other nondairy milk, fruit and vegetable drinks that are at least 50 percent juice, and electrolyte replacement beverages with no more than 42 g of added sweetener per twenty fluid ounces. Snack items must be no more than 250 calories per item and à la carte foods may have no more than 400 calories per entrée and no more than four g of fat per 100 calories. Entrées from NSLP meals are also allowed. These standards are in place from 30 minutes before the school day through 30 minutes after the school day (California Education Code sections 49430–49436).

Florida does not allow any competitive food sales on elementary school campuses during the day and does not allow competitive foods from vending, school stores, and other food sales in secondary schools until an hour after the last lunch period. Carbonated beverages are allowed for high school students if 100 percent fruit juices are also available where those beverages are sold but may not be sold where breakfast or lunch is being served or eaten (Florida Administrative Code 6A–7.0411).

Illinois policy on competitive foods applies only to grades eight and below, for foods sold during the school day, with the exception of foods that are sold as part of a reimbursable meal or sold within the food service area. Allowable beverages include water, reduced fat, lowfat, and nonfat milk; rice, nut, or soy reduced-fat milk; fruit and vegetable drinks that are at least 50 percent fruit juice; and yogurt or ice-based smoothie drinks with fewer than 400 calories that are made with fresh or frozen fruit or fruit drinks containing at least 50 percent fruit juice.

Foods that are allowed to be sold outside food service areas or within food service areas other than during meal service must have no more than 35 percent of calories from fat and 10 percent of calories from saturated fat, no more than 35 percent sugar by weight, and may not contain more than 200 calories per serving. Nuts, seeds, nut butters, eggs, cheese packaged for individual sale, fruits or non-fried vegetables, or lowfat yogurt products are also allowed (Illinois Administrative Code Title 23 section 305.15).

New York State broadly restricts the sales of FMNV and ''all other candy'' from the

[58] Current rules allow manufacturers to report a product has ''zero grams'' of trans fat as long as there are less than 0.5 g trans fat per serving. See 21 CFR Part 101.62.

[59] FNS HealthierUS School Challenge at *http://www.fns.usda.gov/tn/healthierus/index.html.* A nutrition standards chart is available at *http://www.fns.usda.gov/tn/healthierus/award_chart.pdf.*

[60] Alliance for a Healthier Generation School Competitive Food Guidelines. Available at *http://www.k12.wa.us/ChildNutrition/SchoolWellness/School_Comp_food_guidelinest.pdf.*

[61] School participation numbers are from the Healthy School Program, Alliance for a Healthier Generation Web site. *https://schools.healthiergeneration.org/how_it_works/program_overview/healthy_schools_program_in_your_state/.*

beginning of the school day through the end of the last scheduled meal period (New York Education Code section 915). New York's State Education Department, however, allows competitive food standards to be set at the district level (DiNapoli, 2009) and New York City, for example, has adopted standards that are much more rigorous than the State-level standards.

Competitive food sales standards within New York City schools apply to food sales from the beginning of the school day through 6 p.m. weekdays. Students can sell New York State Department of Education approved foods in schools any time during the day, as long as the sale occurs outside of the school cafeteria. PTAs can hold a monthly fundraiser during the day with non-approved food items as long as the sale occurs outside the cafeteria and complies with standards set in the Chancellor's Regulations. Allowed beverages include water or low-calorie drinks without artificial flavors or colors with 10 calories per eight ounces for elementary and middle schools and 25 calories per eight ounces in high schools. Lowfat and nonfat milk are also allowed (New York Education Code section 915).

New York City has also implemented nutrition standards for all foods sold in vending machines in city facilities, including schools. Accordingly, New York City requires that all foods in vending machines meet the following per-package requirements: ≤ 200 calories, ≤ 7 g fat, ≤ 2 g saturated fat, ≤ 200 mg sodium, ≤ 10 g sugar, and ≥ 2 g fiber for grain or potato-based items (Kessler, Walcott, and Farley, 2013). In addition, snack vending machines are not permitted in schools with students in pre-kindergarten through fifth grade. For students above grade five, competitive foods (from other than vending machines) must have no more than 35 percent of calories from fat (nuts and nut butters are exempt), less than 10 percent of calories from saturated fat, and 0.5 g or less of trans fat; no more than 35 percent of calories from sugar (fruit products with no added sugar are exempt), less than 200 total calories, may not exceed 200 mg sodium, and grain-based products must contain at least two grams of fiber per serving (New York City, 2010).[62]

Texas State policy does not allow the sale of FMNV until after the end of the last scheduled class period in any grades. All schools must offer fruits and vegetables daily at all points of service and the fruits and vegetables must be fresh whenever possible. Frozen and canned fruits (in natural juice, water, or light syrup where possible) may also be served.

Individual food items may not contain more than 23 g of fat per serving, with the exception that once per week one food with 28 g (1 ounce) of fat per serving is allowed. Schools must eliminate deep-fat frying as a method of on-site preparation for foods served as part of reimbursable school meals, à la carte, snack lines, and competitive foods. Servings of potatoes may not exceed three ounces, may be offered no more than once per week, and students may only purchase one serving at a time. Baked potato products (wedges, slices, whole, new potatoes) that are produced from raw potatoes and have not been pre-fried, flash-fried or par-fried in any way may be served without restriction.

All schools must offer two percent, lowfat, or nonfat milk at all points where milk is served. Elementary schools must serve only milk, unflavored water and 100 percent fruit and or vegetable juice. In secondary schools, beverages must contain no more than 30 g sugar per eight fluid ounces (Texas Administrative Code Title 4 sections 26.1–26.9).

While none of these States have policies that match all of the standards in the interim final rule, California, Illinois, and New York City meet several. California meets the interim standards for total, saturated, and trans fats and sugar. Illinois meets interim standards for calories, total and saturated fat, and sugar. New York City meets interim standards for total, saturated, and trans fats, sodium, and sugar. On the other end of the spectrum, Texas only provides a standard for total fat (though it is more restrictive than the interim final rule), and Florida does not set specific nutrient standards.

Table 2 provides a summary description of a number of existing sets of nutrition standards that are already in place. These include the two voluntary programs discussed previously: the *HealthierUS Schools Challenge* and the Alliance for a Healthier Generation's *Healthy Schools Program*. We have also outlined the standards in effect in four of the five States with the largest numbers of students enrolled in NSLP-participating schools.[63]

TABLE 2—CURRENT COMPETITIVE FOOD STANDARDS[64]

Nutrition standards (per serving)	Healthier U.S. schools* (gold of distinction level)	Alliance for a healthier generation	California	Illinois **	New York City ***	Texas
Snack calories	≤200	≤150 (elementary) ≤180 (middle) ≤200 (high)	≤175 (elementary) ≤250 (secondary)	≤200	≤200.	
Entrée calories	= NSLP serving size.		≤400 (secondary).			
Snack sodium	≤200 mg	≤230 mg			≤200 mg.	
Entrée sodium	≤480 mg.					
Sugar	≤35% by weight	≤35% by weight	≤35% by weight	≤35% by weight	≤35% by calories.	
Total fat	≤35%	≤35%	≤35%	≤35%	≤35%	≤23 g
Saturated fat	<10%	<10%	<10%	<10%	<10%.	
Trans fat	<0.5 g	0%	0%	0%	<0.5 g.	
Milk	8 oz 1% or less	1% or less (must meet calorie standards above).	2% or less	2% or less	1% or less	2% or less
Juice	6 oz 100% juice		50% juice	50% juice		100% juice

* HUSSC has four levels—bronze, silver, gold, and gold of distinction. The nutrition standards for all levels are the same with the exception of sodium. For bronze through gold, the sodium standard is ≤ 480 mg for non-entrées and ≤ 600 mg for entrées.

** Illinois standards apply only to grades 8 and below.

*** New York City standards apply to 5th grade and above. Competitive foods are not allowed for younger school children in New York City. There are City-wide standards for foods in vending machines that are not included.

[62] These city-level food standards became effective in February of 2010 and are different than the State-level standards.

[63] Florida is not included in this summary table because it does not identify nutrient standards. Instead, it bans competitive food sales on elementary school campuses during the school day and does not allow competitive foods from vending, school stores, and other food sales in secondary schools until an hour after the last lunch period.

[64] Many of the standards provide exemptions for nuts, nut butters, seeds, and fruits, etc. Those exemptions are not shown in the table.

II. Development of Federal Standards

Section 208 of the HHFKA requires USDA to establish science-based nutrition standards for all foods and beverages sold on school campuses during the school day, which are identified in this interim final rule. These standards must be consistent with the most recent DGA and authoritative scientific recommendations (Pub. L. 111–296). At the same time, in developing the rule FNS reviewed existing, currently implemented State and local school nutrition and voluntary standards to promote practicality and ease of implementation and considered comments from the public on the proposed rule.

The interim final rule improves the competitive food options available to students by replacing less healthy items with appropriately sized entrées, side dishes, and snacks that emphasize foods from the food groups that are the basis of a healthy diet, consistent with the DGA. In this way, the rule is designed to help ensure the success of school meal standards introduced in July 2012. However, the rule does not prescribe a specific set of competitive foods, nor does it establish targets for particular food groups. Instead, the rule puts students in a position to make their own healthy choices, and encourages the development of healthy habits for life.

The rule establishes guidelines for all foods sold outside of school meal programs on the school campus at any time during the school day. The school day for purposes of this rule extends from midnight to 30 minutes past the end of the official school day. Although some organizations and individuals who submitted comments on the proposed rule suggested we extend this definition of the school day to capture additional after school events, the interim final rule maintains the proposed rule definition. The school campus includes all areas under jurisdiction of the school that are accessible to students.

The preamble to the interim final rule describes how its provisions differ from those of the proposed rule. The preamble also describes the reason for changes relative to the proposed rule. What follows is a brief summary of the interim final rule provisions without further discussion of those changes.

- Competitive foods and beverages must meet the nutrition standards specified in the interim final rule. A special exemption is allowed for foods and beverages that do not meet competitive food standards for the purpose of conducting infrequent school-sponsored fundraisers. Such exempt fundraisers must not take place more than the frequency specified by the State agency. Exempted fundraiser foods or beverages may not be sold in competition with school meals in the food serving area during the meal service.
- NSLP/SBP entrées sold à la carte are exempt from the rule's nutrient standards if sold on the day that they are offered as part of a reimbursable meal or the following school day.
- To be allowable, a competitive food must
  - Meet all of the competitive food nutrient standards; and
  - Be a grain product that contains 50 percent or more whole grains by weight or have as the first ingredient a whole grain; or
  - Have as the first ingredient one of the non-grain major food groups: fruits, vegetables, dairy products, or protein foods (meat, beans, poultry, seafood, eggs, nuts, seeds, etc.); or
  - Be a combination food that contains ¼ cup of fruit and/or vegetable; or
  - For the period through June 30, 2016, contain 10 percent of the Daily Value of a nutrient of public health concern based on the most recent Dietary Guidelines for Americans (i.e., calcium, potassium, vitamin D or dietary fiber). Effective July 1, 2016, the criterion in this paragraph is obsolete and may not be used to qualify as a competitive food; and
  - If water is the first ingredient, the second ingredient must be one of the food items above.
- Fresh, canned, and frozen fruits or vegetables with no added ingredients except water, or in the case of fruit, packed in 100 percent juice, extra light, or light syrup are exempt from the interim final rule's nutrient standards. Canned vegetables that contain a small amount of sugar for processing purposes are also exempt.
- Competitive foods must contain 35 percent or less of total calories from fat per item as packaged or served. Exemptions to the total fat standard are granted for reduced fat cheese and part-skim mozzarella cheese, nuts, seeds, nut or seed butters, products consisting of only dried fruit with nuts and/or seeds with no added nutritive sweeteners or fat, and seafood with no added fat.
- Competitive foods must contain no more than 10 percent of total calories from saturated fat per item as packaged or served. Exemptions to the saturated fat standard are granted for reduced fat cheese and part skim mozzarella cheese, nuts, seeds, nut or seed butters, and products consisting of only dried fruit with nuts and/or seeds with no added nutritive sweeteners or fat.
- Competitive foods must have 0 g of trans fat per portion as packaged.
- Sodium content in snacks is limited to 230 mg per item as packaged or served. In July 2016, the sodium standard will move to 200 mg per portion. Entrée items must have no more than 480 mg of sodium per item as packaged or served, unless they meet the exemption for NSLP/SBP entrée items.
- Total sugar must be no more than 35 percent of weight. Exemptions are provided for dried whole fruits or vegetables; dried whole fruit or vegetable pieces; dried dehydrated fruits or vegetables with no added nutritive sweeteners; and dried fruits with nutritive sweeteners that are required for processing and/or palatability purposes.
- Snack items and side dishes served à la carte must have no more than 200 calories per item as packaged or served, including accompaniments such as butter, cream cheese, salad dressing, etc. Entrée items sold à la carte must contain no more than 350 calories unless they meet the exemption for NSLP/SBP entrée items.
- Accompaniments must be included in the nutrient profile as a part of the item served (technical assistance will be provided).
- Elementary and middle school foods and beverages must be caffeine free with the exception of naturally occurring trace amounts.
- Allowable beverages for elementary students are limited to plain water (carbonated or uncarbonated), lowfat milk (unflavored) and nonfat milk (including flavored), nutritionally equivalent milk alternatives (as permitted by the school meal requirements), and full strength fruit or vegetable juices and full strength fruit and vegetable juice diluted with water or carbonated water. All beverages must be no more than eight ounces with the exception of water, which is unlimited.
- Allowable beverages for middle school students are limited to plain water (carbonated or uncarbonated), lowfat milk (unflavored) and nonfat milk (including flavored), nutritionally equivalent milk alternatives (as permitted by the school meal requirements), and full strength fruit or vegetable juice and full strength fruit or vegetable juice diluted with water or carbonated water. All beverages must be no more than 12 ounces, with the exception of water (which is unlimited).
- Allowable beverages for high school students are limited to plain water (carbonated or uncarbonated), lowfat milk (unflavored) and nonfat milk (including flavored), nutritionally equivalent milk alternatives (as permitted by the school meal requirements), and full strength fruit or vegetable juice and full strength fruit and vegetable juice diluted with water or carbonated water. Milk and milk equivalent alternatives and fruit or vegetable juice must be no more than 12 ounces. Calorie-free, flavored water, with or without carbonation, and other calorie free beverages that comply with the FDA requirement of less than five calories per 8 ounce serving (or less than or equal to 10 calories per 20 fluid ounces) in no more than 20 ounce servings. Beverages of up to 40 calories per eight fluid ounce (or 60 calories per 12 fluid ounce) in no more than 12 ounce servings are also allowed. There is no ounce restriction on water. Beverages containing caffeine are also permitted. Allowable beverages are available in the food service area and elsewhere without restriction.

III. Response to Comments

The proposed rule generated more than 247,000 comments. While most of these were focused primarily on the rule itself, a significant portion touched on issues addressed in the Regulatory Impact Analysis. Many addressed the implications for SFA and other school group revenues, some focused on the effects on industry, and others discussed the impacts on students. Many commenters, regardless of their concern for the revenue impacts of the rule, expressed sentiments that were captured in recent research conducted by the University of Illinois Institute for Health Research and Policy. Specifically, SFA and industry officials as well as organizations devoted to

[64] Many of the standards provide exemptions for nuts, nut butters, seeds, and fruits, etc. Those exemptions are not shown in the table.

public health are interested in ''doing the right thing'' for student health (Bassler, et al., 2013, p. 16). At the same time, the impact on revenues is a concern for SFAs, other school groups, and businesses. Some of these comments also provided additional information for use in the analysis (see Section IV). What follows is a discussion of the major themes in comments that addressed costs, benefits, and other impacts on affected parties.

A. Concerns About Reduced SFA Revenue

The majority of the commenters that addressed SFA finances were concerned that the rule's competitive food standards will reduce school revenue. Generally, the commenters focused on popular existing products that do not meet the proposed standards and will no longer be allowed for sale in à la carte lines, vending machines, or school stores. Both SFA and industry officials expressed concern that the new standards will reduce variety and limit choices. These officials fear that students, especially older students, will respond by purchasing fewer competitive foods and beverages at school.

While representatives from some food industry groups indicated that relatively few of the snack foods now marketed to schools meet the proposed rule standards, other food industry commenters highlighted the work they have done in recent years, in cooperation with schools and non-school interest groups, to provide healthier school food alternatives. One major manufacturer noted that it has introduced more than 50 new products and is continuing to work on new product formulations and packaging. This manufacturer contributed to efforts by schools to earn HUSSC ''Gold of Distinction'' designations; schools that have earned Gold of Distinction status have competitive food standards that meet or exceed the standards in the interim final rule.

USDA acknowledges these efforts by schools and the food industry and recognizes the value in adopting existing or emerging standards to the extent that they facilitate the success of Federal regulations in making school food offerings more consistent with the DGA. To that end, USDA made several changes to the proposed rule which:

- Increase sodium limit on snacks and non-program side dishes from 200 mg per portion as packaged to 230 mg (through June 2016),
- Exempt nuts and nut butters from the rule's total and saturated fat standards,
- Exempt part skim mozzarella cheese from the total and saturated fat standards,
- Allow full strength juice with added water (or carbonated water), and
- Allow fruit packed in light syrup

In addition, the interim final rule adopts the proposed rule's 35 percent by weight standard for sugar over the alternate 35 percent of calories standard.

Each of these changes further aligns the interim final rule with existing NSLP requirements, voluntary HUSSC standards, Alliance for a Healthier Generation, and IOM guidelines. The effect of these changes is to increase the number of already available healthy products, many already for sale in schools that meet interim regulations. This will tend to reduce the risk that SFAs will lose revenue due to the lack of readily available, market-tested products that meet interim final rule standards.[65]

The proposed rule would have prohibited the sale of beverages other than milk, plain water, and 100 percent fruit and vegetable juice in the cafeteria during meal service periods. Many SFA professionals commented on this restriction, noting that allowing these beverages to be sold in other parts of the school campus would disadvantage SFAs relative to other school groups who raise revenue from the sale of these beverages at meal times. These commenters strongly supported removing the ''time and place'' restriction. Restricting the sale of these beverages in the meal service area, while allowing them elsewhere on campus, had the potential to discourage some high school students from even entering the cafeteria at lunch time and considering a reimbursable meal as an option. Other commenters expressed concern with the mixed message sent by the proposed rule which identifies a group of beverages as healthy options for older students, but prohibits students from purchasing them in the cafeteria at meal times. As a direct response to these comments, the interim final rule removes the proposed rule's time and place restriction.

Other commenters argued that the competitive food standards will reduce SFA revenues as students replace in-school purchases with food from home or food purchased off campus. USDA recognizes both of these risks to SFA revenue. In the case of revenue lost to off-campus purchases, however, the risk is limited to relatively few, mostly upper-grade schools. SNDA–III found that 11 percent of all schools and 25 percent of high schools in SY 2004–2005, had open campus policies (Gordon, et al., 2007, vol. 1, pp. 77–79, pp. 96–100). SNDA–IV, conducted in SY 2009–2010, found that only five percent of all schools and 19 percent of high schools had an open campus policy (Fox, et al., 2012; Volume 1, p. 3–29). To the extent that the changes mentioned above increase the variety of snacks and side dishes that meet Federal standards, schools should be able to retain more of their existing competitive food sales, and lose fewer sales to food brought from home or purchased off campus.

A third outcome mentioned by commenters is that some students will turn to reimbursable school meals. The American Public Health Association (APHA) made this point, citing a study that found that students in schools with beverage vending machines were 3.5 times more likely to buy lunch from vending machines than to purchase a school lunch. The APHA concluded that as a result, ''fewer children consume meals at school that meet nutrition standards and have proven health benefits, and schools receive less cash and commodity support through the federal school meal programs'' (APHA comment, April 9, 2013, p. 4).

Peer-reviewed studies offer additional support for this conclusion. Researchers routinely find that competitive food revenue losses following adoption of State or local nutrition standards are at least partially offset by increases in reimbursable meal revenue (see, for example, Wharton, Long, and Schwartz, 2008; Guthrie, Newman, Ralston, Prell, and Ollinger, 2012; Healthy Eating Research and Bridging the Gap, 2012; Bassler, et al., 2013).

B. Relative Contribution of Competitive Food Revenue to SFA Finances

The impact analysis for the proposed rule noted that SFAs received 16 percent of their revenue from competitive food sales on average. This figure is from USDA's school year 2005–2006 School Lunch and Breakfast Cost Study—II (USDA 2008). Comments from representatives of school districts with relatively few free or reduced-price eligible students argued that competitive food revenue accounts for a far bigger share of such districts' food service budgets, and that many rely on competitive food revenue to break even. Other comments indicated that competitive food sales subsidize reimbursable meals in their districts. And several commenters indicated that implementation of the proposed rule would prompt their districts to leave the Federal school meal programs.

We recognize that 16 percent is the average share of SFA revenue from competitive foods and that there is considerable variation across school districts. Some schools, especially those that serve few free or reduced-price meals, may see substantial reductions in competitive food revenue after implementation of Federal standards, at least in the short term. But even districts in this category tend to generate a significant share of their revenue from reimbursable meals. For example, data from the SLBCS–II shows that SFAs whose share of revenue from competitive foods puts them in the top quartile of all districts generated nearly as much from USDA subsidies[66] as they did from competitive foods in SY 2005–2006. USDA subsidies combined with student payments for program meals generated 60 percent of total SFA revenue in those districts; revenue from competitive foods accounted for 34 percent of the total. Even in SFAs whose reliance on competitive food revenue places them at or above the 90th percentile, USDA subsidies and student payments for program meals accounted for more than half of SFA revenue, while competitive food sales contributed just over 40 percent.[67]

These figures are not meant to understate the potential revenue challenge of

[65] The Alliance for a Healthier Generation maintains a list of products that meet Alliance guidelines as a resource to schools. The National Automatic Merchandising Association (NAMA) maintains its own list of products that meet Alliance standards as a resource for vending machine operators and other NAMA members.

[66] Reimbursement for program meals and the value of USDA Food (commodity) assistance accounted for 30 percent of these SFAs' budgets. Student payments for reimbursable meals added another 31 percent. Revenue from competitive foods contributed 34 percent.

[67] The figures for SFAs at or above the 90th percentile are based on a small sample and are subject to greater error than the mean values reported for all SFAs in the SLBCS–II.

implementing nutrition standards for school foods for SFAs that rely heavily on competitive food revenue. But they do indicate that Federal subsidies and student payments for program meals are at least as important as competitive food sales in the great majority of SFAs.[68] FNS is committed to working with the States to facilitate successful implementation of competitive food reform, ensuring that students have access to the healthiest food choices and guaranteeing that the revenue generated from reimbursable meals continues to make an important contribution to the finances of all SFAs.

Elsewhere in this subsection we describe steps taken by FNS, in response to public comments, that better align the rule with standards already embraced by schools through their own competitive food policies, and by the industry groups that make and market those foods to schools. But it is also important to recognize, as a number of commenters observed, that the certainty of national standards has its own independent value. Uniform and definite standards are likely to encourage industry to invest additional resources in new product development.

The school market is important to industry as well as to school foodservice administrators, especially in districts that generate the most revenue from competitive food sales. In those districts, local vendors, distributors, and foodservice management companies will continue to compete for school contracts after the rule's implementation, and can be expected to work creatively to maintain student sales and the value of their own investments. These firms' success will depend in large part on the availability of appealing new products. Their success will also be aided by the efforts of industry associations and public interest organizations that have invested in the development of toolkits and other resources to assist local businesses and their school customers. The rule takes effect 12 months after publication, which gives industry, interest groups, and schools added time to prepare for implementation. In addition, USDA's decision to issue an interim rather than a final rule will provide another opportunity for review to ensure the rule's success.

C. Impacts on School Food Vendors and Manufacturers

Commenters representing various sectors of the food industry expressed concern that the proposed rule would reduce their sales to schools. Much of this concern was expressed by or on behalf of small vendors, distributors, and manufacturers. The National Automatic Merchandising Association (NAMA) noted that some small vending machine operators generate most or all of their revenue from sales to schools. NAMA expressed support for the goals behind USDA's proposed rule, but urged USDA to modify its proposal by adopting standards already embraced by the vending machine industry through one of its voluntary healthy snack programs. NAMA indicated that adoption of competitive food standards aligned with the industry's ''Fit Pick'' program would reduce the impact on small businesses ''on both the revenue and expense sides.'' NAMA's ''Fit Pick'' standards for calories from fat, calories from saturated fat, percent of sugar by weight, total calories per serving, and sodium per serving match the guidelines developed by the Alliance for a Healthier Generation. NAMA urged USDA to adopt the Alliance guidelines for those nutrients, guidelines that both ''the industry and schools are familiar with,'' in order to create ''a simpler and more cost-effective implementation process.'' USDA recognizes that substantive competitive food standards present the vending industry with new challenges. USDA also recognizes that small vending machine operators may have fewer resources available than large firms to manage the transition to the new standards. In response to concerns expressed by several of these small businesses, by industry groups such as NAMA, and by school foodservice administrators, USDA modified its proposed rule standards on sugar and sodium per serving to match the Alliance guidelines.[69] Additional product exemptions from the total fat and saturated fat requirements also move the rule closer to the Alliance guidelines.[70] These changes are intended to reinforce the investment already made by the vending industry, and to help guarantee the industry's successful contribution to a healthier competitive school food environment.

Other food industry commenters, primarily food producers and trade associations, urged delay in the implementation of new standards to allow time for costly product development and reformulation. Some commenters also pointed to the need to allow time for student acceptance of reformulated products, particularly those with reduced sodium levels. Commenters from industry associations recommended delays of 18–36 months-between issuance of final standards and implementation. In response, we note that the standards contained in the interim final rule will take effect in July 2014, a full year after publication. USDA expects that the year between issuance of final standards and implementation will lessen the risk of revenue loss by industry and SFAs due to limited availability or variety of appealing foods that meet the new standards. At the same time, USDA's decision to more closely align some of the rule's nutrient standards with Alliance guidelines ensures that a long list of familiar products already marketed to schools will be available for sale on implementation. Finally, comments from some producer groups recognize the rule's emphasis on fruits, vegetables, whole grains, and lowfat dairy as an opportunity to expand their presence in schools with their existing product lines. This further reduces the risk that schools will be unable to offer a sufficient variety of products that meet the interim final rule requirements.

D. Financial Impacts on Non-SFA School Groups

Other school groups, i.e., school bands, parent teacher groups, and school clubs, earn revenue through the sale of competitive foods in vending machines, school stores, and fundraisers. Some commenters expressed concern that those organizations rely heavily on the sale of foods that do not meet the proposed requirements. Other commenters wrote that the rule would eliminate funding for student organizations. Other commenters noted the importance of lunchtime food sales outside the cafeteria by student groups. In all of these cases, the commenters were concerned with the continued viability of these organizations without revenues from competitive foods.

The National Confectioner's Association pointed out that their products are often sold in fundraisers conducted outside of the school day and off school grounds. School group revenues from those sales are not impacted by the rule, as it places no restrictions on sales that occur away from school or more than 30 minutes after the school day. Sales through vending machines and school stores, or non-exempt fundraisers held on the school campus are, however, required to meet the same standards as other competitive foods.

Some commenters suggested that food sales may not be the best option for raising funds. A comment from the State Director of Child Nutrition Programs for North Carolina pointed out that while school groups rely on fundraisers for important revenue, there are many non-food alternatives that can generate revenue without incurring the potential risk of ''food-borne illness by well-intended groups that may not be sufficiently trained to prepare and serve potentially hazardous foods'' (Harvey, 2013, p. 2). The National PTA, Nemours, a children's health organization, and others also discussed alternative ways for school groups to generate revenue, e.g., walk-a-thons; no-bake bake sales; selling school logo items such as clothing, pens, pencils, and book covers; custom-labeled bottles of water; and book fairs.

Another line of comments expressed support for the proposed rule's general requirement that non-exempt fundraisers comply with the same standards that apply to SFAs. These commenters are concerned that even a limited exemption for occasional fundraisers establishes a loophole that threatens the rule's public health goals and student participation in the reimbursable meals program. Some suggested that exempt

[68] The percentages cited above are based on data collected in SY 2005–2006, several years prior to the SY 2011–2012 implementation of competitive food pricing reforms. At that time, SFA revenues from reimbursable meals tended to subsidize the prices charged for a la carte and other non-reimbursable foods (USDA 2008, Exhibits 7–2 and 7–9). Eliminating the price advantage of competitive foods will, all else equal, increase the appeal of reimbursable meals relative to competitive foods. This rule will further level the playing field by eliminating snack foods of poor nutritional quality as an alternative to program meals. Both of these reforms are expected to increase the contribution of reimbursable meal revenues to SFA budgets.

[69] The interim final rule's 230 mg sodium limit per portion, as packaged, will drop to 200 mg on July 1, 2016.

[70] The Alliance's per-serving calorie guidelines for elementary and middle schools are more restrictive than the calorie standards in the interim final rule. Products that meet the Alliance calorie guidelines also meet the interim final rule standards.

fundraisers should be allowed only outside school hours.

The proposed rule offered two options for infrequent school-sponsored fundraisers that do not have to meet the rule's competitive food standards. The first would allow State agencies to set limits on the number of exempt fundraisers allowed during the year. The second option would require USDA approval of those State agency plans. USDA adopted the less restrictive option, allowing States to set limits on frequency without USDA review. This option reduces the estimated administrative burden of the rule. It also allows individual States, not USDA, to determine how best to balance the interests of SFA officials and child nutrition advocates, who tend to favor more restrictive rules for exempt fundraisers, against the interests of student organizations and industry groups that depend on the revenue from those sales.

E. Effects on School Foodservice Administration

School foodservice directors, foodservice staff, State officials, and foodservice management companies expressed concern about the administrative burden that the proposed rule would place on SFAs. Some commenters were particularly concerned that implementation of competitive food standards would occur before schools have fully adjusted to the administrative challenges of the new lunch and breakfast meal patterns. Others pointed to the burden of identifying whether foods meet the rule standards and noted that that burden would impose ongoing costs as new products are introduced and as kitchen staff develop new recipes. Recordkeeping and monitoring of compliance by non-SFA groups engaged in fundraising also raised concern among foodservice administrators over their need to train and potentially oversee non-SFA staff. USDA acknowledges that the rule imposes new administrative costs on SFA and LEA staff. However, the administrative burden of establishing and documenting compliance with the new standards is necessary to ensure that students realize the benefits of a healthier school food environment. In addition, some of the comments indicated a preference for additional time to implement the standards. USDA does commit to providing the necessary guidance to SFAs and LEAs to clarify their respective documentation and recordkeeping responsibilities.

F. Health Benefits

Some commenters questioned the potential health benefits of the proposed rule, suggesting that school children will not buy healthy snacks but will instead bring food from home or go off campus to buy the foods they want. While some students may refuse to buy healthy snacks that comply with Federal standards, others may respond positively to newly available healthy snacks. The immediate goals of the interim final rule are to encourage healthy eating habits by students who might respond to such encouragement, make healthy snacks an option for students who desire it, reinforce parents' efforts to encourage healthy eating, and support the investment that schools are making in a healthier meals program. The longer-term benefits of achieving these goals are ''improved dietary intake[s] and the long-term health of millions of children across the country'' (Lavizzo-Mourey, 2013, p. 4).

The National Education Association Health Information Network summed up the need for standards, writing, ''[g]iven the high childhood obesity rates in the United States and the important role foods and beverages available for sale in school play in children's diet, it is imperative that competitive foods are held to high standards, as are school meals'' (Howley, 2013, p. 2). The American Heart Association discussed hypertension and the benefits of restricting sodium in diets and noted that children are at risk for developing ''heart disease and elevated blood pressure at an earlier age now because an estimated 97% of them currently consume too much salt'' (Arnett, 2013).

Some of the students who submitted comments expressed interest in making healthy food choices a part of their lifestyles, and that requires healthy options in school. The rule's competitive food standards will contribute to a school environment that supports these students' efforts to eat healthier. Other commenters criticized USDA for substituting government rules for lessons that ought to be learned at home. A number of parents expressed approval that the healthy environments they were creating in their homes, especially with regard to healthy eating behaviors, would be ''supported and encouraged'' at school.

Although some commenters expressed skepticism that the rule could deliver on its promised health benefits, and others criticized the rule as too intrusive on student and school decision-making, few commenters, if any, took issue with the goal of improving the health of American schoolchildren. USDA modified the proposed rule in response to comments that expressed concerns about cost, revenue impacts, and administrative practicality, in order to facilitate successful implementation of the rule and realize its full potential health benefits.

IV. Cost-Benefit Analysis

The rule requires schools to improve the nutritional quality of foods offered for sale to students outside of the Federal school lunch and school breakfast programs.

The key benefit sought through this interim final rule is to improve the food choices that children make during the school day. By helping to ensure that *all* foods sold at school—those provided as part of a school meal or sold in competition with such meals—are aligned with the latest dietary recommendations, the rule should also improve the mix of foods that students purchase and consume at school.

Although the complexity of factors that influence overall food consumption and obesity prevent us from defining a level of dietary change or disease or cost reduction that is attributable to the rule, there is evidence that standards like those in the rule will positively influence—and perhaps directly improve—food choices and consumption patterns that contribute to students' long-term health and well-being, and reduce their risk for obesity.

Any rule-induced benefit of healthier eating by school children would be accompanied by costs, at least in the short term. Healthier food may be more expensive than unhealthy food—either in raw materials, preparation, or both—and this greater expense would be distributed among students, schools, and the food industry. Moreover, students who switch to less-preferred foods and beverages could experience a utility loss. If students do not switch to healthier foods, they may incur travel or other costs related to obtaining their preferred choices from a location less convenient than school. Regardless of student response, the proposed rule would also impose administrative costs on schools and their food authorities.

Additional effects of the rule may include transfers of food sales revenue to or from school food authorities. Such effects would be correlated with health outcomes.

A. School Revenue Effects

Changing the mix of competitive foods offered by schools will likely change student expenditures on those foods, with potential implications for school food service revenues. It may also change the extent to which students purchase reimbursable school meals, resulting in changes in amounts transferred from USDA to schools (via SFAs) and from students to SFAs for reduced price and paid meals.

This analysis examines a range of possible responses of students and schools, and resulting changes in school revenue, based on the experience of States, school districts, and schools with similar standards. The analysis incorporates research findings published since publication of the proposed rule and it reflects input provided by school foodservice administrators and other interested parties who submitted comments. While evidence on the overall impact of competitive food standards on school revenues is mixed, a number of schools implementing such standards have reported little change, and some have seen increases in revenues.[71] Our analysis illustrates a number of different possible revenue impacts that could result, all of which are relatively small (+0.5 percent to −1.3 percent).[72] By way of comparison, USDA has previously estimated that the combined effect of the other school food service revenue provisions included in HHFKA are expected to increase overall school food revenue by roughly six percent.[73] The combined estimated effect of

[71] Throughout this analysis we rely on data collected by researchers from a number of studies. In most cases, financial impacts are described in terms of ''revenues'' gained or lost; those studies did not collect the data necessary to compare changes in revenues from the sale of competitive foods compared to changes in costs of acquiring those foods for sale.

[72] These figures are intended to illustrate possible national level net effects. As noted by interested parties who submitted comments on the proposed rule, relatively modest national net impacts do not preclude greater positive or negative effects in individual SFAs.

[73] *http://www.fns.usda.gov/cnd/Governance/regulations/2011-06-17.pdf.*

these rules is thus a net increase in SFA revenue.

1. Existing Research on Revenue Effects

Students who currently purchase competitive foods will adjust their behaviors in a number of ways in response to Federal standards. Some students will accept the new competitive food offerings. Some will not and will turn instead to the Federal reimbursable meals programs. Other students will replace school food purchases with food from home. And, where the option exists, students may spend their competitive food dollars off campus. Student responses, in turn, will depend on the ability of schools, food manufacturers, and the foodservice industry to offer appealing choices.

It is instructive to begin with a review of studies and evaluations of existing State and local standards. While none of the existing standards are fully aligned with the provisions of the interim final rule, they offer the best available insight into the likely consequences of the rule on school revenues and costs.

A number of studies have looked at the effects of implementation of nutrition standards on school food service revenues in a handful of States:

• A series of studies examined California's Linking Education, Activity and Food (LEAF) pilot program (Woodward-Lopez et al 2005a; Vargas et al 2005). Among 16 high schools that received LEAF grants to implement competitive food standards adopted by California, 13 reported increases in total food service revenues, usually through increased reimbursable meal sales that offset a concurrent decrease in à la carte sales. Net income increased in three of the five sites that provided data on expenditures, and fell at the other two sites. It is not clear how much of the observed effects are solely due to the changes in competitive food standards because the pilot schools received grants ranging from about $200,000 to $740,000 for a 21 month implementation period [74] (Center for Weight and Health, 2005).

• A related assessment of the impact of California's legislated nutrition standards reports that 10 of 11 schools that reported financial data experienced increases of more than five percent in total food and beverage revenue after implementation (Woodward-Lopez et al. 2010). Among the five schools that provided data for non food service sales of competitive foods and beverages (primarily from vending machines), four experienced a decrease in revenue of more than five percent and one experienced a modest increase.

• An estimated 80 percent of surveyed principals in West Virginia reported little or no change in revenues after implementation of a state policy requiring schools to offer healthier beverages and restrict low nutrient dense foods and soda (West Virginia University, 2009).

• Pilot projects in Connecticut and Arizona report, in some cases, increased food sales, increased meal participation, and no significant change or loss in food service revenue (Long, Henderson, and Schwartz, 2010; Arizona Healthy School Model Policy Implementation Pilot Study, 2005).

• Green Bay, Wisconsin officials reported that ''[w]hen low-nutrient foods were removed from à la carte lines and replaced with healthful alternatives, daily à la carte revenue decreased by an average of 18 percent. However, the decreased emphasis on à la carte sales prompted a 15 percent increase in school meal participation! The revenue generated by the additional school meals more than doubled the lost à la carte revenue. Therefore, bottom-line dollars for school foodservice have increased overall'' (USDA, et al., 2005, p. 98).

• South Carolina's Richland One District ''reported losing approximately $300,000 in annual à la carte revenue after implementing [competitive food] changes, [but] school lunch participation and subsequent federal reimbursements increased by approximately $400,000 in the same year'' (GAO 2005, p. 43).

• Wharton, Long, and Schwartz (2008) reviewed ''the few available'' revenue-related articles and studies focused on healthier competitive food standards and determined that the ''. . . data suggest that most schools do not experience any overall losses in revenue'' after implementing healthier standards (p. 249).

• Most studies have assessed the impact of nutrition policies in the immediate post-implementation period. A recent effort examined longer-term impacts. Comparing revenue data over three years from 42 middle schools in five States, half of which adopted healthier competitive food standards, Treviño et al. (2012) found no difference and concluded that providing healthier food options is affordable and does not compromise school food service finances.

The Pew Health Group addressed the issue of revenue changes due to healthier competitive foods in its recent Health Impact Assessment (HIA). After analyzing the relationship between State policies and school-related finances, Pew researchers concluded that:

When schools and districts adopted strong nutrition standards for snack and à la carte foods and beverages, they generally did not experience a decrease in revenue overall. In most instances, school food service revenues increased due to higher participation in school meal programs. However, in some cases, school districts experienced initial declines in revenue when strengthening nutrition standards. The HIA concluded that, over time, the negative impact on revenue could be minimized—and in some cases reversed—by implementing a range of strategies (Pew, RWJF, 2012, p. 4).

Similarly, after reviewing the evidence, the National Center for Chronic Disease Prevention and Health Promotion at CDC concluded that ''[w]hile some schools report an initial decrease in revenue after implementing nutrition standards, a growing body of evidence suggest that schools can have strong nutrition standards and maintain financial stability'' (CDC, *Implementing Strong Nutrition Standards for Schools: Financial Implications,* p. 2).

A 2013 report by the Illinois Public Health Institute studied the experience of eight U.S. school districts that implemented ''strong'' competitive food standards without negative financial consequences.[75] The standards adopted by these districts, whether on their own initiative or in response to State mandates, are comparable to USDA's interim final rule standards. The study's purpose was to learn from districts that successfully implemented strong standards without financial loss, not to determine the success rate among all districts that implemented similar standards. Nevertheless, among 27 districts that imposed strong competitive food standards (from a national sample of 622 districts selected for a broader study of school wellness policies) food service directors in 12 of those districts perceived no negative financial impact. Although competitive food profits generally declined in these districts, overall food service profits increased or remained stable, due largely to increased participation in the school meal programs. Only three of the 27 districts reported losing money.[76]

While the existing research suggests that the national impact of competitive food standards is likely to be relatively modest, there is substantial variation in the experience and results to date. The information available indicates that many schools have successfully introduced competitive food reforms with little or no loss of revenue. In some of those schools, losses from reduced sales of competitive foods were fully offset by increases in reimbursable meal revenue. In other schools, students responded favorably to the healthier options and competitive food revenue increased or remained at previous levels.

But not all schools that adopted or piloted competitive food standards fared as well. A number of SFA and school officials who submitted comments on the proposed rule indicated that they suffered significant reductions in competitive food revenue following adoption of local or State imposed standards. Others noted that their schools depend on competitive food revenue to balance their foodservice budgets, and that even a moderate decrease in competitive food revenue will be difficult to absorb. Some officials, particularly those with relatively few free or reduced-price eligible students, noted that USDA's analysis of possible revenue effects from the proposed rule did not adequately address their situation. These

[74] Receipt of grant money may have contributed to these schools' successful implementation of competitive food reforms.

[75] The authors selected districts that both implemented and enforced clear standards for particular foods and/or nutrients. ''To identify possible districts, 'strength' scores were computed for the competitive food provisions included in each district's policy for each grade level of applicability—middle and high school. Scores represented strong standards for vending machines AND à la carte lines AND school stores in terms of specific and required limits on fats and sugars in foods, bans on regular soda, other sugar-sweetened beverages (SSBs) (other than sports drinks), and 2% or whole fat milk. All school districts that allowed the sale of any candy, energy drinks, soda, or other SSBs (not including sports drinks) were categorically excluded from the selection process.'' (Bassler, et al., 2013, p. 11)

[76] One district reported no competitive food sales at all. The remaining 11 districts either failed to return the researchers' screening questionnaire, or chose not to participate in the study.

officials indicated that even if the overall average impact at the national level is modest, some SFAs will experience far bigger revenue losses.

The updated impact analysis presented below attempts to capture wider variation in potential SFA revenue outcomes than the proposed rule analysis, and give greater attention to the downside risk of significant revenue losses. At the same time, the analysis incorporates data that has been made available since preparation of the proposed rule analysis that offers additional support for the conclusion that revenue effects are likely to be modest over the long term in most SFAs.

2. Estimating School Revenue Changes

To assess the impacts of the interim final rule on school revenue, we reviewed the evidence summarized above, identified three scenarios for student behavior, and estimated the revenue changes that could result. Each of these scenarios is meant to illustrate one reasonable response to competitive food nutrition standards. The actual response of students, and the impact on SFAs, will likely include some mix of all three. In addition, the experience of States and SFAs that have already imposed their own competitive food standards makes clear that each of these scenarios can result in revenue impacts of varying size.

- Scenario 1: Relatively high student acceptance of new competitive foods, thereby allowing schools to maintain existing competitive food sales.
- Scenario 2: Lower competitive food sales with fully offsetting increases in school meal participation.
- Scenario 3: Lower competitive food sales with partially offsetting increases in school meal participation.

We assume that the percentage change in NSLP participation (ΔL) following implementation of competitive food standards will be directly related to the percent change in competitive food purchases (ΔCF), since a portion of competitive food purchases are for lunch consumption. We assume that the change in competitive food revenue occurs largely from students whose response to new standards takes the form of increased or decreased demand, and that all other students maintain previous levels of purchasing.[77] Students who do not buy the new options are assumed to behave as if competitive foods were not available, and we model their behavior using the effect of competitive foods availability on NSLP participation as measured by Gordon, et al. (2007). Gordon, et al. (SNDA III, vol. 2, p. 117) estimate that the NSLP participation rate was 4.6 percentage points higher in schools that did not offer competitive foods during mealtimes compared to those that did. We scale this result by the percentage change in competitive food sales potentially brought about by the interim final rule (ΔCF) and, in order to express ΔL as a percentage (rather than percentage point) change, divide by the baseline NSLP participation rate, estimated in the SNDA–III to be 61.7 percent.[78]

$$\Delta L = \Delta CF \times (-4.6/61.7).$$

The value of comparing changes in competitive food revenue to changes in NSLP revenue is limited to the extent that costs per dollar of gross revenue from the two sources differ. Although we do not have the data necessary to estimate profit margins on competitive foods, we expect that margins on NSLP meals and à la carte items, the most important subgroup of competitive foods, are similar.

Scenario 1: High Student Acceptance of New Competitive Foods

For this scenario, we look to the experience of schools and school districts that have maintained or increased competitive food sales after introduction of healthier standards. With relatively modest efforts to engage students in developing standards and to promote healthier choices, these schools have demonstrated that student demand for healthier competitive foods can be maintained or increased.

Most competitive food revenue is generated by sales of à la carte foods. If competitive food revenue continues to be driven largely by à la carte sales, and the transition to healthier school meals (and, by extension, healthier à la carte items) is well under way prior to the implementation of competitive food standards, then the incremental effect of those standards on competitive food revenue in the short term could be relatively small.

Under this scenario, we assume a modest five percent increase (beginning in SY 2016–2017 following no change in the first full school year after implementation) in competitive food revenue after the initial transition to healthier competitive foods. We choose five percent to match the minimum competitive food revenue increase recorded by three of ten schools in the California Healthy Eating Active Communities study (Woodward-Lopez, et al., 2010).

Given that many schools have already adopted competitive food standards, we then adjust our five percent assumption to account for the effects already experienced by those schools. While we cannot precisely quantify these costs and revenue impacts, our review of the standards in place in the four largest States and the nation's largest school district provides a basis for adjusting the assumption: We reduce all of our estimates by 20 percent. After the 20 percent adjustment, we estimate an increase in competitive food revenues of four percent ($\Delta CF = 4.0$).

These case studies confirm the general NSLP participation effect described in SNDA–III, suggesting that an increase in competitive food purchases after implementation of the proposed rule may come at the expense of NSLP participation. Because this scenario assumes a small increase in competitive food revenues, we estimate that SFAs will experience a slight (0.3 percent) decrease in school meal participation ($\Delta L = -0.3$).

We attribute 36 percent of the 0.3 percent change in the lunch participation to students who are eligible for free and reduced-price meals, and the other 64 percent to students who pay full price,[79] based on unpublished results showing that 64 percent of competitive food purchases were made by students not eligible for free or reduced-price meals.[80] Our analysis uses the relative proportions of free and reduced-price lunches projected by USDA for the FY 2014 President's Budget to divide the 36 percent into separate free and reduced price components. For FY 2012, the observed proportions were 60 percent and 9 percent for free and reduced price lunches, and 32 percent for paid.

Our estimated reduction in SFA revenue from free lunches is equal to the projected Federal subsidy for free lunches multiplied by our estimated reduction in free lunches served. The projected Federal per-meal subsidy is from the President's Budget. The reduction in free lunches is equal to 0.3 percent of the Budget's baseline number of all reimbursable lunches multiplied by our estimated share of free lunches (60 percent of 36 percent, from above).

We use similar logic to estimate the reduction in SFA revenue from reduced-price and paid lunches, except that we also include the lost value of student payments for those meals. For reduced-price lunches we use the 40 cent maximum charge allowed by the NSLA.[81] For paid lunches we use the same projected average price per meal developed for the regulatory impact analysis for the rule to implement Sections 205 and 206 of HHFKA.[82]

Federal reimbursements are necessarily lower than SFA revenues for the same meals since the SFA revenue includes student payments for meals served at reduced or full price. Our estimated reduction in Federal costs is the product of the estimated decrease in NSLP meals multiplied by projections of the value of the reimbursements for free, reduced price, and paid meals.[83] The net impact in schools whose experiences align with this estimate is an overall school food revenue (SFA and other school group revenue) increase of roughly 0.5 percent. Our estimated reduction in Federal payments is

[77] This is in contrast to the possibility that all students reduce their purchases by the same percentage.

[78] This relationship assumes that (1) the increase in NSLP participation must come from non-participants who bought competitive foods as part of lunch, (2) that the decrease in competitive food purchases occurs as a reduction in the number of students purchasing competitive foods while students still purchasing competitive foods do not change their behavior, and (3) the proportion of students who switch from purchasing competitive foods as part of lunch to NSLP participation is the same as the additional proportion of students who participate in NSLP in schools where competitive foods are not available.

[79] Paid, reduced price, and free NSLP meals each have some level of government subsidy, therefore even lunches that are ''full price'' are subsidized.

[80] Unpublished ERS analysis of SNDA–III data.

[81] 42 USC 1758(b)(9)(B).

[82] See rule and RIA in **Federal Register** Vol. 76, No. 117, pp. 35301–35318. For SY 2014–2015 we use an average paid meal price of $2.29.

[83] FNS projections of Federal reimbursements for free, reduced price, and paid lunches are those used to prepare the FY 2014 President's Budget, adjusted for changes for Sections 205 and 206 of HHFKA.

equal to roughly 0.2 percent of overall NSLP reimbursements.

Scenario 2: Lower Competitive Food Sales With Fully Offsetting Increases in School Meal Participation

School districts that have implemented strong competitive food standards without lasting adverse financial effects commonly report that increases in reimbursable meal participation and revenue offset reductions in revenue from competitive food sales. A 2013 compilation of case studies by the Illinois Public Health Institute reported offsetting reimbursable meal revenue in large and small districts, both urban and rural, in all regions of the country (Bassler, et al., 2013).[84]

''In spite of a perceived decline in competitive food profits, none of the food service directors [interviewed for the study] reported significant on-going financial concerns. In fact, when considering all food service accounts, as opposed to just competitive food revenues, profits either increased or stayed the same after implementation of stronger nutrition standards, with increases to food services accounts largely attributed to increased participation in the school meal program'' (Bassler, et al., 2013, p. 18).

As discussed in Section IV.A. above, these districts were selected for study by the Illinois researchers precisely *because* they were able to implement strong standards without a negative impact on overall food service profits. The study was not designed to determine how common this experience is, although only a minority of districts that implemented strong standards reported a reduction in overall food service profits. One of the goals of the case studies was to identify the policies and practices that contributed to the districts' success. At least one food service industry representative commented that USDA's proposed rule analysis was based on the experience of schools whose voluntary standards may not have been comparable to the proposed rule. The Illinois Public Health Institute case studies suggest that implementation of strong competitive food standards—standards comparable to those contained in the interim final rule—need not necessarily strain food service budgets.

Although overall food service profits remained stable, profits from competitive foods decreased on implementation of strong standards in all but one of the eight case study districts. Food service directors in five of the seven districts that reported decreases indicated that the initial drop in competitive food profits ranged from five to 20 percent. Two reported initial decreases in profits greater than 20 percent. In all but one district, initial decreases in competitive food profits were followed by substantial though not complete recovery within a couple of years. For purposes of this scenario, we model a sustained 10 percent decrease in competitive food revenue for both SFAs and non-SFA school groups.

To adjust for States and school districts that have already adopted competitive food standards, we assume that 20 percent of the revenue impact has already been realized nationwide. That reduces the estimated 10 percent competitive food revenue loss to 8 percent ($\Delta CF = -8$).

As students reduce their competitive food consumption in search of alternatives, many turn to reimbursable meals. After implementation of changes to competitive food and school meal standards, many of the items offered à la carte (the largest component of SFA competitive food sales) will be identical to components offered in reimbursable meals. In this scenario, those most likely to turn away from competitive foods are also those who recognize that they may be able to get the same foods at lower price in an NSLP meal.

It is possible that students' economic circumstances will play a role in their decision to replace competitive foods with reimbursable meals. Once reimbursable meals and competitive foods are subject to comparable nutrition standards, and the difference between competitive foods and a reimbursable meal is reduced largely to price, increased participation in the reimbursable meals program may be particularly attractive to students who qualify for free or reduced-price benefits.

Districts with relatively few low-income students may have to rely more heavily on marketing and nutrition education to maintain or increase participation in the meal programs. In at least one of the higher-income districts in the Bassler study, these strategies were coupled with modest increases in full-price lunches.

For SFAs with a mix of competitive food and program revenue equal to the U.S. average, an eight percent reduction in competitive food revenue would be fully offset with a three percent increase in reimbursable meal revenue.

For other school groups, net revenues are driven by a different set of rules and opportunities. School group sales that are held off campus or after school hours are not subject to the interim final rule standards. In addition, the interim final rule provides for infrequent in-school fundraisers that permit the sale of foods that would not otherwise meet the new standards. And unlike SFAs, school groups need not depend on food sales to raise revenue; they may turn instead to non-food sales to compensate for reduced sales from competitive foods.[85] For these reasons, it may be reasonable to assume a smaller net reduction in overall revenue for school groups than for SFAs. At the same time, some groups may have little experience with non-food sales, and may find it more challenging than SFAs to *fully* offset their loss of competitive food revenue, at least in the short term. For this scenario and for Scenario 3, then, we assume a net reduction of five percent in school group revenue.

Overall, the net impact on overall school food revenue (SFA and other school group revenue) under Scenario 2 is estimated at −0.04 percent. The estimated increase in Federal payments is roughly 2 percent of NSLP reimbursements.

Scenario 3: Lower Competitive Food Sales With Partially Offsetting Increases in School Meal Participation

The Illinois Public Health Institute case studies confirm what earlier researchers identified as strategies for successful implementation of competitive food reform (Bassler, et al., 2013). Successful districts commonly adopt a comprehensive strategy to maintain overall food service revenue, a strategy that focuses on reimbursable meals as well as competitive foods, rather than an approach designed to maintain each component's pre-reform share of revenue.

Like earlier studies, the Illinois study found that student engagement, involvement of cafeteria staff, cooperation from vendors, and leadership from food service directors, school boards, and district administrators were all important contributors to success. Specific strategies include ensuring a variety of healthy food options for students, introducing new foods gradually, marketing and packaging, nutrition education, appropriate pricing of competitive foods and reimbursable meals, and encouraging selection of healthy foods with small changes in cafeteria layout or displays.[86]

These strategies, in various combinations, have proven successful in districts regardless of size, urban or rural status, and the percent of student enrollment certified for free and reduced-price meals. Because the same strategies will be available to districts whose implementation of the interim final rule will be their first step toward competitive food reform, we expect that most will implement the new standards without significant financial impact.

Nevertheless, some food service managers and at least one management company who submitted comments on the proposed rule analysis indicated that their own adoption of competitive food reforms coincided with decreases in competitive food sales without offsetting increases in reimbursable meal revenue. At least one commenter even pointed to *decreases* in reimbursable meal revenue, noting that some districts implemented competitive food reforms at the same time that they were adopting new NSLP meal patterns in SY 2012–2013.

There are reasons to expect that the experience of these districts is not a good predictor of how other districts will fare when they implement the interim final rule standards. One key difference is that the interim final rule will take effect in July 2014, two years after the effective date of revised NSLP meal patterns. This implementation lag means that students will have had time to adjust to a variety of healthier school foods before the introduction of competitive food standards.

[84] Unlike other studies cited in this analysis, the Bassler study focused on profits, rather than revenues. Citing USDA and other research, Bassler and colleagues point out that changes in net profits from reimbursable meals and competitive food sales are more meaningful than changes in net revenue, given that excess profits from reimbursable meals sometimes subsidize competitive food losses when costs are properly allocated across reimbursable meal and competitive food accounts, p. 95.

[85] Bassler, et al., 2013, confirms the viability of non-food sales as an alternate revenue source. See, for example, pp. 19 and 62.

[86] See also: USDA, et al., 2005; Pew, RWJF, 2012; Just and Wansink, 2009.

USDA believes that given the July 2014 implementation date, school districts and the food and food service industries will have time to continue developing a variety of healthy competitive food options that meet the standards. Both incremental change in the school food environment and a variety of healthy options are cited as factors in successful competitive food policy implementation.

Even though we expect that implementing interim final rule standards in 2014 will prove less challenging than had we adopted comprehensive school meal and competitive food reforms in SY 2012–2013, we recognize that some districts will see a reduction in competitive food revenue that is not fully offset by increases in revenue from reimbursable meals.

As suggested by some commenters, this risk is perhaps greatest for districts with relatively few students certified for free or reduced-price meals. Two of the districts studied by the Illinois Health Institute reported relatively few free or reduced-price eligible students (just 22 percent and 35 percent of enrollment). One of these reported an initial 20 percent reduction in competitive food profit after implementation of new standards with some recovery over time.[87]

For purposes of Scenario 3, a 20 percent reduction in competitive food revenue is an extreme outcome. This case study district has an open campus policy in its high schools, a policy shared by just 19 percent of U.S. high schools in SY 2009–2010 (Fox, et al., 2012; Volume 1, p. 3–4). Also, the study reported some recovery in competitive food revenue over time. Scenario 3 models an outcome where only a small fraction of the loss in competitive food revenue is offset with revenue from within the food service account. Since students have finite options for meals during the school day, a reduction in competitive food revenue near the extreme end of the case study findings (where reductions in competitive food profits were fully offset by profits on other food service sales) is unlikely. We assume the more reasonable, but still substantial 10 percent reduction in SFA revenue that we used in Scenario 2. We also assume here, as we do in Scenario 2, that other school group revenue decreases by 5 percent.

Applying the same adjustment we used in the previous two scenarios for competitive food policies already implemented around the country, we assume a reduction in SFA competitive food revenue of 8 percent ($\Delta CF = -8$). With that reduction in competitive food revenue, our model of partially offsetting NSLP participation is 0.6 percent ($\Delta L = 0.6$).

Overall, Scenario 3 suggests a net decrease in school food revenue of roughly 1.3 percent, and an increase in Federal NSLP reimbursements of 0.4 percent.

B. Impacts on Participating Children and Families

Beyond revenue impacts to SFAs and other school groups, changes in food purchasing choices caused by the interim final rule will also have an economic effect on children and their families. The projected decreases in competitive food revenues represent reductions in spending by school children and their families on school-provided competitive foods. We do not have sufficient information to estimate increases or decreases in overall spending by students who find alternatives to school-provided competitive foods. Some students will spend less overall by replacing competitive foods consumption with free or reduced price school meals. A decrease in competitive food sales may also increase foods brought from home and/or foods purchased outside of schools. These imply revenue increases for food industries that sell foods brought from home and purchased outside the school setting.

The rule will not impact all students in the same way. For example, price and availability of competitive foods may differ by region of the country, constraining choices for some but not all students. For some students, choices will be limited by their incomes. For other students, alternatives to competitive foods will be limited by school policy. For example, students at schools with open campuses may have more available competitive food options than students on closed campuses. However, taking advantage of that option has some cost in terms of time and perhaps money, resources that are not equally available to all students.[88] Students on closed campuses lack the ability to leave school at lunch time, which may tend to minimize the differences in the competitive food choices available to students of different economic means. Faced with fewer opportunities to make poor food choices, students on closed campuses may benefit by choosing healthier competitive foods or reimbursable meals.

C. Administrative Costs

Under the interim final rule, LEAs and SFAs will be required to maintain records such as receipts, nutrition labels, and/or product specifications for food items that will be available to students on the school campus during the school day. The purpose of this documentation is to ensure that those foods comply with the competitive food standards. Thus, there will be recordkeeping costs associated with the interim final rule and these costs will occur at the State agency level, the SFA and LEA level, and at the school level. The estimated additional annual burden for recordkeeping under the proposed rule is 927,633 hours, divided among the State agencies (1,739 hours), LEAs and SFAs (417,160 hours), and schools (508,735) hours.[89] Our estimate uses data from the Bureau of Labor Statistics on wages and salaries for State and local government employees and assumes no growth in burden hours over time. Wages are inflated using estimates from the 2014 President's Budget.[90] Note that the rule increases recordkeeping costs, but does not impose any new reporting requirements on State or local officials.

TABLE 3—ESTIMATE OF ADMINISTRATIVE COSTS FOR RECORDKEEPING FOR INTERIM FINAL RULE[91]

Recordkeeping	Fiscal year (millions)					
	2014	2015	2016	2017	2018	Total
State Agencies	$0.04	$0.05	$0.05	$0.05	$0.05	$0.24
SFAs & LEAs	10.6	10.9	11.3	11.7	12.0	56.5
Schools	12.9	13.3	13.8	14.2	14.7	68.9
Total	23.5	24.3	25.1	25.9	26.8	125.7

It is also possible that some schools and LEAs may have additional costs due to the rule. For example, some schools may require new equipment such as vending machines to accommodate new products and package sizes. Additionally, schools and/or LEAs may

[87] Interestingly, though, district officials attributed that reduction primarily to their new standard's ban on soda sales. Relatively few districts will see a drop in competitive food profits for that reason: just 12 percent of U.S. schools, and 24 percent of high schools in the U.S. sold soda in school vending machines in SY 2009–2010 (Fox, et al., 2012; Volume 1, p. 3–47).

[88] Open campus policies are relatively uncommon. As we note in Section III.A., just 19 percent of high schools had open campus policies in SY 2009–2010, down from 25 percent 5 years earlier. Open campus policies are rare among lower grades; just 1.9 percent of elementary schools, and 1.3 per cent of middle schools reported having such policies in SY 2009–2010 (Fox, et al., 2012, Vol. 1, p. 3–29).

[89] See the preamble of the rule for additional detail on these Paperwork Reduction Act estimates.

[90] We use wages and salaries for administrative employment in the state and local government sector from the Bureau of Labor Statistics' ''Employer Cost for Employee Compensation'' database (*http://www.bls.gov/data/home.htm*). For FY 2011, wages and salaries for these positions averaged $23.52 per hour. We inflate these through FY 2016 with projected growth in the State and Local Expenditure Index prepared by OMB for use in the FY 2014 President's Budget.

[91] Table 3 estimates costs in nominal dollars. The same table, using constant 2013 dollars, appears in Section VI.

have contracts with vendors that will require modification which could result in some additional labor cost. Those costs are not estimated here because we lack sufficient information on how many schools or LEAs could be affected and how those costs might be distributed among affected locations.

D. Industry Effects

Although they are not directly regulated by the proposed rule, food manufacturers and distributors will face changes in demand by schools and SFAs in response to the rule.

Manufacturers will face reduced school demand for some products and increased demand for others. Some food manufacturers may not have existing product lines that meet the interim final rule's requirements and may lose market share to other manufacturers. The impact of tightening the nutritional standards for food and beverages sold at public schools in the United States on food vendors is difficult to know ex-ante. It is likely that the elasticity of demand for food at schools is quite steep, implying that absent available alternatives, most consumption behavior will change aggregate sales by a small amount.

U.S. SFAs that participate in the NSLP purchased roughly $8.5 billion in food in SY 2009–2010, including the value of USDA foods.[92] That represents only about 1.3 percent of the $644 billion worth of shipments from U.S. food manufacturers in 2010.[93] FNS estimates that SFA revenue from competitive food equals about 20 percent of overall SFA revenue. If we assume that the ratio of food cost to revenue is consistent between competitive foods and other school foods, then SFA purchases of competitive foods totaled about $1.7 billion in SY 2009–2010. That represents only about 0.3 percent of the $644 billion worth of shipments from U.S. food manufacturers in 2010.

According to the 2007 Economic Census, about 23.4 percent of food manufacturing sales are by firms with 100 or fewer employees.[94] If we assume that competitive food sales are distributed to firms in proportion to their share of overall sales, we can estimate that in 2010 figures, about $400 million of competitive food sales is carried out by these small businesses, out of over $150 billion in total sales by these firms.

Implementing nutrition standards for competitive foods will result in a more nutritious, and potentially more expensive, mix of foods offered. If we assume that the cost of these foods is, on average, seven percent higher under the new standards—comparable to the estimated cost increase for school meals under updated nutrition standards—and that this increase will reduce demand for these foods comparably to school meals,[95] we would expect to see a two percent reduction in overall sales of competitive foods—about $34 million of the $1.7 billion in sales estimated for SY 2009–2010, with about $8 million of these losses experienced by small business.

While data is not available to estimate the possible distributional effects across the food industry overall, research indicates that some of the marketplace changes that would be required under the interim standards are already taking place. Wescott et al. (2012), for example, found that between 2004 and 2009 the beverage industry reduced the number of calories shipped to schools by 90 percent, with a total volume reduction in full-calorie soft drinks of over 95 percent. In addition, in comments submitted in response to the proposed rule, representatives of the vending industry pointed to their own efforts to identify and market items to schools that comply with Alliance for a Healthier Generation guidelines. NAMA indicated that its members would incur lower costs if the proposed rule were aligned more closely with Alliance guidelines. On several items, USDA did align the interim final rule more closely with Alliance guidelines. Therefore, at least with respect to some products, many of the changes required by the rule have already taken place under existing self-regulation and State and local standards. And for other products, industry has positioned itself well to meet new demand from schools as they implement the new Federal standards.

Local vending machine operators may also face some changes to their current business model. Although the effect of the interim final rule on individual operators will vary, available industry and school data suggest that the effect on this industry group as a whole will be small. Vending machine sales made up a small percentage of total competitive food revenue in SY 2004–2005. We estimate that à la carte sales accounted for 93 percent of total competitive food revenue. The remaining seven percent is generated by a variety of alternate sources. Although vending machines are the most common of these alternate sources of competitive food revenue (they were found in 39 percent of schools in SY 2009–2010 (Fox, et al., 2012, vol. 1, p. 3–42)) they are not the only alternate source. Based on principals' reports, 13 percent of all schools had a school store that sold food and/or beverages (including snack foods) and 4 percent had a snack bar (Fox, et al., 2012, vol. 1, pp. 3–51–52).

Vending and manual foodservice operators served 18,000 primary and secondary schools in 2009, which was down about 17 percent from 2007 (VendingTimes.com, p. 4).[96] Primary and secondary schools accounted for just 2.2 percent ($930 million out of $42.9 billion) of total vending machine sales in 2009 (VendingTimes.com, p. 4).

These data suggest that the impact of the interim final rule on the vending machine industry as a whole will be limited. Just a small share of vending industry revenue is generated in primary and secondary schools. And, importantly, some of that revenue is generated from sales of foods that are already compliant with the proposed rule standards, such as 100 percent juice and bottled water. Other products found in school vending machines in SY 2009–2010 were also likely compliant or near-compliant with the proposed rule.[97]

Both industry and Census Bureau data indicate that most vending machine operations are small businesses. The majority of vending machine operators that operated for the entire year in 2007 (76 percent) employed fewer than ten individuals according to the U.S. Economic Census.[98] About 37 percent of operators generated less than $250,000 in receipts, although those operators accounted for less than three percent of total revenue from this industry group.[99] Some small vendors may be challenged by the changes contained in the interim final rule. Whether small or large, many vending machine operators will need to modify their product lines to meet the requirements of the rule.

Limited data from California suggests that the transition to healthier competitive foods can be managed, that healthier foods can be marketed successfully in schools, and that competitive food sales outside of the à la carte line need not decline. In the first year healthier competitive food policies under California Senate Bill 19 (2001), seven of ten pilot sites that were able to report such data saw per capita decreases in non-foodservice competitive food sales (Center for Weight and Health, UC Berkeley, 2005, p. 12). However, vending machine and/or school store revenue increased in two other sites (both high schools) which led researchers to conclude that ''SB 19 compliant foods and beverages can be marketed successfully at the high school level'' (Center for Weight and Health, UC Berkeley, 2005, p. 12).

As we discuss elsewhere in this document, the interim final rule provisions take effect one year after publication, giving industry time to modify their product lines. In addition, USDA has chosen to implement an interim final rule rather than a final rule, to

[92] USDA School Food Purchase Study III, 2012.

[93] Bureau of Economic Analysis, Gross Domestic Product by Industry, data for NAICS 311 and 312, excluding animal foods, tobacco and alcoholic beverages (*http://bea.gov/industry/xls/GDPbyInd_SHIP_NAICS_1998–2011.xls*).

[94] Bureau of the Census, 2007 Economic Census (*http://www.census.gov/econ/census07*).

[95] See Gleason, ''Participation in the National School Lunch Program and the School Breakfast Program,'' *Am J Clin Nutr* 61: 213S–220S.

[96] This figure is much smaller than the 39 percent of schools figure from SNDA–IV. The VendingTimes' industry data was gathered through a survey of vending machine operators, providers of coin-operated entertainment services, coffee-break service providers, and related industry subgroups.

[97] The SNDA–IV data do not allow us to identify which other products in school vending machines are compliant with the interim final rule standards. Nor do the data allow us to estimate revenue from vending machine sales of compliant products. Nevertheless, the list of foods found in school vending machines includes several categories of products, in addition to water and 100 percent juice, that are likely compliant with the interim final rule, or include specific products that are compliant. These include milk, other lowfat dairy products, certain low calorie beverages, snacks such as pretzels and reduced-fat chips, and even fruits and vegetables. See Fox, et al., 2012, pp. 3–47–48.

[98] Data for NAICS code 454210, ''vending machine operators.'' U.S. Census Bureau, *http://factfinder2.census.gov/faces/nav/jsf/pages/guided_search.xhtml* (accessed 06/03/2013).

[99] Ibid. Note that these statistics are for all vending machine operators in NAICS code 4545210, not just those that serve the school market. We do not know whether the concentration of small vending machine operators that serve the school market differs from the concentration of small operators in the industry as a whole.

allow an additional opportunity for public comment by all parties before the new standards take effect.

E. Distributional Effects

1. Revenues and Grade Level

Competitive food purchases and revenues are not equally distributed across schools. Elementary schools derive much less revenue from competitive foods than do secondary schools. They are typically smaller, much less likely to have vending machines, and usually serve a smaller assortment of à la carte items. According to SNDA–IV, middle and high schools obtain almost three times as much revenue from à la carte foods (the biggest source of school competitive food revenue) as do elementary schools (Fox, et al., 2012, Volume 1, p. 3–4); therefore, changes in competitive food standards will have a greater impact at the middle- and high-school levels than they will in elementary schools.

2. Low-Income Students

Differences in competitive food revenues by free and reduced-price meal participation, one indicator of whether schools serve primarily lower-income students, are even more dramatic. According to SNDA–III, schools serving at least one-third of their meals at full price to higher income students obtain more than seven times as much revenue from competitive food sales as schools serving a larger percentage of free and reduced-price (and hence lower-income) students.[100] Guthrie, et al. (2012) found that when considering competitive food revenue, schools with high percentages of students who qualify for free and reduced price meals were more likely to see revenues increase after the introduction of competitive food standards, due primarily to increases in meal participation. However as noted previously, revenues may drop more in terms of percentages at lower-income schools if low-income students are more price-sensitive than high-income students.[101] This difference is mirrored in the behavior of high-income students. About two-thirds (64 percent) of competitive foods and beverages are selected by students who are not receiving free or reduced price meals.

Given these purchasing patterns, revenue losses would be substantial if students who previously bought competitive foods and beverages not allowed under the Federal standards simply stopped buying any foods. The revenue losses would be concentrated in secondary schools and schools serving higher proportions of non-poor students, i.e., students not eligible for free or reduced-price meals. However, case studies based on experience with established State- or district-level nutrition standards indicate that many students will substitute other competitive food and beverage purchases, or switch to purchasing USDA school meals. This would likely result in reducing revenue losses substantially. In predominantly low-income schools, students may be even more inclined to turn to reimbursable meals if not satisfied with competitive food options. For those students, a free or reduced price meal may become the most attractive option.[102]

Some of the greatest concern among school and SFA officials who commented on the proposed rule was expressed by those from districts with relatively *few* low-income students. These officials indicated that they rely heavily on competitive food revenue, and do not expect a significant shift to participation in the reimbursable meal programs by students who are dissatisfied with their new competitive food choices. Although the challenges faced by these districts may be different than those faced by less affluent districts, and the strategies for addressing those challenges may be different too, case studies offer some insight into how these districts can implement competitive food reform without an adverse financial impact.

Finally, there is some suggestion that access to healthy foods in schools varies by the socio-economic standing of the school and its neighborhood (Tipler, 2010). Improved nutrition standards for competitive foods could lessen the nutrition gap among schools.

F. Benefits

The interim final rule is intended to help ensure that *all* foods sold at school—whether provided as part of a school meal or sold in competition with such meals—are aligned with the latest dietary recommendations. They will work in concert with recent improvements in school meals to support and promote diets that contribute to students' long-term health and well-being. And they will support efforts of parents to promote healthy choices for children, at home and at school.

A growing body of evidence tells us that giving school children healthful food options will help them make healthier choices during the school day. In 2012, the Pew Health Group and the Robert Wood Johnson Foundation conducted an extensive Health Impact Assessment to evaluate potential benefits that could result from national standards for competitive foods sold in schools during the school day. They concluded that:

- A national competitive foods policy would increase student exposure to healthier foods and decrease exposure to less healthy foods, and
- Increased access to a mix of healthier food options is likely to change the mix of foods that students purchase and consume at school, for the better.

These kinds of changes in food exposure and consumption at school are important influences on the overall quality of children's diets. While nutrition standards for foods sold at school may not on their own be a determining factor in children's overall diets, they are a critical strategy to provide children with healthy food options throughout the entire school day, effectively holding competitive foods to the same standards as the rest of the foods sold at school during the school day. This, in turn, helps to ensure that the school nutrition environment does all that it can to promote healthy choices, and help to prevent diet-related health problems. Ancillary benefits could derive from the fact that improving the nutritional value of competitive foods may reinforce school-based nutrition education and promotion efforts and contribute significantly to the overall effectiveness of the school nutrition environment in promoting healthful food and physical activity choices.

The link between poor diets and health problems such as childhood obesity are a matter of particular policy concern given their significant social and economic costs. Obesity has become a major public health concern in the U.S., second only to physical activity among the top 10 leading health indicators in the United States Healthy People 2020 goals.[103] According to data from the National Health and Nutrition Examination Survey 2007–2008, 34 percent of the U.S. adult population is obese and an additional 34 percent are overweight (Ogden and Carroll, 2010). The trend towards obesity is also evident among children; 33 percent of U.S. children and adolescents are now considered overweight or obese (Beydoun and Wang, 2011), with current childhood obesity rates four times higher in children ages 6 to 11 than they were in the early 1960s (19 vs. 4 percent), and three times higher (17 vs. 5 percent) for adolescents ages 12 to 19 (IOM, 2007b, p. 24). These increases are shared across all socio-economic classes, regions of the country, and have affected all major racial and ethnic groups (Olshansky, et al., 2005).

Excess body weight has long been demonstrated to have health, social, psychological, and economic consequences for affected adults (Guthrie, Newman, and Ralston, 2009; Wang, et al., 2008). Recent research has also demonstrated that excess body weight has negative impacts for obese and overweight children. Research focused specifically on the effects of obesity in children indicates that obese children feel they are less capable, both socially and athletically, less attractive, and less worthwhile than their non-obese counterparts (Riazi, et al., 2010). Further, there are direct economic costs due to childhood obesity; $237.6 million (in 2005 dollars) in inpatient costs (Trasande, et al., 2009)[104] and annual prescription drug,

[100] Unpublished ERS analysis of SNDA–III data.

[101] Woodward-Lopez, et al., 2010.

[102] See, for example, Bassler, et al., 2013, p. 17. ''While many in the school community worry that stronger competitive food and beverage standards will disparately and negatively impact low-income districts, this was not the case in the districts studied here. As mentioned above, many of the districts found that reimbursable school meal program participation increased. Several respondents from low-income districts suggested that when most students participate in the free lunch program, the school does not rely on competitive food sales. Thus, a drop in competitive food sales is unlikely to have a significant impact on the financial status of districts with high rates of free- and reduced-price lunch participation.''

[103] *http://www.cdc.gov/nchs/healthy_people/hp2010/hp2010_indicators.htm*

[104] Trasande, et al., 2009 report that between 1999 and 2005, hospitalizations related to obesity increased 8.8 percent among children ages 2 to 5, 10.4 percent among children 6 to 11, and 11.4 percent among children ages 12 to 19 after controlling for other factors.

emergency room, and outpatient costs of $14.1 billion (Cawley, 2004).

Childhood obesity has also been linked to cardiovascular disease in children as well as in adults. Freeman, Dietz, Srinivasan, and Berenson (1999) found that ''compared with other children, overweight children were 9.7 times as likely to have 2 [cardiovascular] risk factors and 43.5 times as likely to have 3 risk factors'' (p. 1179) and concluded that ''[b]ecause overweight is associated with various risk factors even among young children, it is possible that the successful prevention and treatment of obesity in childhood could reduce the adult incidence of cardiovascular disease'' (p. 1175). In comments, the American Heart Association also discussed the fact that childhood obesity has resulted in problems of hypertension for people at younger ages and noted that America's children are at higher risk for heart problems and blood pressure problems due to the amounts of sodium in their diets.

It is known that overweight children have a 70 percent chance of being obese or overweight as adults. However, the actual causes of obesity have proven elusive (ASPE, no date). While the relationship between obesity and poor dietary choices cannot be explained by any one cause, there is general agreement that reducing total calorie intake is helpful in preventing or delaying the onset of excess weight gain.

There is some recent evidence that competitive food standards can improve children's dietary quality:

- Taber, Chriqui, and Chaloupka (2012) compared calorie and nutrient intakes for California high school students—with competitive food standards in place—to calorie and nutrient intakes for high school students in 14 States with no competitive food standards. They concluded that California high school students consumed fewer calories, less fat, and less sugar at school than students in other States. Their analysis ''suggested that California students did not compensate for consuming less within school by consuming more elsewhere'' (p. 455). The consumption of fewer calories in school ''suggests that competitive food standards may be a method of reducing adolescent weight gain'' (p. 456).
- A study of competitive food policies in Connecticut concluded that ''removing low nutrition items from schools decreased students' consumption with no compensatory increase at home'' (Schwartz, Novak, and Fiore, 2009, p. 999).
- Similarly, researchers for Healthy Eating Research and Bridging the Gap found that ''[t]he best evidence available indicates that policies on snack foods and beverages sold in school impact children's diets and their risk for obesity. Strong policies that prohibit or restrict the sale of unhealthy competitive foods and drinks in schools are associated with lower proportions of overweight or obese students, or lower rates of increase in student BMI'' (Healthy Eating Research, 2012, p. 3).

Pew Health Group and Robert Wood Johnson Foundation researchers noted that the prevalence of children who are overweight or obese has more than tripled in the past three decades, which is of particular concern because of the health problems associated with obesity. In particular, researchers found an increasing number of children are being diagnosed with type 2 diabetes, high cholesterol, and high blood pressure. These researchers further observed that children with low socioeconomic status and black and Hispanic children are at a higher risk of experiencing one or more of these illnesses (pp. 39–40, 56).

Their analysis also noted that:

There is a strong data link between diet and the risk for these chronic diseases. Given the relationship between childhood obesity, calorie consumption, and the development of chronic disease risk factors at a young age, this report proposes that a national [competitive food] policy could alter childhood and future chronic disease risk factors by reducing access to energy-dense snack foods in schools.

To the extent that the national policy results in increases in students' total dietary intake of healthy foods and reductions in the intake of low-nutrient, energy-dense snack foods, it is likely to have a beneficial effect on the risk of these diseases. However, the magnitude of this effect would be proportional to the degree of change in students' total dietary intake, and this factor is uncertain (p. 68).

In summary, the most current, comprehensive, and systematic review of existing scientific research concluded that competitive foods standards can have a positive impact on reducing the risk for obesity-related chronic diseases.

Because the factors that contribute both to overall food consumption and to obesity are so complex, it is not possible to define a level of disease or cost reduction that is attributable to the changes in competitive foods expected to result from implementation of the rule. USDA is unaware of any comprehensive data allowing accurate predictions of the effect of the interim requirements on consumer choice, especially among children. But to illustrate the magnitude of the potential benefits of a reduction in childhood obesity, based on $237.6 million in inpatient costs and $14.1 billion in outpatient costs, a one percent reduction in childhood obesity implies a $143 million reduction in health care costs.

Some researchers have suggested possible negative consequences of regulating nutrition content in competitive foods. They argue that not allowing access to low nutrient, high calorie snack foods in schools may result in overconsumption of those same foods outside the school setting (although as noted earlier, the Taber et al. study concluded overcompensation was not evident among the California high school students in their sample). Some groups have expressed concerns that the focus on competitive foods is less on nutrition than obesity, thus regulating competitive foods may contribute to bodyweight and/or appearance issues and result in increasing body insecurity feelings among children. The focus on obesity may also increase the stigmatization of children who are perceived as being obese.

G. Limitations and Uncertainties

We conducted this analysis using available data; due to the limitations of these data, there are some important qualifications to our analysis that should be noted. We discuss a few of these below.

1. Limitations in Available Research

Available research generally supports the notion that school food revenues will not necessarily be adversely affected by the implementation of healthier competitive food standards. Some schools or school districts, however, have seen revenue losses. Cullen and Watson (2009, p. 709) note that smaller districts might ''have more barriers associated with the bidding and food contract process and availability of alternative products'' relative to large districts. In addition, a five-month pilot program in North Carolina elementary schools saw decreases in competitive food sales with no offsetting increase in school meal participation (North Carolina General Assembly 2011). North Carolina's State Superintendent commented on the lack of available foods that met the pilot standards and although she stated that increases in the availability of appropriate replacements would likely improve the economic impact of the healthier food standards, she still had concerns that healthier products may never generate the revenue necessary to meet North Carolina school needs (NCGA 2011, p. 2 Atkinson letter).

Commenters also expressed two primary concerns in this regard. The first set of comments noted, as we have throughout this analysis, that the case study data are not generalizable, that is, those studies do not necessarily reflect the experiences of their schools. Some commenters requested that the standards not be implemented until broader studies could be conducted.

We are mindful of the comments that are concerned with the limitations of our data. We used the data available to us with the understanding that there would be a wide variation in impacts, and considerable uncertainty about which impacts would be most likely or frequent. We have also updated the scenarios based on experiences from more current case studies.

Finally, we are mindful that instituting competitive food standards and the effects on revenue will vary. It is possible that older students who are more accustomed to having less healthy options available will be less receptive to the changes than younger students. This combined with the increasing availability of products that do meet the standards and the increasing acceptance of a more healthful environment overall, will help to mitigate revenue losses in the long run.

2. Prices of Competitive Foods

We do not have actual prices paid for specific competitive food and beverage items. While we assume that competitive items meeting and not meeting the interim final rule standards contribute equally to revenues, this is uncertain. It is likely that reformulated versions of existing competitive foods will cost at least as much as foods currently available. However, to meet calorie or fat standards, manufacturers may simply reduce package sizes, e.g., replacing 16 ounce containers of full strength juice with eight or 12 ounce bottles. In those cases, there is little

reason to expect higher prices. Additionally, not all compliant foods will be close substitutes for existing foods, e.g., fruit drinks that are not 100 percent fruit juice may be replaced by bottled water at a similar or lower cost.

3. State and Local Support of Reimbursable Meals

Information on State and local payments in support of USDA school meals is not available. Some States and localities make payments that are tied to USDA school meal participation. If combined Federal, State, and local payments are greater (or less) than the costs of producing meals, SFAs would likely make lunch pricing decisions with a view toward optimizing their levels of Federal, State, and local subsidizes.

4. Student Response to New Standards

Only a few limited case studies assess possible behavior change that may occur in response to the interim final rule. Even these limited studies are based on standards that are not exactly the same as the interim final rule. The local conditions in which they take place may not match national conditions. Implementation of State standards may have been accompanied by other factors, such as nutrition education or promotion of school meals, which may have influenced outcomes. While we believe that the evidence we examined is generally consistent with the suggestion that new standards will be associated with purchases of healthier competitive foods and increased school meal participation, data limitations create considerable uncertainty about the size of these changes. We also lack information on changes in purchasing behavior over time. As students adjust to the new range of competitive options, their purchasing behavior could adapt, altering revenue patterns.

5. Industry Response

This analysis assumes that food manufacturers and vendors, SFAs, and other school groups that sell competitive foods and beverages will adapt their behaviors in response to the interim final rule. Studies of State and local changes in competitive food and beverage policies indicate that these behavioral changes will occur (Cullen and Watson, 2009; Wharton, Long, and Schwartz, 2008; Woodward-Lopez, et al., 2010; USDA 2005; Bassler, et al., 2013). We draw on this literature to estimate the possible effects of behavioral changes on competitive food and beverage revenues.

This literature indicates that to a large extent, lost revenues from products that can no longer be sold in schools because of the interim final rule may be offset by increased purchases of products that are already widely available and purchased as competitive items (for example, bottled water) or by purchases of newly available, healthier products. In some cases changes are relatively simple. For example juices currently sold in 16-oz containers could be sold in 12-oz or 8-oz containers, as appropriate for grade level. In other cases, reformulations of existing products are already underway. Actions by State agencies and voluntary groups such as Alliance for a Healthier Generation have already encouraged food manufacturers to develop new products for competitive food sales: 4-oz fruit bowls; nonfat, no-sugar added frozen yogurt; 4-oz frozen fruit bars; and reduced-fat and sodium pizza with whole grain crust (Alliance for a Healthier Generation, 2010). In a 2013 compilation of case studies, researchers note that some

''. . . food service directors reported having difficulty finding foods and beverages that met the stronger nutrition standards for competitive foods and beverages in the early stages of implementation. However, they also reported that as time went on, vendors responded to the demand and more and more appealing items became available. As stronger standards begin to be implemented nationwide, the research team anticipates this trend will continue'' (Bassler, et al., 2013, p. 20).

Establishment of Federal standards is likely to spur further product development and increased sales volume that may help to bring prices in line with those of less-nutritious competitive items. Comments from one beverage manufacturer noted that existing competitive food standards have already resulted in the company developing or reformulating products that meet or exceed the standards in the interim final rule. Because State and local experience to date has preceded the establishment of Federal standards, their results may overstate the challenges that schools will face in implementing the interim final rule. The pressures on school revenue from high costs and limited availability could ease in the 12-month period between publication of the interim final rule and its effective date.

6. SFA and School Compliance

Early studies on competitive food revenues indicate that not all schools have complied with existing State competitive food standards.[105] This may be due, in part, to a lack of approved product choices, especially for early implementers. Compliance may be less of a challenge with national standards, especially as industry and students continue to adapt to State standards already in place. But, to the extent that schools fail to implement or fully enforce certain provisions of the interim final rule, the cost, benefit and revenue impacts of the rule will be lower. Each of our estimates assumes full compliance with the interim final rule.

7. School Participation in Federal Meal Programs

It is possible that some schools could choose to leave NSLP and SBP to avoid the new competitive food standards, and this possibility was reflected in some of the comments received on the proposed rule. Although some schools may realize significant losses in revenue from competitive foods, especially in the short term, we believe it is unlikely that many schools will choose to leave the Federal meals program. As noted previously, on average SFAs receive 16 percent of their total revenue from competitive foods; 84 percent of revenue is derived from Federal reimbursements for NSLP and SBP meals, student payments, and State and local contributions tied to those meals (USDA, 2008). But even in SFAs with competitive food revenues that are greater than the average, e.g., SFAs in the 90th percentile for competitive food revenues, USDA subsidies and student payments for program meals still account for more than half of SFA revenue while competitive food sales amounted to less than half.[106]

8. Food and Labor Costs

This analysis focuses on revenues in SFAs and other school groups. It does not address food and labor costs directly because few of the research reports and case studies report detailed cost information. One study (Treviño et al., 2012) that did report expenses and labor costs in addition to revenues found no statistically significant difference between intervention and control schools after the intervention schools implemented stronger competitive food standards. Although the differences were not statistically different, intervention schools were found to have higher excess revenue over expenses than the control schools ($3.5 million versus $2.4 million) (pg. 421).

Although we do not address costs directly, we expect that cost will have a limited effect on the net revenue of SFAs and other school groups. SFA competitive food revenue is derived primarily from à la carte sales. Under the interim final rule, à la carte items that are available as part of a reimbursable meal are deemed to meet the new standards and those items will be subject to new school meal standards under regulations that took effect July 1, 2012.[107] To the extent that schools' à la carte lines are stocked with school meal entrées, side dishes, and beverages that are also available in reimbursable meals, much of the cost of providing healthier à la carte items will have been incurred before competitive food standards take effect.

This does not apply, of course, to à la carte items that are not components of a reimbursable meal or to items sold in vending machines or through other outlets; schools may incur higher costs to replace those items with items that meet this rule's standards. However, even for those foods, industry and schools will have had some time after implementation of new school meals standards to prepare. Some of the fixed costs of product development, contracting with new suppliers, developing recipes, and training kitchen staff will have already been incurred by industry and schools as they implement Federal school meal standards, easing pressure, perhaps, on prices and the administrative costs of complying with this competitive foods rule.

A number of SFA professionals commented that requiring accompaniments (e.g., salad dressings, catsups, etc.) to be pre-portioned would potentially add large additional costs (purchasing individual

[105] See, for example, SNDA–III, V. 1, 2007; Woodward-Lopez, et al., 2005b; Bullock, et al., 2010; Woodward-Lopez, et al., 2010.

[106] The figures for SFAs at or above the 90th percentile are based on a small sample and are subject to greater error than the mean values reported for all SFAs in the SLBCS–II.

[107] The proposed school meal standards rule was published in January, 2011. See **Federal Register** Vol. 76, No. 9, p. 2494.

packets) or involve considerable labor for staff who had to pre-portion the accompaniments. In response to these concerns, the interim final rule eliminates the proposed pre-portioning requirement, which should result in labor and cost savings.

V. Alternatives

A. Exemption for Reimbursable Meal Entrées

The proposed rule presented two basic alternatives for the treatment of entrées and side dishes that are served as part of a reimbursable meal. Under the first alternative, these items could be served à la carte as long as they met the rule's fat and sugar standards that apply to all other competitive foods. Under the second alternative, NSLP entrées and sides (except grain-based desserts) would be exempt from all of the rule's competitive food requirements if served à la carte on same day that they are part of a reimbursable meal (alternative B1) or within four days of service as part of a reimbursable meal (alternative B2).

The interim final rule adopts a variation on the second alternative. Entrées (but not side dishes) served as part of a reimbursable meal will be exempt from the rule's competitive food requirements on the day they are served as part of the meal and the following day. Exempt entrées that are sold as competitive food must be offered in the same or smaller portion sizes as the NSLP and SBP, and with the same accompaniments.

The primary benefit of an exemption that is limited strictly to foods on the current day's menu is that those items could be offered à la carte no more often than they could be served in reimbursable meals without exceeding weekly NSLP or SBP restrictions on average calories, fat, or sodium. Such an exemption would also encourage students to consume a greater variety of foods, even if they choose foods consistently from the à la carte line. The interim final rule achieves these same goals while offering SFAs the ability to serve leftover entrées the next day, an important tool for menu planning and cost control.

The interim final rule provision offers somewhat greater administrative simplicity compared to the other alternative considered by USDA. That alternative would have required a nutrient analysis of reimbursable meal items before they could be sold à la carte in order to measure their compliance with the rule's fat and sugar standards.

B. School-Sponsored Fundraisers

The proposed rule offered two alternatives for establishing limits on the frequency of exempt fundraisers. One would have allowed States to set limits subject to USDA approval. The other would grant full discretion to the States.

After consideration of comments from interest groups and school officials, USDA opted to allow States to set their own limits on the frequency of exempt fundraisers without USDA review.[108] Full State discretion should benefit from State administrators' knowledge of what will prove most effective in their schools. In addition, eliminating USDA review will reduce administrative costs at both the State and Federal levels. It may also encourage States to modify their policies, as needed, to address unanticipated problems. The time and administrative expense of USDA review might discourage fine-tuning of established policies.

The alternative considered by USDA would have given Federal administrators the opportunity to review State plans prior to implementation. Although Federal review would have entailed some cost, it may have resulted in little difference in the policies ultimately adopted. Nevertheless, State discretion entails some small risk that one or more States or school districts (if States use their discretion to leave the decision to local districts) will adopt standards that impose little or no restriction on the frequency of exempt fundraisers. At least some commenters expressed concern that State discretion will lessen the consistency that might have been achieved with USDA review. Ultimately, however, State administrators are, like USDA, committed to the success of competitive food reform. Whether success is measured by student well-being or the financial health of SFAs, it is in the interest of the States to set fairly narrow exemptions for infrequent fundraisers.

C. Total Sugar

The proposed rule solicited public comment on two alternate sugar standards for competitive foods. These would have limited total sugar content to either 35 percent of calories or 35 percent of weight. Both standards would have placed a meaningful check on the amount of sugar allowed in competitive foods while providing exceptions for certain fruit and vegetable snacks and yogurt. After considering arguments in favor of each of these standards, USDA adopted the sugar by weight standard for the interim final rule.

Administrative burden and product availability were among the factors that weighed most heavily in this decision. Commenters who favored the 35 percent by weight standard argued that

- It was consistent with standards already in place through voluntary programs such HUSSC and the Alliance for a Healthier Generation,
- Sugar is commonly reported by weight by industry and others,
- Calculators for sugar by weight already exist to aid school food service professionals in their calculations,
- The sugar as a percent of calories standard would negatively affect food service revenues, and
- Sugar by weight allows greater flexibility in the products available to students.

The first four of these points suggest that the sugar by weight standard will be less costly to implement for both the schools and industry that have already invested in that standard. Schools that are new to competitive food reform will also benefit from the sugar by weight standard to the extent that industry has already developed products designed to meet the demand of HUSSC schools and schools that follow Alliance guidelines.

The alternate percent of calories standard, by contrast, would have added to some schools' cost of compliance with the rule. It would have been most disruptive and potentially costly to schools that have already established relationships with suppliers and distributors who provide the schools with products intended to meet the sugar by weight standard.

The net effect on industry of choosing the weight standard over the calorie standard is unclear. Manufacturers and distributors that have already invested in supplying schools with products that meet the sugar by weight standard may realize the greatest immediate benefit. Comments from representatives of the vending industry point to that industry's voluntary efforts to support schools that follow Alliance guidelines on competitive foods, and urged USDA to adopt standards consistent with those guidelines. The interim final rule's sugar standard, in combination with some of the other changes to the rule, aligns the rule with more of these existing products. Manufacturers as well as distributors of such products may see additional demand once all schools implement the rule.

Not all sectors of the food industry favored the sugar by weight standard. Compared to the alternate sugar as a percent of calories standard, the weight standard may be more difficult to meet for sugar-sweetened products with low moisture content, where the ratio of fat to sugar may mean the difference between compliance and non-compliance. Because a gram of fat has more than twice as many calories as a gram of sugar, snack products and desserts with a relatively high fat content (from nuts or chocolate, for example) may be less likely to meet the proposed rule's weight-based sugar standard although they might have met the alternative calorie-based standard.[109] Where product reformulation is an option, manufacturers of non-compliant snacks may choose to incur those costs.

D. Naturally Occurring Ingredients and Fortification

Competitive foods that do not satisfy one of the interim final rule's food group requirements may be sold in school if they contain at least 10 percent of the daily value of one of several nutrients of concern (i.e., calcium, potassium, vitamin D, and fiber), but only through June 2016. Beginning July 1, 2016 this criterion will be obsolete and may not be used to qualify an item as an allowable competitive food.

The primary alternative considered by USDA was the proposed rule's handling of nutrients of concern. The proposed rule would have allowed products that met the 10 percent threshold, but only through the use of naturally occurring ingredients. In addition, the proposed rule would have made this option permanent.

[108] FNS will provide guidance to ensure that State policies are consistent with the legislative requirement that exemptions for fundraisers are ''infrequent'' (Pub. L. 111–296)

[109] Certain varieties of trail mix, granola bars, and whole grain cookies sometimes fall into this group. Two examples from the USDA's National Nutrient Database for Standard Reference (release 24) are product IDs 25056 (chocolate coated granola bar) and 18533 (iced oatmeal cookie).

USDA's decision to modify the proposed rule provision was driven primarily by concerns other than cost or administrative burden. The interim final rule's long-term focus on foods that satisfy the rule's food group requirements is better aligned with IOM recommendations. IOM cited ''[e]merging evidence for the health benefits of fruits, vegetables, and whole grains'' that ''reinforces the importance of improving the overall quality of food intake rather than nutrient-specific strategies such as fortification and supplementation'' (IOM, 2007a, p. 41).

The proposed rule's requirement that only naturally occurring nutrients could satisfy its 10 percent of daily value threshold was viewed by commenters as impractical. It would be difficult for food service professionals to distinguish products that satisfied the naturally occurring requirement from products that did not. At present, the contribution of food-based and non-food sources to nutrient values are not shown separately on processed food nutrition labels. For that reason, the proposed rule's naturally occurring nutrient criterion offered only limited flexibility for schools.

In the critical early months of implementation, the interim final rule offers a more meaningful administrative cost advantage relative to the proposed rule. The interim final rule provision is intended to reduce costs by ensuring the widest availability of compliant products during a 24-month transition to an entirely food-based set of standards.

E. Low Calorie Beverages in High Schools

The proposed rule offered two alternatives for public comment on lower-calorie beverages for high school students. The first would have permitted up to 40 calories per 8 fl oz serving (and 60 calories per 12 fl oz). The second would have allowed up to 50 calories per 8 fl oz serving (and 75 calories per 12 fl oz). The higher 50 calorie limit would have permitted the sale of national brand sports drinks in their standard formulas. The lower 40 calorie limit would have allowed only reduced-calorie versions of those drinks. The interim final rule adopts the lower 40 calorie limit as the better alternative to limit the consumption of added sugar in beverages sold in school, and to further advance the public health goals of the rule.

Leading public health organizations that submitted comments on the proposed rule tended to prefer the interim final rule standard to the proposed rule's higher calorie alternative. Many of the same organizations, however, would have preferred even stricter limits on sugar-sweetened beverages, a major source of discretionary calories in competitive school foods.

Schools, with strong support from the beverage industry, have largely eliminated full-calorie carbonated drinks from school vending machines. But representatives from some public health groups point out that sports drinks remain widely available in schools, and they note that these products are an important contributor to excess added sugar intake by children. Data from USDA's SNDA studies indicate a modest reduction in the percent of high schools that offered sports drinks in vending machines from SY 2004–2005 to SY 2009–2010, although percentages remain high [110] The same studies show a more substantial reduction in high schools that offer sports drinks in à la carte lines. Adoption of the 50 calorie per 8 fl oz standard would have undermined the efforts of school administrators who are leaders in reducing the availability of sugary drinks in schools. Although the 40 calorie standard in the interim final rule does not go as far as recommended by some public health groups, it will have a substantial effect on the types of sweetened beverages offered in high schools.[111]

Food and foodservice industry representatives, as well as some school administrators, favored the higher calorie limit. The beverage industry has invested in developing and marketing products that meet the Alliance for a Healthier Generation's 66 calorie per 8 fl oz guideline, and may have been better positioned to meet a 50 calorie standard than the interim final rule's 40 calorie standard. There may be fewer products currently available that meet or can be reformulated to meet the interim final rule standard. If so, then the immediate transition to the interim final rule may be more challenging for manufacturers, distributors, and vending machine operators, as well as SFAs, student organizations, and other non-SFA school groups that rely on the sale of such beverages. However, while some businesses may face a reduced market for their products, at least in the short term, manufacturers and distributors of competing lower calorie products have an opportunity to increase sales.

The interim final rule drops the proposed rule restriction on the sale of lower calorie beverages in the meal service area during a meal service. As discussed more fully in Section III.A., the proposed rule's time and place restriction would have put some SFA revenue at risk, and might have depressed the sale of reimbursable meals. The proposed rule restriction would also have sent a mixed message on the acceptability of the excluded beverages. For these reasons, the interim final rule eliminates the restriction. Although the interim final rule provides greater flexibility to SFAs, greater choice to students, and reduces the risk to SFA revenue, the interim final rule provision has the potential to reduce the amount of milk consumed by high school students during meal times. USDA will monitor this after implementation and take those preliminary observations into consideration in the development of a final rule.

F. Caffeinated Beverages

Consistent with IOM recommendations, the proposed rule required that beverages served to elementary and middle school students be caffeine free or include only small amounts of naturally occurring caffeine. The proposed rule, however, did not put caffeine restrictions on products for high school students; a departure from the IOM guidelines. Many of the comments from health professionals and school officials expressed concern about the effects of large amounts of caffeine on adolescents and suggested that the Department either disallow caffeinated beverages at the high school level entirely, or at least provide some guidelines for caffeine limits. After considering these comments, and because of the lack of an accepted standard for caffeine consumption by high school-aged students, USDA retains the proposed rule standard. The interim final rule retains maximum flexibility for high schools, allowing the continued sale of beverages containing caffeine. At the same time, USDA urges schools not to allow the sale of energy drinks, in response to concerns expressed by health professionals. To the extent that caffeinated products generate revenue for schools, the interim final rule will have a lesser economic impact on SFAs and other school groups than the primary alternative considered by USDA.

VI. Accounting Statement

As required by OMB Circular A–4, we have prepared an accounting statement showing the annualized estimates of benefits, costs and transfers associated with the provisions of this proposed rule.[112] As discussed throughout this impact analysis, available data do not allow us to develop point estimates of competitive food or reimbursable meal revenue effects with any certainty. For this reason, the only dollar figures presented in the accounting statement are those associated with Table 3's State agency, LEA, and school-level recordkeeping costs.

The accounting statement's cost figures are equal to the annualized, discounted sum of the estimated cost stream from Table 3:

[110] In SY 2009–2010, 64 percent of high schools sold ''energy and sports drinks'' in vending machines. This is down from 78 percent in SY 2004–2005. (Gordon, et al., 2007, Volume 1, p. 104; Fox, et al., 2012, Volume 1, p 3–47)

[111] Both the standard adopted for the interim final rule as well as the 50 calorie alternative, would end the sale of sweetened beverages in elementary and middle schools.

[112] OMB Circular A–4 is available at *www.whitehouse.gov/sites/default/files/omb/assets/regulatory_matters_pdf/a-4.pdf.*

	Fiscal year ($ millions)					
	2014	2015	2016	2017	2018	Total
Total projected nominal cost of interim final rule	$23.5	$24.3	$25.1	$25.9	$26.8	$125.7

Applying 7 and 3 percent discount rates to this nominal cost stream gives present values (in 2013 dollars):

	Fiscal year ($ millions)					
	2014	2015	2016	2017	2018	Total
Total cost (present value, 7% discount rate)	$22.0	$21.2	$20.5	$19.8	$19.1	$102.6
Total cost (present value, 3% discount rate)	22.8	22.9	23.0	23.0	23.1	114.9

The annualized values in FY 2013 dollars of these discounted cost streams are computed with the following formula, where PV is the discounted present value of the cost stream ($102.6 in the illustration), *i* is the discount rate (7 percent), and *n* is the number of years beyond FY 2013 (5).[113]

$$PV \div \left[\frac{1 - \frac{1}{(1+i)^{(n-1)}}}{i} + 1 \right]$$

$$\$102.6 \div \left[\frac{1 - \frac{1}{(1+0.07)^{(5-1)}}}{0.07} + 1 \right] = \$23.4$$

Benefits	Outcome scenario	Estimate	Year dollar	Discount Rate (%)	Period covered
Annualized Monetized ($millions/year)	n.a.	n.a.	n.a.	n.a.	FY 2014–2018.
Qualitative: The rule will ensure that all foods sold to children in school during the school day will meet macronutrient and food group standards that are consistent with a healthy diet and are based on current nutrition science. The proposed rule will encourage the consumption of foods such as whole grains, fruit, vegetables, and dairy products that are low in fat and added sugar. By allowing only the sale of competitive foods that comply with Dietary Guidelines recommendations, this proposed rule aims to promote healthy eating habits.					
Costs	**Outcome scenario**	**Estimate**	**Year dollar**	**Discount rate (%)**	**Period covered.**
Quantitative: SFA and State educational agency administrative expenses to comply with the rule's recordkeeping requirements (estimated here). Additional costs (not estimated) include the potential higher costs to schools and to industry of acquiring or producing healthier competitive foods, the extra costs incurred by students to purchase higher priced competitive foods, and the costs incurred by students (including travel costs) in purchasing competitive foods off campus.					
Qualitative: Net utility losses to students who lose access to favorite competitive foods and must switch to less preferred foods.					
Annualized Monetized ($millions/year)	1–3	$23.4 24.4	2013 2013	7% 3%	FY 2014–2018.
Transfers	**Outcome scenario**	**Estimate**	**Year dollar**	**Discount rate**	**Period covered**
Qualitative: The changes in competitive foods offered by schools will likely result in changes in student expenditures on competitive foods (sold by SFAs and non-SFA school groups). It will also change the extent to which students purchase and consume reimbursable school meals, resulting in changes in amounts transferred from students to school food authorities, and from USDA to school food authorities, for reduced price and paid meals. We have modeled a number of potential scenarios based on available data to assess impacts of competitive food standards on overall school food revenue. While they vary widely, each scenario's estimated impact is relatively small (+0.5 percent to −1.3 percent). The data are insufficient to assess the frequency or probability of schools experiencing any specific level of impact.					

[113] The Excel formula for this is PMT(rate, # periods, PV, 0, 1)

VII. References

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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Parts 300 and 679

Pacific Halibut Fisheries; Catch Sharing Plan for Guided Sport and Commercial Fisheries in Alaska; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 300 and 679

[Docket No. 101027534–3546–01]

RIN 0648–BA37

Pacific Halibut Fisheries; Catch Sharing Plan for Guided Sport and Commercial Fisheries in Alaska

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations that would implement a catch sharing plan for the guided sport (charter) and commercial fisheries for Pacific halibut in waters of International Pacific Halibut Commission (IPHC) Regulatory Areas 2C (Southeast Alaska) and 3A (Central Gulf of Alaska). If approved, this catch sharing plan will replace the Guideline Harvest Level program, define an annual process for allocating halibut between the charter and commercial fisheries in Area 2C and Area 3A, and establish allocations for each fishery. The commercial fishery will continue to be managed under the Individual Fishing Quota system. To allow flexibility for individual commercial and charter fishery participants, the proposed catch sharing plan also will authorize annual transfers of commercial halibut quota to charter halibut permit holders for harvest in the charter fishery. This action is necessary to achieve the halibut fishery management goals of the North Pacific Fishery Management Council.

DATES: Written comments must be received by August 12, 2013.

ADDRESSES: You may submit comments, identified by FDMS Docket Number NOAA–NMFS–2011–0180, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2011-0180,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.
- *Fax:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to 907–586–7557.

Instructions: Comments 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.

Electronic copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action are available from *http://www.regulations.gov* or from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov*.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to NMFS at the above address and by email to *OIRA_Submission@omb.eop.gov* or fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Julie Scheurer, 907–586–7228.

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I. Current Management of the Halibut Fisheries

A. Regulatory Authority

The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC adopts regulations governing the Pacific halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979). For the United States, regulations developed by the IPHC are subject to acceptance by the Secretary of State with concurrence from the Secretary of Commerce. After acceptance by the Secretary of State and the Secretary of Commerce, NMFS publishes the IPHC regulations in the **Federal Register** as annual management measures pursuant to 50 CFR 300.62. The final rule implementing IPHC regulations for the 2013 fishing season was published March 15, 2013, at 78 FR 16423. IPHC regulations affecting sport fishing for halibut and vessels in the charter fishery in Areas 2C and 3A may be found in sections 3, 25, and 28 of that final rule.

The Halibut Act, at sections 773c(a) and (b), provides the Secretary of Commerce with general responsibility to carry out the Convention and the Halibut Act. In adopting regulations that may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act, the Secretary of Commerce is directed to consult with the Secretary of the department in which the U.S. Coast Guard is operating, currently the Department of Homeland Security.

The Halibut Act, at section 773c(c), also provides the North Pacific Fishery Management Council (Council) with authority to develop regulations, including limited access regulations, that are in addition to, and not in conflict with, approved IPHC regulations. Regulations developed by the Council may be implemented by NMFS only after approval by the Secretary of Commerce. The Council has exercised this authority in the development of subsistence halibut fishery management measures, codified at 50 CFR 300.65, and the guideline harvest level program and limited access program for charter operators in the charter fishery, codified at 50 CFR 300.67. The Council also developed the Individual Fishing Quota (IFQ) Program for the commercial halibut and sablefish fisheries, codified at 50 CFR part 679, under the authority of section 773 of the Halibut Act and section 303(b) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

B. Background on the Halibut Fishery

The harvest of halibut in Alaska occurs in three fisheries—the commercial, sport, and subsistence fisheries. The commercial halibut fishery is a fixed gear fishery managed under an Individual Fishing Quota program. The sport fishery includes unguided and guided anglers. Guided anglers are commonly called ''charter'' anglers because they fish from chartered vessels. The subsistence fishery allows rural residents and members of an Alaska Native tribe to retain halibut for personal use or customary trade.

The IPHC annually determines the amount of halibut that may be removed from the resource by regulatory area in all Convention waters. The IPHC estimates the exploitable biomass of halibut using a combination of harvest data from the commercial, sport, and subsistence fisheries, and information collected during scientific surveys and sampling of bycatch in other fisheries. The IPHC calculates a range of total allowable removals of halibut from all sources in an IPHC regulatory area based on the annual stock assessment and apportionment process conducted by the IPHC. The range of total allowable removals is referred to as the Total Constant Exploitation Yield (CEY) and represents the total removals for that area in the coming year at varying levels of harvest and risk. The Total CEY is expressed in net pounds, which is defined as the weight of halibut from which the gills, entrails, head, and ice and slime have been removed. The Fishery CEY represents the difference between the Total CEY and all other removals, including sport, subsistence, bycatch, and waste. The Fishery CEY is the basis for the IPHC's determination of catch limits for the directed commercial fixed gear halibut fishery. The IPHC considers staff recommendations, harvest policy, and stakeholder input when it determines commercial catch limits.

Pursuant to Article III of the Convention, the IPHC must develop and maintain halibut stocks to levels that will permit the optimum yield for the halibut fisheries. The IPHC addresses this objective through a harvest strategy that is designed to balance the benefits of yield with the risk of spawning biomass dropping below a minimum level. To the extent possible, the IPHC accounts for all sources of fishing mortality within the Total CEY and establishes the commercial fixed gear catch limits only after subtracting waste in the commercial halibut fishery and halibut removals from other non-halibut commercial fisheries and non-commercial uses. Because the IPHC subtracts non-commercial halibut fishery removals (including charter harvest or the guideline harvest level) from the Total CEY, and because the charter fishery harvest increased during the 1990s and early 2000s, the amount of halibut available for the commercial halibut fishery decreased relative to the long-term historic proportion of the fishery available to the commercial fishery. The commercial IFQ halibut fishery therefore views charter harvests in excess of established policies or goals as uncompensated reallocations of fishing privileges.

II. History of Management in the Charter Halibut Fisheries

This section provides an overview of management policies applicable to charter halibut fishing in Areas 2C and 3A. Additional details on the management measures specific to each regulatory area are addressed later in this preamble. Until 2007, harvest restrictions for the charter halibut fisheries were developed by the IPHC. In 1973, the IPHC first adopted halibut sport fishing regulations to provide consistent and uniform halibut sport fishing regulations in all regulatory areas. At that time, the IPHC established that the sport fishing season for halibut would occur from March 1 through October 31, and limited the number of halibut that anglers could retain by imposing a daily three-fish bag limit. From 1984 through 1997, the IPHC required charter vessels to have IPHC licenses. Since the initial three-fish bag limit was established in 1973, the IPHC has adjusted the bag limit to vary among one, two, and three fish per angler per day. The current bag limit under IPHC regulations is two fish of any size per day unless a more restrictive bag limit applies in Federal regulations. There is not a more restrictive limit currently in effect in Federal regulations for Area 3A, but NMFS has established a more restrictive one-fish bag limit for charter vessels for Area 2C as described in the following section of this preamble.

In 1997, the Council adopted separate guideline harvest levels (GHLs) for the Area 2C and Area 3A charter halibut fisheries. The proposed and final rules implementing the current GHLs were published in the **Federal Register** in 2002 and 2003, respectively (67 FR 3867, January 2, 2002; 68 FR 47256, August 8, 2003). These regulations are codified at 50 CFR 300.65. A more detailed description of GHL management and the Council's rationale behind such management can be found in the proposed and final rules cited above; a brief description follows.

The GHLs represent pre-season specifications of acceptable annual harvests in the charter halibut fisheries in Areas 2C and 3A. To accommodate some growth in the charter halibut fishery, while approximating historical levels, the Council recommended the GHLs were to be based on 125 percent of the average charter halibut fishery harvest from 1995 through 1999 in each area. For Area 2C the maximum GHL was set at 1,432,000 pounds (lb), or 649.5 metric tons (mt), net weight, and in Area 3A the maximum GHL was set at 3,650,000 lb (1,655.6 mt) net weight. The Council recommended a system of step-wise adjustments to the GHLs to accommodate decreases and subsequent increases in halibut abundance. The Council recommended this system of GHL adjustments to provide a relatively predictable and stable harvest target for the charter halibut fishery. Although the Council had a policy that charter halibut fisheries should not exceed the GHL, the 2003 GHL regulations did not actually limit charter halibut fishery harvests. Rather, the GHL regulations set benchmarks for use in future regulations, and harvest restrictions could be adopted in the year following a year that the GHL was exceeded.

In response to concerns that growth in the charter halibut fishery was resulting in overcrowding in productive halibut grounds, the Council recommended, and the Secretary of Commerce adopted, a limited access program to provide stability for the charter halibut fishery and decrease the need for regulatory adjustments affecting charter vessel anglers. NMFS published a final rule on

January 5, 2010 (75 FR 554), that implemented the charter halibut limited access program (CHLAP) in 2011. This rule capped the number of charter businesses that could operate in Areas 2C and 3A to limit further expansion of the industry.

Under the CHLAP, NMFS initially issued permits to those businesses that historically and recently participated in the charter halibut fishery. The CHLAP also issues a limited number of permits to non-profit corporations representing specified rural communities and to U.S. military morale programs for service members. Beginning February 1, 2011, all vessel operators in Areas 2C and 3A with charter anglers on board were required to have an original, valid permit on board during every charter halibut vessel fishing trip. Charter Halibut Permits (CHPs) are endorsed for the appropriate regulatory area and, except for military CHPs, the number of anglers catching and retaining halibut on a trip. In October 2012, NMFS published an implementation report for the CHLAP after all interim permits had been adjudicated and resolved. This report is available at *http://alaskafisheries.noaa.gov/ram/charter/chp_review1012.pdf.* At the time of publication, a total of 972 charter halibut permits had been issued to 356 permit holders in Area 2C and 439 permit holders in Area 3A. Of these 972 CHPs, 711 are transferable. Transfers of permits allow new entrants into the charter halibut fishery. With the exception of initial recipients of CHPs who meet specified requirements under 50 CFR 300.67, permit-holders are limited to 5 permits.

A. Southeast Alaska (Area 2C)

The Area 2C charter halibut harvest exceeded its GHL every year during 2004 through 2010, despite management measures designed to control charter halibut harvest in this area (Table 1).

TABLE 1—AREA 2C GUIDELINE HARVEST LEVEL AND ESTIMATED CHARTER HALIBUT HARVEST FROM 2004 TO 2013

[Rounded to the nearest 1,000 lb]

Year	Area 2C GHL	Area 2C estimated harvest
2004	1,432,000 lb (649.5 mt)	1,750,000 lb (793.8 mt)
2005	1,432,000 lb (649.5 mt)	1,952,000 lb (885.4 mt)
2006	1,432,000 lb (649.5 mt)	1,804,000 lb (818.3 mt)
2007	1,432,000 lb (649.5 mt)	1,918,000 lb (870.0 mt)
2008	931,000 lb (422.3 mt)	1,999,000 lb (906.7 mt)
2009	788,000 lb (357.4 mt)	1,245,000 lb (564.7 mt)
2010	788,000 lb (357.4 mt)	1,086,000 lb (492.6 mt)
2011	788,000 lb (357.4 mt)	344,000 lb (156.0 mt)
2012	931,000 lb (422.3 mt)	645,000 lb (292.6 mt) *
2013	788,000 lb (357.4 mt)	not available

* Harvest estimate for 2012 is preliminary.

To ensure that the halibut stocks would continue to develop to a level that would allow optimum yield in the halibut fisheries, beginning in 2007 the IPHC and Council have recommended, and the Secretary of Commerce has adopted, a number of regulatory measures in Area 2C to limit charter halibut harvest to the Area 2C GHL. In 2007, NMFS implemented regulations to require that under the two-fish daily bag limit, one of the harvested halibut could not exceed 32 inches head-on length (81.3 cm) (72 FR 30714, June 4, 2007). These regulations were in effect for 2007 and 2008. In 2008, the GHL dropped to 931,000 lb (422.3 mt) in Area 2C and charter halibut harvest was more than double the GHL.

In 2009, the GHL dropped again to 788,000 lb (357.4 mt), prompting NMFS to implement additional restrictions on Area 2C charter anglers: A one-fish daily bag limit superseded the two-fish with maximum size rule, harvest by the charter vessel guide and crew was prohibited, and a line limit equal to the number of charter vessel anglers on board, but not to exceed six lines was implemented (74 FR 21194, May 6, 2009). This rule was challenged by participants in the charter halibut fishery, and the U.S. District Court for the District of Columbia granted summary judgment in favor of the Secretary of Commerce on November 23, 2009 (*Van Valin* v. *Locke, 671 F. Supp 2d 1 D.D.C. 2009*). The one halibut per day bag limit for charter vessel anglers remained in effect for Area 2C for the 2009 and 2010 seasons, yet catch still exceeded the GHL by approximately 58 percent in each of these years.

Because NMFS imposed no additional charter restrictions in 2011, the IPHC believed that charter halibut harvest was likely to exceed the 788,000 lb GHL again. As such, the IPHC recommended and the Secretary of State accepted, with the concurrence of the Secretary of Commerce, a daily bag limit for charter vessel anglers in Area 2C of one halibut with a maximum length of 37 inches (94.0 cm) per day (76 FR 14300, March 16, 2011). The 2011 Area 2C charter halibut harvest under the 37-inch maximum length rule was estimated at 344,000 lb, significantly below the GHL of 788,000 lb. The Council determined that it would be appropriate for IPHC to consider alternative management measures to limit charter halibut harvest to the GHL, and requested an analysis of two options in addition to a maximum size limit for management measures for the 2012 Area 2C charter halibut fishery to limit charter halibut harvest to the 2012 GHL. One alternative management measure was a reverse slot limit, in which anglers may retain fish that are smaller or larger than a specified range of lengths, but must release fish within that range. Another alternative considered was charter halibut fishery closures on selected days of the week.

In December 2011, the Council reviewed the analysis of the range of management measures to limit Area 2C charter halibut harvest to its 2012 GHL (available at *www.alaskafisheries.noaa.gov/npfmc/PDFdocuments/halibut/2012MgmtMeasures2C.pdf*) and unanimously recommended that the IPHC implement a reverse slot limit that allowed retention of halibut less than or equal to (under) 45 inches (U45) and greater than or equal to (over) 68 inches (O68) in length. This U45/O68 reverse slot limit would allow the retention of halibut that are less than approximately 32 lb and greater than 123 lb (headed and gutted). At its annual meeting in January 2012, the IPHC reviewed the

Council analysis for charter halibut management measure options and the Council's recommendation. The IPHC unanimously recommended implementing the U45/O68 reverse slot limit for charter anglers in Area 2C for the 2012 halibut fishing season. This recommendation was implemented through the 2012 IPHC annual management measures (77 FR 16740, March 22, 2012).

In November 2012, the preliminary estimate of charter halibut harvest for 2012 was 645,000 lb (292.6 mt), which was below the GHL of 931,000 lb (422.3 mt). In December 2012, the Council undertook the same process it used in December 2011 to consider options for the appropriate Area 2C charter halibut management measures for implementation in 2013. Based on an analysis of charter halibut management options and advice from its advisory committees and the public, the Council recommended a continuation of the status quo charter management measures in Area 2C for the 2013 season. At its annual meeting in January 2013, the IPHC reviewed the Council analysis for 2013 charter halibut management measure options (available at *www.alaskafisheries.noaa.gov/npfmc/PDFdocuments/halibut/2013charterAnalysis_1212.pdf*) and the Council's recommendation. Based on the Total CEY, the resulting GHL for Area 2C in 2013 was 788,000 lb (357.4 mt). The IPHC unanimously recommended status quo management (i.e., the U45/O68 reverse slot limit) for charter anglers in Area 2C for the 2013 halibut fishing season, which was implemented through the 2013 IPHC annual management measures (78 FR 16423, March 15, 2013).

B. Southcentral Alaska (Area 3A)

Since the GHL was implemented in 2004, charter anglers in Area 3A have been managed by the same harvest restrictions as unguided anglers, i.e., a two-fish daily bag limit with no size restrictions. Charter halibut harvest in 2004 through 2007 was at or slightly above the GHL of 3,650,000 lb (1,655.6 mt) in Area 3A (Table 2). Each year from 2007 to 2009, the Alaska Department of Fish and Game (ADF&G) issued an Emergency Order that prohibited charter skipper and crew harvest of all species for the major portion of the season under ADF&G's general authorities to regulate state-licensed sport fishing vessels. From 2010 until 2012, the charter halibut fishery had a two-fish of any size bag limit with no prohibition on skipper and crew harvest. Charter halibut harvest in Area 3A has remained below the GHL since 2008, even after the GHL dropped in 2012 from 3,650,000 lb (1,655.6 mt) to 3,103,000 lb (1,407.5 mt). Table 2 summarizes GHLs and charter halibut harvest in Area 3A since 2004. The IPHC adopted commercial halibut fishery catch limits based on a Total CEY which resulted in a 2013 GHL of 2,734,000 lb (1,240.1 mt) and approved status quo management measures for Area 3A for 2013 (78 FR 16423, March 15, 2013), following the Council's recommendation.

TABLE 2—AREA 3A GUIDELINE HARVEST LEVEL AND ESTIMATED CHARTER HALIBUT HARVEST FROM 2004 TO 2013

[Rounded to the nearest 1,000 lb]

Year	Area 3A GHL	Area 3A estimated harvest
2004	3,650,000 lb (1,655.6 mt)	3,668,000 lb (1,672.8 mt)
2005	3,650,000 lb (1,655.6 mt)	3,689,000 lb (1,673.3 mt)
2006	3,650,000 lb (1,655.6 mt)	3,664,000 lb (1,662.0 mt)
2007	3,650,000 lb (1,655.6 mt)	4,002,000 lb (1,815.3 mt)
2008	3,650,000 lb (1,655.6 mt)	3,378,000 lb (1,532.2 mt)
2009	3,650,000 lb (1,655.6 mt)	2,734,000 lb (1,240.1 mt)
2010	3,650,000 lb (1,655.6 mt)	2,698,000 lb (1,223.8 mt)
2011	3,650,000 lb (1,655.6 mt)	2,793,000 lb (1,266.9 mt)
2012	3,103,000 lb (1,407.5 mt)	2,375,000 lb (1,077.3 mt) *
2013	2,734,000 lb (1,240.1 mt)	not available

* Harvest estimate for 2012 is preliminary.

III. Proposed Catch Sharing Plan (CSP) for Area 2C and Area 3A

A. Overview

In October 2008, the Council adopted a motion to recommend a CSP for the charter and commercial halibut fisheries in Areas 2C and 3A to NMFS. The 2008 Council motion is available at *www.alaskafisheries.noaa.gov/npfmc/PDFdocuments/halibut/HalibutCSPmotion1008.pdf.* The Council intended that the CSP be a comprehensive management program for the charter halibut fisheries in Area 2C and Area 3A. In July 2011, NMFS published a proposed rule for that CSP based on the Council's 2008 preferred alternative (76 FR 44156, July 22, 2011) and received more than 4,000 public comments. The majority of the comments addressed the proposed allocation percentages and the matrix of charter halibut fishery harvest restrictions that would have been automatically triggered by changes in the annual commercial and charter halibut fisheries' combined catch limits (annual combined catch limits) supported by halibut exploitable biomass. In October 2011, in part due to questions raised in the public comments on the proposed rule, NMFS and the Council decided that further analysis and clarification of provisions of the proposed 2011 CSP were required. In December 2011, the Council requested a supplemental analysis of new information since its 2008 preferred alternative, including an evaluation of the management implications and economic impacts of the proposed CSP at varying levels of halibut abundance. Based on this new evaluation and additional public input, the Council recommended a revised preferred alternative for the CSP in October 2012. The 2012 Council motion, upon which this proposed rule is based, is available at *www.alaskafisheries.noaa.gov/npfmc/PDFdocuments/halibut/CSPMotion1012.pdf.*

Consistent with the intent of the first proposed CSP in 2011, the Council intends this proposed CSP to address ongoing allocation conflicts between the charter and commercial halibut fisheries. The commercial halibut fishery is subject to defined allocations of individual harvest shares that generally rise and fall with halibut abundance, and the charter halibut fishery, which experienced many years of sustained annual growth, is not

directly subject to limitation with changes in fishery abundance. The commercial IFQ and charter halibut fishery are harvesting a fully utilized resource. The primary objectives of the CSP are to define an annual process for allocating halibut between the charter and commercial halibut fisheries in Area 2C and Area 3A, establish allocations that vary with changing levels of annual halibut abundance and that balance the differing needs of the charter and commercial halibut fisheries t, and specify a process for determining harvest restrictions for charter anglers that are intended to limit harvest to the annual charter halibut fishery catch limit.

The CSP allocations would replace the GHL with a percentage allocation to the charter halibut fishery of the annual combined catch limit. The Council also intends to follow the process it used in 2011 and 2012 to specify annual management measures for the charter halibut fishery prior to the upcoming fishing season based on projected harvests and charter catch limits (i.e., currently the GHL). Prior to 2012, restrictions to limit charter halibut harvests to the respective GHLs were implemented either by IPHC regulation in the annual management measures without input from the Council, or by separate NMFS rulemaking after the GHL was exceeded. The pre-season harvest restriction specification process recommended in this proposed rule is intended to limit charter halibut harvest to the target level before an overage occurs, as opposed to an approach that implements management measures several years after the target harvest level has been exceeded.

The pre-season specification of harvest restrictions for charter anglers is consistent with the Council's objective to maintain the charter halibut fishery season length in effect (February 1 through December 31) with no inseason changes to harvest restrictions, even if it appears that the regulatory measures may result in an overage. The Council developed this objective based on committee recommendations and public testimony from charter vessel operators indicating that inseason changes to harvest restrictions would be disruptive to charter operators and anglers. Many charter vessel anglers book fishing trips with operators well in advance of the trip date with an expectation that the harvest restrictions that are effective at the beginning of the fishing season will be in place throughout that season. Management changes to bag or size limits for charter vessel anglers within a fishing season may cause considerable inconvenience for charter anglers and adverse economic impacts to charter operators if anglers decide to postpone or cancel their charter fishing trip due to a mid-season change in regulations. The potential for inseason management changes also could result in fewer anglers planning charter fishing trips in Alaska, which could have significant long-term adverse economic impacts on charter vessel operators by reducing revenue.

The Council recommended, and NMFS agrees, that the annual CSP catch limits for the commercial and charter halibut fisheries should be determined by a predictable and standardized process utilizing the IPHC's annual management measures. This proposed rule would establish a procedure for determining the commercial and charter halibut fisheries' catch limits for each area. If this proposed rule for a CSP is implemented, the IPHC's annual combined catch limits for 2C and 3A would be apportioned between the annual charter catch limits and annual commercial catch limits in those areas. At its annual meeting, the IPHC would consider the Council's recommendations designed to constrain the charter halibut fisheries in 2C and 3A to their allocated annual catch limits, and would consider the advice of IPHC staff, advisors, and the public. The IPHC would be expected to adopt the catch limits and appropriate management measures as part of the annual IPHC halibut fishery conservation and management regulations. Should the Secretary of State accept the IPHC regulations, with concurrence of the Secretary of Commerce, the approved IPHC regulations would be published in the **Federal Register** as specified by regulations at 50 CFR 300.62. The IPHC annual management measures would remain in effect until superseded by future regulations.

In recent years, this implementation schedule for IPHC annual management measures has occurred after the February 1 season opening date for halibut sport fisheries in Alaska. In most years, the effective date of the IPHC annual management measures has been around March 15. Thus, the period between the February 1 opening of the sport season and the mid-March effective date of the superseding annual management measures has been subject to the previous year's IPHC regulations. This schedule will continue under the proposed CSP unless the IPHC recommends a change to the February 1 opening for the sport fishing season. However, implementation of the annual management measures in March likely does not impact the charter halibut fishery because there has historically been little or no charter halibut harvest during February 1 through mid-March.

As part of this proposed action, the Council also recommended that ADF&G Saltwater Charter Logbooks be used as the primary data source to estimate the number of halibut harvested in the charter halibut fishery following each charter halibut fishing season and to project the number of halibut harvested in the charter fishery in the following year. Since the mid-1990s, the primary data source to estimate the numbers of halibut harvested in the charter fishery provided to the IPHC and the Council has been the Alaska Statewide Harvest Survey (SWHS). The SWHS is a mail survey that employs stratified random sampling of households containing at least one licensed angler. Survey respondents are asked to report the numbers of fish caught and kept by all members of the entire household, and the data are expanded to cover all households.

The ADF&G Saltwater Charter Logbook is the primary reporting requirement for operators in the charter fisheries for all species harvested in saltwater in Areas 2C and 3A. ADF&G developed the saltwater charter logbook program in 1998 to provide information on participation and harvest by individual vessels and businesses in charter fisheries for halibut as well as other state-managed species. Saltwater charter logbook data are compiled to show where fishing occurs, the extent of participation, and the species and the numbers of fish caught and retained by individual anglers. This information is essential to estimate harvest for regulation and management of the charter halibut fisheries in Area 2C and Area 3A. Since 1998, the saltwater charter logbook design has undergone annual revision, driven primarily by changes or improvements in the collection of fisheries data. In recent years, ADF&G has added saltwater charter logbook reporting requirements to accommodate information required to implement and enforce Federal charter halibut fishing regulations, such as the Area 2C one-halibut per day bag limit and the charter halibut limited access program.

In 2006, ADF&G adopted a number of new measures to improve the quality of saltwater charter logbook data including requiring charter operators to report angler license numbers and the numbers of fish caught per angler, and increasing staff resources to verify the data collected. Following these changes, ADF&G sought to determine whether the quality of logbook data had in fact improved, and whether logbook data

should be used to monitor and manage the charter halibut fishery. In 2008 and 2009, ADF&G presented two evaluations of the logbook data to the Council and the Council's Scientific and Statistical Committee. The reports included comparisons of charter halibut harvest estimates using saltwater charter logbook data and SWHS data. Based on these reports and additional information, the Council determined that the use of saltwater charter logbook data instead of the SWHS offers several advantages. Most important among these advantages is that logbook data are available sooner; they are reported on a weekly basis and partial-year harvest can be summarized by the end of the charter halibut fishing season. In contrast, data from the SWHS are not available until nearly a year after the fishing season has ended. It is important to obtain timely estimates of charter halibut harvest so the performance of management measures relative to the charter catch limits can be evaluated and modified, if necessary, before the next fishing season begins. Additionally, logbook data are intended to provide a complete census of the harvest without recall bias or sampling error that may be present in the SWHS and are therefore thought to be more accurate that SWHS data. NMFS anticipates that if the CSP is approved, i.e., this proposed rule is implemented, ADF&G will report charter halibut harvest to the IPHC and the Council using saltwater charter logbooks as the primary data source for the number of fish harvested.

In order to provide flexibility for individual commercial and charter halibut fishery participants, the Council also recommended that the CSP authorize annual transfers of commercial halibut IFQ as guided angler fish (GAF) to charter halibut permit holders for harvest in the charter halibut fishery. Under the commercial IFQ Program, commercial halibut operators hold quota share (QS) that yields a specific amount of an annual harvest privilege, or IFQ. GAF would offer charter halibut permit holders in Area 2C or Area 3A an opportunity to lease a limited amount of IFQ from commercial QS holders to allow charter clients to harvest halibut in addition to, or instead of, the halibut harvested under the daily bag limit for charter anglers. Charter anglers using GAF would be subject to the harvest limits in place for unguided sport anglers in that area, currently a two-fish of any size limit in Areas 2C and 3A. GAF harvested in the charter halibut fishery would be accounted for as commercial halibut IFQ harvest.

Except for authorizing commercial halibut QS holders to transfer IFQ as GAF to charter halibut permit holders, the Council did not intend for the CSP to change the management of the commercial halibut fisheries in Area 2C and Area 3A. The directed commercial halibut fisheries in Area 2C and Area 3A are managed under the IFQ Program pursuant to regulations at 50 CFR part 679 subparts A through E. The proposed rule would amend only those sections of the IFQ Program's regulations to authorize transfers between IFQ and GAF and establish the requirements for using GAF.

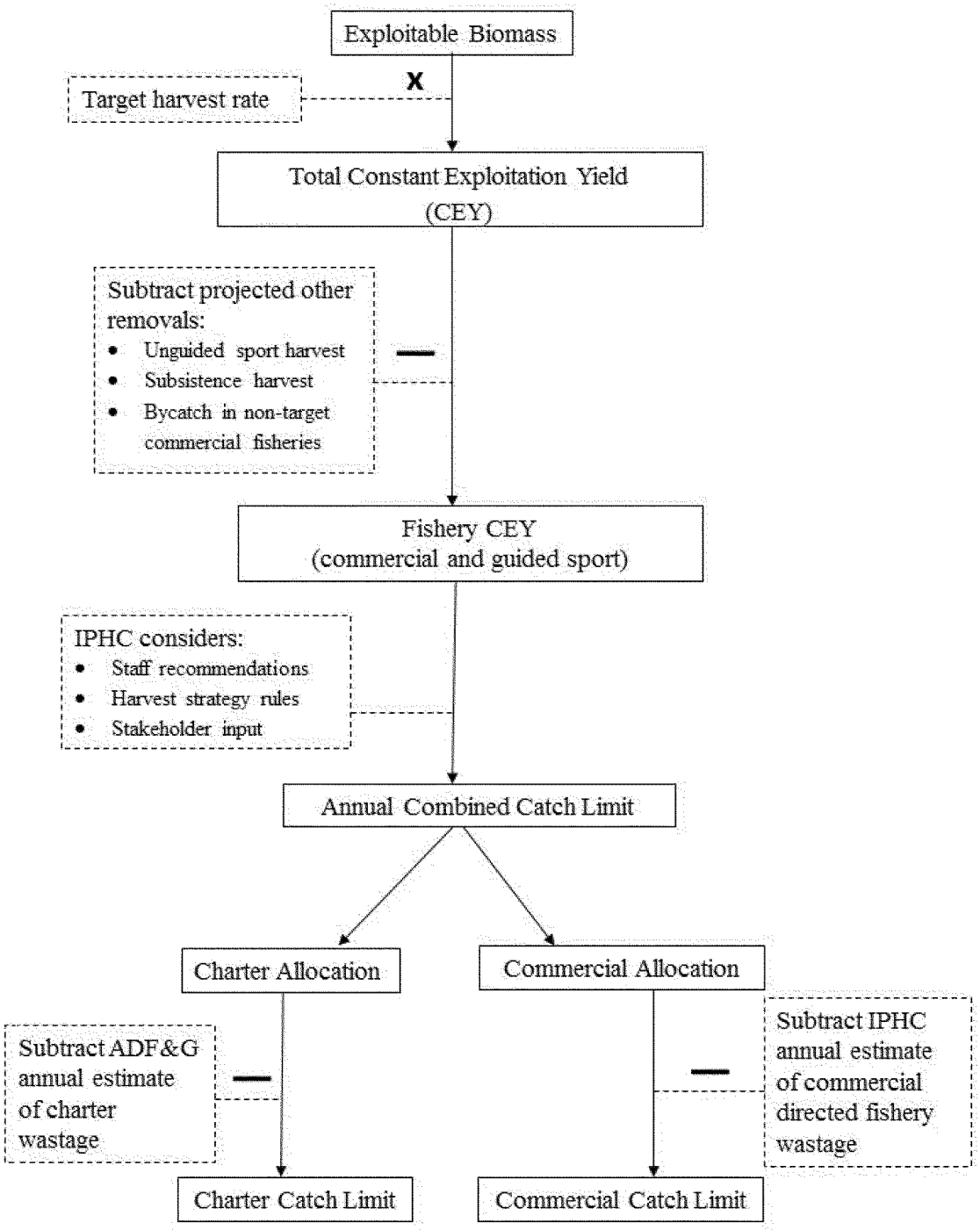
B. Annual Combined Catch Limit

The CSP would change the current process for specifying annual catch limits for the commercial halibut fisheries in Area 2C and Area 3A, and establish a process for specifying annual charter halibut fishery catch limits in Area 2C and Area 3A. The process for specifying annual guided sport catch limits under the CSP would replace the GHL for the charter halibut fisheries in Area 2C and Area 3A. The IPHC currently only specifies annual catch limits for the directed commercial halibut fisheries, and Federal regulations determine the GHL for charter halibut fisheries based on the Total CEY in Area 2C and Area 3A as determined by the IPHC. Under the proposed CSP, the IPHC would specify an annual combined catch limit for Area 2C and for Area 3A at its annual meeting in January. Each area's annual combined catch limit in net pounds would be the total allowable halibut harvest for the directed commercial halibut fishery plus the total allowable halibut harvest for the charter halibut fishery under the CSP.

NMFS anticipates that the IPHC process for determining the annual combined catch limit would be similar to the process it has typically used in the past for determining annual commercial catch limits. A notable exception is how each fishery's wastage would be deducted from the combined catch limit, as described in the ''Calculation of Annual Fishery Catch Limits'' section of this preamble. The IPHC would continue to estimate the exploitable biomass of halibut using a combination of harvest data from the commercial, sport, and subsistence fisheries, and information collected during scientific surveys and sampling of bycatch in other fisheries. The IPHC would calculate the Total CEY, or the target level for total removals (in net pounds) for that area in the coming year, by multiplying the estimate of exploitable biomass by the harvest rate in that area. The IPHC would subtract estimates of other removals from the Total CEY. Other removals would include unguided sport harvest, subsistence harvest, and bycatch of halibut in non-target commercial fisheries. The remaining CEY, after the other removals are subtracted, would be the Fishery CEY which would be the basis for the IPHC's determination of the annual combined catch limit for Areas 2C and 3A. The IPHC would continue to consider the combined commercial and charter halibut Fishery CEY, staff analysis, harvest policy, and stakeholder input when it specifies the Area 2C and Area 3A annual combined catch limits in net pounds.

The IPHC process for determining annual combined catch limits and commercial and charter allocations and catch limits under the proposed CSP is presented in Figure 1 and described further in subsequent sections of this preamble.

Figure 1. Process for Setting Annual Combined Catch Limits, Charter and Commercial Allocations, and Charter and Commercial Catch Limits for Area 2C and Area 3A Under the Proposed Catch Sharing Plan



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C. Annual Commercial Fishery and Charter Fishery Allocations

Under the CSP, the IPHC would divide the annual combined catch limits into separate annual catch limits for the commercial and charter halibut fisheries. A fixed percentage of the annual combined catch limit would be allocated to each fishery at most levels of the combined catch limit. The fixed percentage allocation to each fishery would vary with halibut abundance, with higher allocations to the charter halibut fishery at lower levels of abundance. The charter halibut fishery would receive a fixed poundage allocation at intermediate abundances to

avoid a ''vertical drop'' in allocation (described further below). The IPHC would multiply the CSP allocation percentages for each area by the annual combined catch limit to calculate the commercial and charter halibut allocations in net pounds.

The CSP allocation method is a significant change from the current guidelines established under the GHL. At moderate to low levels of halibut abundance, the CSP would provide the charter halibut fishery with a smaller poundage allocation than the guideline limits established under the GHL program. Conversely, at higher levels of abundance, the CSP would provide the charter halibut fishery with a larger poundage allocation than the guideline limits established under the GHL program. The Council intended the CSP fishery allocations to balance the needs of the charter and commercial halibut fisheries at all levels of halibut abundance. The Council believes, and NMFS agrees, that the allocation under the CSP provides a more equitable management response to changes in Total CEY, compared to the GHL program.

One of the primary disadvantages of the GHL program is that it is not responsive or adaptable to changes in halibut abundance and fishing effort. For example, the Area 2C GHL was 788,000 lb in 2009. The Area 2C Total CEY declined by approximately 10 percent from 2009 to 2010, but this decline did not trigger a change in the GHL, which remained at 788,000 lb in 2010. Therefore, the commercial halibut fishery IFQ allocations were reduced, but there was no change in the charter halibut fishery GHLs. Conversely, when halibut exploitable biomass increases, the GHL does not allow the charter halibut fishery to fully benefit from this increase. For example, the Area 3A Total CEY increased by approximately 11 percent from 2006 to 2007, but this increase did not trigger a change in the GHL, which was limited to the maximum level of 3,650,000 lb in those years.

Among other options, the Council considered establishing fixed poundage allocations to the charter halibut fishery similar to the guidelines established under the GHL program. However, the Council determined that use of a fixed percentage allocation of the combined catch limit to each fishery under the CSP would result in both the commercial and charter halibut fishery allocations adjusting directly with changes in halibut exploitable biomass. In contrast, in this proposed rule, both fisheries would share in the benefits and costs of managing the resource for long-term sustainability.

The allocation under the proposed CSP provides a more transparent and equitable management response than the GHL program because unlike the current allocation system, it would use the same method to establish commercial and charter halibut fishery allocations. Under the current management structure, the GHL is calculated directly from the IPHC's determination of Total CEY, or total allowable removals of halibut from all sources. The commercial halibut catch limit is based on the Total CEY and is also affected by other halibut removals from sport harvest, subsistence harvest, bycatch of halibut in commercial fisheries targeting other species, and wastage in the commercial halibut fishery. As described above in the ''Background on the Halibut Fishery'' section, the IPHC currently establishes the commercial fishery catch limits only after subtracting these other halibut removals from the Total CEY. Therefore, an increase in other removals directly reduces the amount of halibut available for the commercial halibut fishery. The GHL for the charter halibut fishery is not affected by changes in other halibut removals.

Section 2.5.10 of the EA/RIR/IRFA (see **ADDRESSES**) describes the effects of the current allocation system, in which the proportion of total halibut harvested in the Area 2C and Area 3A commercial halibut fishery has declined and the proportion harvested in the charter halibut fishery has increased. From 2008 through 2012, the Area 2C commercial halibut fishery harvest declined from 60.2 percent to 43.1 percent of the Total CEY, and charter halibut fishery harvest increased from 14.3 percent to 15.9 percent of the Total CEY over the same time period. In Area 3A, commercial halibut fishery harvest decreased from 76.8 percent to 60.3 percent of the Total CEY, and charter halibut fishery harvest increased from 12.6 percent to 15.7 percent of the Total CEY from 2008 through 2012. Thus, while both the GHL and commercial halibut fishery catch limits have declined in recent years, the commercial halibut fisheries have borne larger poundage and proportional reductions under the current allocation system. The Council and NMFS determined that the proposed CSP would stabilize the proportions of harvestable halibut available to the commercial and charter fisheries at all levels of halibut abundance by basing both fishery allocations on the annual combined catch limit.

The Council considered historical and recent catch information when determining the recommended CSP allocation percentages for the commercial and charter halibut fisheries. The Council reviewed average charter halibut harvest estimates for individual years and for different combinations of years ranging from 1999 through 2005. The Council recommended multiple CSP allocation percentages for the commercial and charter halibut fisheries in Area 2C and in Area 3A depending on the combined catch limit set for that area. Combined catch limits would be divided into tiers based on abundance. As described above, at lower levels of abundance the CSP would allocate a higher percentage of the combined catch limit to the charter halibut fishery than it would receive under higher combined catch limits. The Council recommended, and NMFS proposes, higher charter allocation percentages at relatively low abundance levels of halibut to ameliorate the effects of replacing the GHL stair-step benchmark in pounds with a CSP allocation percentage that varies directly with the annual combined catch limit. A higher percentage allocation at lower abundance levels is also intended to keep charter businesses from being severely restricted at times of low halibut abundance.

Section 2.5 of the EA/RIR/IRFA (see **ADDRESSES**) analyzes several alternatives for allocations under the CSP. Under the Council's preferred alternative for the CSP in Area 2C, the poundage allocation to the charter halibut fishery would have been from 4.8 percent to 32 percent lower than the GHL from 2008 through 2012. For Area 3A, the poundage allocation to the charter halibut fishery would have been from 4.7 percent to 24.5 percent lower than the GHL in Area 2C from 2008 through 2012. The Council acknowledged that reductions in charter halibut fishery catch limits relative to the GHL may reduce demand for charter services and may result in reduced demand for charter services and negative economic impacts for charter operators. Section 2.6 of the EA/RIR/IRFA notes that it is not possible to quantify the effects of the reduction in pounds allocated to the charter halibut fishery under the CSP relative to the GHL. However, the Council noted that from 2008 through 2012, catch limits in the commercial halibut fisheries were reduced by 57.7 percent in Area 2C and by 51.7 percent in Area 3A, which resulted in reduced revenues for participants in the fishery, most of whom are also small businesses

(Section 3.2.2 of the EA/RIR/IRFA, see **ADDRESSES**). In recommending the CSP, the Council faced the challenge of balancing historical harvests, economic impacts to each sector, and the declining status of the halibut stock in both areas, under the proposed range of allocation options. As a result, it is not possible for any allocation under the proposed CSP to make participants in both fisheries whole economically given current halibut abundance levels.

The proposed allocations differ for Area 2C and Area 3A. The Council considered that Area 2C and Area 3A are distinct from each other in terms of halibut abundance trends and charter fishing effort when it selected its preferred alternative. In Area 2C, the main indices of halibut abundance have shown a steady decline in exploitable biomass from high levels in the mid-1990s. While it appears that the rate of decline in the Total CEY in Area 2C has slowed or stopped, halibut abundance continues to remain at historically low levels. From 2004 through 2008, Area 2C charter halibut harvests increased by 41.5 percent, which demonstrated the ability of participants in that fishery to increase capacity to meet angler demand. This rapid growth in the charter halibut industry in Area 2C, combined with the delay in setting harvest restrictions, made it difficult for managers to set harvest restrictions to avoid exceeding the GHL, while meeting the Council's objectives of avoiding in-season changes to harvest restrictions and maintaining a traditional season length. Until 2011, no mechanism was in place to implement new charter halibut harvest restrictions in a timely fashion in response to harvests exceeding the GHL. As a result, the charter halibut fishery in Area 2C exceeded its GHL each year 2004 through 2010. After considering these factors, the Council recommended, and NMFS proposes, more conservative CSP charter halibut fishery allocations in Area 2C, particularly at low levels of abundance, to accommodate imprecision in managing harvest in a fishery that depends on inseason regulatory stability but that also has exhibited the ability to undertake rapid growth, particularly at current low levels of halibut abundance. The Council also noted that a more conservative charter halibut fishery allocation was appropriate under the CSP because participants in the Area 2C commercial halibut fishery have experienced significant economic losses in revenue from reductions in catch limits since 2007. While ex-vessel prices for halibut have increased in recent years, the increases have not compensated all revenue losses experienced by the Area 2C commercial halibut fishery (see section 2.3.2 and 2.6 of the EA/RIR/IRFA).

In contrast, while declines in Total CEY in Area 3A have occurred over the last several years, the Total CEY remains the largest of any of the regulatory areas. In addition, following implementation of the GHL, charter halibut fishery removals in this area did not increase at the rate seen in Area 2C, increasing by just 9 percent from 2004 through 2007. The following sections provide additional details on the proposed CSP allocations for Area 2C and Area 3A.

1. Calculation of Annual Fishery Allocations and Catch Limits—Area 2C

In Area 2C, the proposed charter halibut fishery allocation percentages were based on Alternative 3 of the EA/RIR/IRFA (see **ADDRESSES**). The proposed CSP would establish three allocation tiers for Area 2C (Table 3 and Figure 2).

TABLE 3—AREA 2C PROPOSED CATCH SHARING PLAN (CSP) ALLOCATIONS TO THE CHARTER AND COMMERCIAL HALIBUT FISHERIES RELATIVE TO THE ANNUAL COMBINED CATCH LIMIT (CCL)

Area 2C annual combined catch limit for halibut in net pounds (lb)	Charter halibut fishery CSP allocation (% of annual combined catch limit)	Commercial halibut fishery CSP allocation (% of annual combined catch limit)
0 to 4,999,999 lb	18.3%	81.7%.
5,000,000 to 5,755,000 lb	915,000 lb	Area 2C CCL minus 915,000 lb.
5,755,001 lb and up	15.9%	84.1%.

When the IPHC sets an annual combined catch limit of less than 5,000,000 lb (2,268 mt) in Area 2C, the commercial halibut fishery allocation would be 81.7 percent and the charter halibut fishery allocation would be 18.3 percent of the annual combined catch limit. This percentage allocation was calculated as 125 percent of the average charter halibut harvest in Area 2C from 2001 through 2005 divided by the annual average combined charter and commercial halibut harvests in Area 2C from 2001 through 2005 (17.3 percent) and then adjusted to account for the Council's recommendation to use saltwater charter logbooks as the primary mechanism to estimate charter halibut harvest.

The Council considered smaller percentage allocations to the charter halibut fishery, including an allocation based on the current GHL formula, which uses a calculation of 125 percent of the average 1995 through 1999 charter halibut harvest divided by the 1995 through 1999 combined charter and commercial halibut harvests in Area 2C. However, the Council received testimony from Area 2C charter halibut fishery participants that the GHL had been overly restrictive since it was implemented in 2004, particularly during times of low halibut abundance. These participants requested that the Council base the CSP allocation on higher levels of historical charter halibut harvest to accommodate growth in the fishery since implementation of the GHL. The Council considered this testimony and the effects on participants in the commercial and charter halibut fisheries, and determined that using 2001 through 2005 average charter halibut harvests for the charter fishery allocation provided an equitable balance for both fisheries. Using these years would provide the charter halibut fishery with an increase in the proportion of the combined charter and commercial halibut harvests allocated to the charter fishery relative to the GHL formula. However, in consideration of the effects of an increased charter fishery allocation on commercial halibut fishery participants at low halibut abundance levels, NMFS proposes to base the CSP allocation on 2001 through 2005 charter halibut harvest levels rather than on more recent years in which charter halibut harvests reached historically high levels.

As discussed in Section 1.7.3 of the EA/RIR/IRFA (see **ADDRESSES**), data from the most recent five years of harvest (2006 through 2010) that were available when the Council selected its preferred alternative were used to calculate the average difference between harvest estimates provided by logbooks and the statewide harvest survey

(SWHS). Estimates using saltwater charter logbook data are on average higher than estimates using SWHS data. The Council considered this average difference (5.6 percent) when it recommended its CSP preferred alternative. Without this adjustment factor incorporated into the CSP, the charter halibut fishery would have been held to allocations that were based on charter halibut harvest estimates using SWHS as the primary data source, but would be managed based on charter halibut harvest projections using saltwater charter logbooks as the primary data source.

For the first allocation tier in Area 2C (i.e., a combined catch limit of less than 5,000,000 lb), the adjustment factor was applied to the allocation using the following equation:

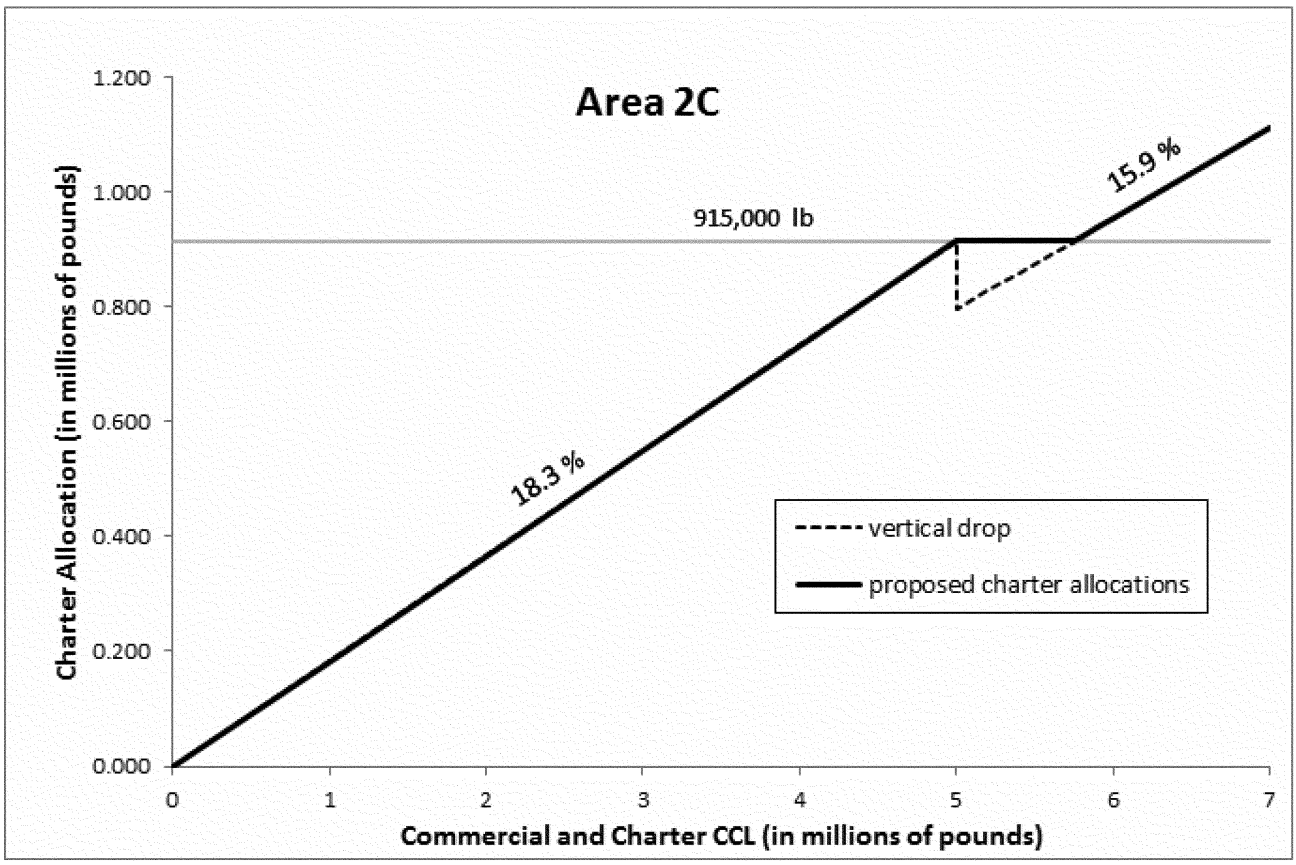
(CSP allocation × adjustment factor) + CSP allocation = adjusted CSP allocation

or

(17.3% × 5.6%) + 17.3% = 18.3%

When the IPHC sets the annual combined catch limits at the second tier, between 5,000,000 lb and 5,755,000 lb (2,610.4 mt), the allocation to the charter halibut fishery would be a fixed 915,000 lb (405 mt), to smooth the vertical drop in the poundage allocation that would occur without this adjustment (Figure 2). Without this adjustment, a 1 lb increase in combined catch limit from 4,999,999 lb to 5,000,000 lb would trigger a 2.4 percent drop in the charter allocation, resulting in a significant drop in the poundage allocated to the charter halibut fishery. For example, without the adjustment, if the combined catch limit were set at 4,999,999 lb, the charter allocation would be 18.3 percent or 915,000 lb. However, if the combined catch limit increased to 5,000,000 lb, the charter allocation percentage would be 15.9 percent, or 795,000 lb (360.6 mt). By adding this fixed poundage allocation tier for Area 2C to the proposed CSP, the vertical drop in the allocation is removed. The charter halibut fishery allocation would be fixed at 915,000 lb until the combined catch limit increased to the point where the charter allocation percentage at higher abundance levels would not result in a decrease in poundage allocated to the charter halibut fishery. With the proposed allocation percentages, the poundage allocated to the charter halibut fishery would increase as a fixed percentage at combined catch limits above 5,755,000 lb.

Figure 2. Area 2C Charter Allocations at Varying Levels of the Combined Catch Limit (CCL).



When the CCL is between 0 and 4,999,999 lb, the charter halibut fishery receives 18.3 percent of the CCL. Above 5,755,000 lb, the charter halibut fishery receives 15.9 percent of the CCL. When the CCL is between 5,000,000 and 5,755,000 lb, the charter halibut fishery would receive a fixed poundage allocation of 915,000 lb. The dashed line represents the vertical drop in allocation that would occur without the fixed poundage adjustment. The

commercial halibut fishery would be allocated the Area 2C combined catch limit minus the 915,000 lb fixed allocation to the charter halibut fishery.

When the IPHC sets the annual combined catch limit at the third tier, greater than 5,755,000 lb (2,610.4 mt), in Area 2C, the commercial halibut fishery allocation would be 84.1 percent and the charter halibut fishery allocation would be 15.9 percent of the Area 2C annual combined catch limit. This proposed charter halibut CSP allocation percentage was calculated as the 2005 charter halibut harvest estimates divided by the combined 2005 charter and commercial halibut harvests in Area 2C and adjusted to account for the Council's recommendation to use saltwater charter logbooks as the primary mechanism to estimate charter halibut harvest. For the third allocation tier in Area 2C, the adjustment factor was applied to the allocation using the same equation as for the first tier:

(CSP allocation × adjustment factor) + CSP allocation = adjusted CSP allocation

or

(15.1% × 5.6%) + 15.1% = 15.9%

Although the Council considered smaller percentage allocations to the charter halibut fishery, the Council determined, and NMFS agrees, that 2005 charter halibut harvest would be a more appropriate basis at higher levels of halibut abundance for determining the charter halibut allocation percentages under the CSP. The charter halibut harvest in 2005 was the second highest halibut harvest estimated since 1999. The Council determined that at higher levels of abundance, the CSP would provide an allocation to the charter halibut fishery based on a relatively high historical level of harvest and would allow participants to benefit from higher halibut abundance. NMFS agrees that 2005 is an appropriate basis for the charter halibut fishery allocation because it represents a year in which halibut abundance was relatively high in Area 2C. Halibut abundance began to decline in the years following 2005, and as a result, charter halibut fishery harvests increased in proportion to commercial halibut fishery harvests. NMFS agrees with the Council's recommendation for a charter halibut fishery allocation at the highest combined catch limit tier that balances the needs of participants in the commercial and charter halibut fisheries.

2. Calculation of Annual Fishery Allocations and Catch Limits—Area 3A

In Area 3A, the proposed charter halibut fishery allocation percentages were based on the methodology presented in Section 1.6 of the EA/RIR/IRFA. The Council recommended three different percentages of allocations depending on the level of the combined catch limit, with smaller percentage allocations to the charter halibut fishery as the combined catch limit increases. Consistent with the methodology used in Area 2C to avoid the vertical drops in allocations to the charter halibut fishery as the combined catch limit increases from one percentage allocation to another, NMFS also would establish fixed allocations to the charter halibut fishery for Area 3A. Because there would be two transitions between the three combined catch limit percentage allocations in this area, this proposed rule would add two tiers with fixed poundage allocations to remove the vertical drops. The proposed Area 3A allocation therefore contains 5 tiers (Table 4 and Figure 3).

TABLE 4—AREA 3A PROPOSED CATCH SHARING PLAN (CSP) ALLOCATIONS TO THE CHARTER AND COMMERCIAL HALIBUT FISHERIES RELATIVE TO THE ANNUAL COMBINED CATCH LIMIT (CCL)

Area 3A annual combined catch limit for halibut in net pounds (lb)	Charter halibut fishery CSP allocation (% of annual combined catch limit)	Commercial halibut fishery CSP allocation (% of annual combined catch limit)
0 to 9,999,999 lb	18.9%	81.1%.
10,000,000 to 10,800,000 lb	1,890,000 lb	Area 3A CCL minus 1,890,000 lb.
10,800,001 to 20,000,000 lb	17.5%	82.5%.
20,000,001 to 25,000,000 lb	3,500,000 lb	Area 3A CCL minus 3,500,000 lb.
25,000,001 lb and up	14.0%	86.0%.

For Area 3A, when the IPHC sets the annual combined catch limits at the first tier, less than 10,000,000 lb (4,535.9 mt), the commercial halibut fishery allocation would be 81.1 percent and the charter halibut fishery allocation would be 18.9 percent of the Area 3A annual combined catch limit. These allocation percentages were calculated using the same formula as for Area 2C, i.e., as 125 percent of the average charter halibut harvest in Area 3A from 2001 through 2005 divided by the annual average combined charter halibut and commercial halibut harvests in Area 3A from 2001 through 2005 (15.4 percent). Additionally, the Council recommended that this allocation be increased by 3.5 percent to establish the CSP allocation at the upper end of the target range around the allocation originally proposed in the 2011 CSP (18.9 percent).

The Council determined that this allocation would be appropriate for Area 3A because it provided for a limited increase in allocation relative to the years used as the basis for the GHL by including two (2004 and 2005) of the four (2004 through 2007) years in which charter halibut fishery harvests reached historically high levels. In determining its recommendation for the Area 3A charter halibut fishery allocation, the Council also considered public testimony that the lower poundage allocation under the CSP relative to the GHL at lower levels of abundance would negatively impact angler demand and reduce charter operator revenues (see sections 2.5.8 and 2.5.10 of the EA/RIR/IRFA). The Council considered this information and recommended increasing the Area 3A charter halibut fishery allocation by an additional 3.5 percent at lower levels of abundance. In developing the CSP, the Council considered including a buffer of 3.5 percent around the charter allocations to account for the imprecision of managing charter halibut fisheries using pre-season specifications of harvest restrictions without in-season adjustments or an early season closure (section 1.6.2 of the EA/RIR/IRFA). While the Council ultimately did not recommend a 3.5 percent buffer for all charter halibut fishery allocations under the proposed CSP, it did determine that it would be appropriate to increase the Area 3A charter halibut fishery allocation by 3.5 percent at lower levels of abundance in order to increase the poundage allocation to levels more consistent with the GHL. This adjustment was recommended because the charter fishery in Area 3A does not have a history of excessive overages and also because the abundance of halibut is

higher. A similar adjustment was not approved for the allocation to the Area 2C charter halibut fishery. The Council chose a more conservative allocation option in Area 2C because of that area's potential for rapid increases in charter harvests and the increased likelihood of exceeding its allocation at low levels of abundance. NMFS agrees that this allocation increase for Area 3A likely would mitigate the negative impact on charter halibut fishery participants of the reduced CSP allocation (in pounds of halibut) relative to the GHL.

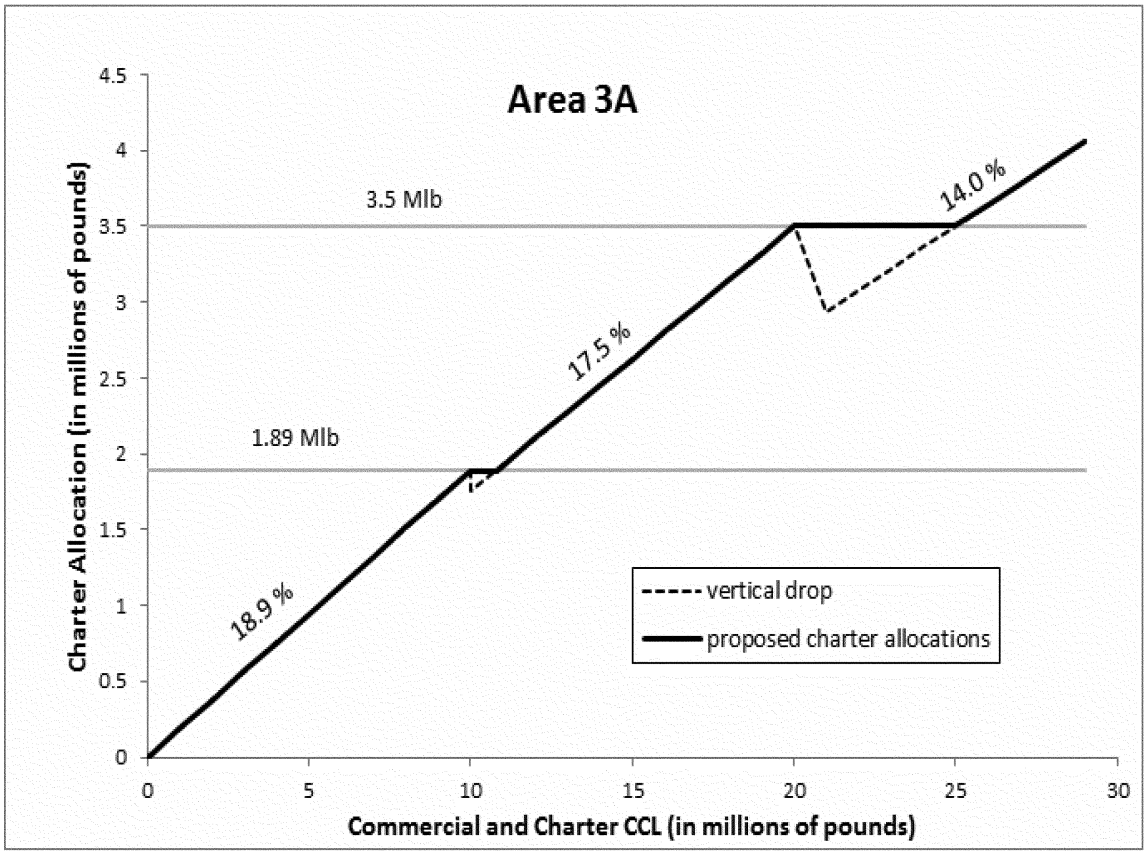
For Area 3A annual combined catch limits between 10,000,000 lb and 10,800,000 lb (4,898.8 mt), the allocation to the charter halibut fishery would be 1,890,000 lb (857.3 mt). The commercial halibut fishery would be allocated the Area 3A combined catch limit minus the 1,890,000 lb fixed allocation to the charter halibut fishery. This allocation tier would ensure that charter halibut fishery allocations would not decrease as the combined catch limit (and commercial catch limit) increased.

At abundances greater than 10,800,000 lb and less than 20,000,000 lb (9,071.9 mt), the allocations in Area 3A would be based on the same methods used to calculate the GHL, i.e., the charter allocation would be 125 percent of the average charter halibut harvest between 1995 and 1999 divided by the annual average combined charter halibut and commercial halibut harvests in Area 3A from 1995 through 1999. The Council and NMFS determined that this allocation to the charter halibut fishery was appropriate because harvest by the Area 3A charter GHL was not overly restrictive at comparable halibut abundance levels. This allocation tier would also include the 3.5 percent upward adjustment from the allocations proposed in the 2011 CSP in order to mitigate the negative impact on charter halibut fishery participants of the lower CSP allocation (in pounds of halibut) relative to the GHL. The resulting allocations would be 82.5 percent of the combined catch limit to the commercial halibut fishery and 17.5 percent to the charter halibut fishery.

When the combined catch limit for Area 3A is set at greater than 20,000,000 lb and less than or equal to 25,000,000 lb (11,339.8 mt), the charter halibut fishery would receive a fixed 3,500,000 lb allocation. This fixed poundage allocation would ensure that charter fishery allocations would not decrease as the combined catch limit (and commercial catch limit) increased. The commercial halibut fishery allocation would equal the combined catch limit minus 3,500,000 lb.

At combined catch limits greater than 25,000,000 lb, the commercial halibut fishery allocation would be 86 percent and the charter halibut fishery allocation would be 14 percent of the Area 3A annual combined catch limit. The Council determined that allocating a larger percentage to the charter halibut fishery would give more to the charter halibut fishery than they could harvest based on available historic harvest data and information on charter business operations received during the development of the CSP (see Section 1.6.7 of the EA/RIR/IRFA for additional detail).

Figure 3. Area 3A Charter Allocations at Varying Levels of the Combined Catch Limit (CCL).



When the CCL is less than 10 million pounds (Mlb), the charter halibut fishery receives 18.9 percent of the CCL. Between 10.8 Mlb and 20 Mlb, the charter halibut fishery receives 17.5 percent of the CCL. When the CCL is greater than 25 Mlb, the charter halibut fishery receives 14.0 percent of the CCL. Two adjustments for vertical drops in allocation are made at intermediate abundance levels as shown.

NMFS would publish the combined catch limits and associated allocations for the charter and commercial halibut fisheries in the **Federal Register** as part of the IPHC annual management measures pursuant to 50 CFR 300.62. Fishery-specific catch limits are calculated by deducting separate estimates of wastage from the commercial and charter halibut allocations, as described in the following section.

D. Calculation of Annual Fishery Catch Limits

Under the proposed CSP, the commercial and charter halibut fisheries would have separate accountability for their discard mortality or ''wastage,'' such that each fishery's wastage would be deducted from its respective allocation to obtain its catch limit. Wastage is currently only estimated for the commercial fishery and includes undersized halibut (regulatory discards) that die after release and halibut of all sizes that die on lost or abandoned gear. Under the current process for setting commercial catch limits, commercial wastage is deducted with other removals from the Total CEY. Through 2012, discard mortality in the recreational fishery has not been included in the other removals for calculating the Fishery CEY for any IPHC regulatory area, because estimates of recreational fishery discards have not been available. Under the proposed CSP, separate fishery accountability for wastage would not change the allocation percentages for each fishery. Instead, each fishery's allocation would be reduced by an estimate of its wastage to obtain the fishery's catch limits. The processes for estimating wastage by fishery are described below.

Each year the IPHC estimates wastage, or the discard mortality of halibut captured in the commercial fishery that are under the minimum legal size of 32 inches, based on data collected from the IPHC's annual stock assessment survey (available at *www.iphc.int/publications/rara/2012/rara2012053_commwastage.pdf*). The discard mortality rate is currently estimated to be 16 percent. The amount of halibut wasted on lost or abandoned commercial fixed gear is extrapolated from logbook interview and fishing log data, and represents a small percentage of the total wastage in the fishery. Additional forms of mortality in the commercial fishery that are not currently included in estimates of

wastage may include excess harvest that must be discarded when more gear is set than is needed to obtain fishing limits, and halibut that are damaged by predators and are discarded at sea. The IPHC intends to re-evaluate this approach for estimating wastage in the directed commercial halibut fishery once data on halibut discards from the previously unobserved commercial halibut fleet are available from the restructured North Pacific Groundfish and Halibut Fisheries Observer Program (77 FR 70062, November 21, 2012).

Wastage occurs in the charter fishery as a result of stress or injuries sustained from hooking, hook removal, and handling. Although recreational harvest is routinely estimated, the additional removals of halibut due to catch-and-release mortality are not currently estimated. Discard mortality rates vary with the type of gear used, handling and release methods, water temperature, hook type, and size of the fish, among other factors. NMFS anticipates that ADF&G would generate annual estimates of charter wastage in each area that could then be deducted by the IPHC from the charter allocation to obtain the charter catch limit in each area under this proposed rule.

NMFS proposes that the deduction of wastage from each fishery's allocation to calculate its catch limit promotes the Council's objective for the CSP to determine catch limits for the commercial and charter halibut fisheries using a predictable and standardized methodology for separate accountability. As shown in Figure 1, the basis for the catch limit recommendations, the Fishery CEY, would no longer be reduced only by commercial halibut fishery wastage. Instead, the commercial fishery allocation would be reduced by the commercial halibut fishery's estimated wastage, and the charter fishery allocation would be reduced by the charter halibut fishery's estimated wastage. NMFS proposes that the deduction of wastage from each fishery's allocation promotes conservation because it would encourage better handling of discarded fish to reduce the discard mortality rates and thus increase fishery catch limits.

E. Annual Process for Setting Charter Management Measures

Prior to 2012, charter management measures were recommended by the Council and implemented by NMFS through proposed and final rulemaking, or implemented by IPHC regulations without specific recommendations by the Council. The Council recommended a different approach under the CSP because it sought a more timely and responsive process to address harvest overages or underages, or changes in halibut exploitable biomass. The Scientific and Statistical Committee (SSC), the Council's primary scientific advisory body, reviewed and endorsed this process for analyzing and recommending charter management measures at its December 2012 meeting.

In 2012 and 2013, charter management measures were implemented to limit the charter halibut fishery to its GHL using the process outlined below. The Council and IPHC have endorsed this same process for setting charter halibut management measures in Area 2C and 3A up to and following implementation of the CSP to limit the charter halibut fishery to its allocation and catch limit under the CSP. The steps in the annual process would continue as follows until modified by the Council or IPHC:

1. In October, the Council's Charter Halibut Management Implementation Committee makes preliminary recommendations of proposed annual management measures for the next year for Area 2C and Area 3A for analysis.
2. In December, the Council's advisory bodies and the public review the analysis of proposed management measures and make final recommendations to the Council.
3. At its December Council meeting, the Council selects the charter halibut management measures to recommend to the IPHC that would most likely constrain charter halibut harvest for each area within its allocation, while considering the economic impacts on charter operations.
4. In January of the next year at its annual meeting, the IPHC considers the Council recommendations and input from its stakeholders and staff. The IPHC then may adopt the Council's recommendation or alternative charter halibut management measures for Area 2C and Area 3A. The IPHC recommends these measures to the Secretaries of State and Commerce consistent with the provisions of the Convention.
5. In March, NMFS publishes in the **Federal Register** the charter halibut management measures for each area as part of the IPHC annual management measures accepted by the Secretary of State with the concurrence of the Secretary of Commerce.

This approach is an improvement over the previous method of setting charter management measures though Federal proposed and final rulemaking often years after an overage had occurred. The current process reduces the delay in implementing regulations to address overages and allows the most recent halibut stock status and charter fishery data to be used to implement the appropriate measures for the next halibut fishing season. This method for setting charter harvest management measures is likely to limit the charter halibut fishery to its catch limit over time because adjustments to management measures could change in response to harvest overages and underages before the next season begins.

The Council, SSC, IPHC, and NMFS would continue to assess effectiveness of this method of recommending and implementing charter management measures after the CSP is implemented. The SSC provides the Council, NMFS, and the public with scientific and technical reviews of regulatory amendment analyses, stock assessments, and research and data needs for fisheries management in Alaska. The Council expects that any modifications to the process for setting charter harvest restrictions would be reviewed by these entities.

NMFS recognizes that, because the CSP would not change management measures during a sport fishing season, the management measures implemented prior to the start of a sport fishing season may result in harvests that are greater or less than the catch limit. However, the Council anticipates, and NMFS agrees, that over time, halibut harvests by the charter halibut fishery under the CSP would stabilize around the charter halibut catch limits, thereby promoting conservation and management objectives over the long term. The IPHC would continue to account for all removals when determining the annual combined catch limit under the CSP, and IPHC stock assessments would continue to account for charter halibut harvests that unintentionally exceed the fishery's catch limit. Operationally, overages may contribute to a corresponding decrease in the combined charter and commercial catch limit in the following year. Underages would accrue to the benefit of the halibut biomass and all user groups and could result in an increase in the combined catch limit in the following year. The Council determined, and NMFS agrees, that halibut fishery management under the CSP is more responsive to changes in halibut abundance than the GHL program.

Because management measures would be determined annually under the CSP, and implemented as IPHC annual management measures, the Council recommended and NMFS proposes to remove two restrictions from Federal regulations: the one-fish daily bag limit for Area 2C at § 300.65(d)(2)(i); and the line limit at (d)(2)(iii). NMFS anticipates

that under the process described above, daily charter halibut fishery bag limits would be established in the IPHC annual management measures. It is important to note that by removing the one-fish bag limit from Federal regulations, NMFS will be relying on the IPHC annual management measures to implement that bag limit, if necessary. NMFS proposes that a Federal line limit regulation is no longer necessary for three reasons. First, the charter halibut limited access program regulations at § 300.66(s) restrict the number of anglers retaining halibut to the number endorsed on the charter halibut permit being used for that charter fishing trip. Also, U.S. Coast Guard safety regulations limit the number of clients that may be onboard most charter vessels. Additionally, a line limit for Area 2C is unnecessary because line limits do not directly restrict halibut retention by charter vessel anglers. NMFS proposes to revise a prohibition at § 300.66(m) to reference the IPHC annual management measures for charter halibut fishery gear and harvest restrictions.

F. Other Restrictions Under the CSP

The Council recommended two additional restrictions as part of the proposed CSP. NMFS would implement a prohibition on retention of halibut by skipper and crew on a charter vessel fishing trip. Previously, NMFS published a final rule (74 FR 21194, May 6, 2009) to implement, along with other restrictions, a prohibition on operator, guide, and crew retention of halibut in Area 2C. The proposed CSP would not modify this prohibition in Area 2C, but would implement the same prohibition in Area 3A. As noted in Section 2.3.2 of the EA/RIR/IRFA prepared for the CSP (see **ADDRESSES**), NMFS estimates that prohibiting retention of halibut by operators, guides, and crew reduces charter halibut harvest by approximately 5.5 percent in Area 3A relative to current harvests (see *www.alaskafisheries.noaa.gov/npfmc/PDFdocuments/halibut/2013charterAnalysis_1212.pdf*). The Council recommended that NMFS implement this prohibition in the CSP to clarify that only halibut harvested by charter anglers will be counted toward the CSP charter halibut fishery allocation. Charter operators, guides, and crew are not considered charter anglers under current Federal regulations, and NMFS proposes it would not be appropriate for halibut harvested by these persons to be counted toward the charter halibut fishery harvest. Additionally, halibut harvested by charter operators, guides, and crew are difficult for enforcement agents to distinguish from halibut caught by charter clients.

The Council also recommended, and NMFS proposes, to prohibit individuals who hold both a charter halibut permit and commercial halibut IFQ from fishing for commercial and charter halibut on the same vessel during the same day in Area 2C and Area 3A. This provision would facilitate enforcement, as different regulations apply to charter-caught and commercially caught halibut. This provision would not prevent an individual who holds both a charter halibut permit and commercial halibut IFQ from conducting charter operations and commercial operations on separate vessels on the same day.

NMFS proposes several additional restrictions to facilitate monitoring and enforcement of the CSP. To be consistent with the Council's recommendation to prohibit individuals who hold both a charter halibut permit and commercial halibut IFQ from fishing for commercial and charter halibut on the same vessel during the same day, this proposed rule also would prohibit individuals who hold both a charter halibut permit and a Subsistence Halibut Registration Certificate from using both permits to harvest halibut on the same vessel during the same day in Area 2C and Area 3A. This prohibition would allow enforcement officials and samplers to classify harvest among the charter, subsistence, and commercial halibut fisheries. Allowing multiple types of trips on a vessel in the same day could create uncertainty regarding how to classify and properly account for retained halibut.

To enforce prohibitions on individuals fishing for commercial and charter halibut or for subsistence and charter halibut on the same vessel during the same day in Area 2C and Area 3A, NMFS would require charter vessel operators to indicate the date of a charter vessel fishing trip in the saltwater charter logbook and to complete all of the required fields in the logbook before the halibut are offloaded. These requirements would enable enforcement agents to determine whether that vessel was used on a charter vessel fishing trip that day. Beginning in 2009, charter anglers in Area 2C were required to sign the saltwater charter logbook to verify the accuracy of the reported catch. This signature requirement was intended to improve the accuracy of charter halibut harvest estimates, and improve the enforceability of a one-fish bag limit (74 FR 21194, May 6, 2009). NMFS proposes to extend the signature requirement to include charter anglers in Area 3A as part of the CSP in the event that additional harvest restrictions are implemented in that area.

IV. Guided Angler Fish (GAF)

A. Overview of GAF

The proposed CSP would authorize supplemental individual transfers of commercial halibut IFQ as guided angler fish (GAF) to qualified charter halibut permit holders for harvest by charter vessel anglers in Areas 2C and 3A. Through the GAF program, qualified charter halibut permit holders may offer charter vessel anglers the opportunity to retain halibut up to the limit for unguided anglers when the charter management measure in place would limit charter vessel anglers to a more restrictive harvest limit. In other words, a charter vessel angler may retain a halibut as GAF that exceeds the daily bag limit and length restrictions in place for charter anglers only to the extent that the angler's halibut retained under the charter halibut management measure plus halibut retained as GAF do not exceed daily bag limit and length restrictions imposed on unguided anglers. For example, the daily halibut retention limit for unguided sport anglers in Area 2C and Area 3A is currently two halibut of any size per calendar day. Assuming this same unguided sport angler retention limit, charter vessel anglers would retain GAF only when the charter halibut management measure for that area limits charter halibut anglers to retaining fewer than two fish of any size per calendar day. The Council recommended this restriction on GAF use to maintain parity between guided and unguided sport halibut retention limits.

Table 5 presents examples of the potential uses of GAF by charter vessel anglers in Area 2C and Area 3A under various potential annual management measures, assuming that unguided sport anglers are subject to the current regulations limiting retention to two halibut of any size per calendar day.

TABLE 5—OPTIONS FOR GUIDED ANGLER FISH (GAF) HARVEST UNDER DIFFERENT ANNUAL MANAGEMENT MEASURES, ASSUMING UNGUIDED ANGLERS ARE ALLOWED TO RETAIN TWO FISH OF ANY SIZE PER DAY

If the annual management measure for charter anglers is a daily bag limit of:	then each charter vessel angler could use GAF to retain:
one halibut of a restricted size (e.g., reverse slot limit of U45/O68).	either one halibut meeting the restrictive size requirement under the charter angler restriction plus one GAF halibut of any size or two GAF halibut of any size.
one halibut of any size	one halibut of any size under the charter angler restriction plus one GAF halibut of any size.
two halibut, of which only one fish may be larger than a maximum size limit. If a charter vessel angler retains only one halibut in a calendar day, that halibut may be of any length.	one halibut of any size under the charter angler restriction plus one GAF of any size.
two halibut of any size	not applicable.

The Council recommended including GAF in the Area 2C and Area 3A CSP to increase operating flexibility for participants in the commercial and charter halibut fisheries. The Council determined, and NMFS agrees, that the GAF program could increase fishing opportunities in the charter fishery for those anglers desiring such an opportunity. The GAF program also would give commercial halibut quota share holders greater flexibility when developing their annual harvest strategies. A person holding halibut QS for an area has harvesting privileges for an amount of halibut (IFQ) that is derived annually from his or her QS holdings in that area and authorized on his or her IFQ permit. The opportunity for annual transfers of IFQ to GAF could benefit some halibut IFQ holders if they receive more revenue from transferring IFQ to GAF than they would receive from harvesting the IFQ themselves. In recommending the CSP preferred alternative, the Council stated its intent to annually review GAF use following implementation. NMFS and the Council intend that the GAF program would allow the charter halibut fishery to increase halibut harvest beyond area annual catch limits specified in the annual management measures up to guided sport catch limits. In addition the GAF program creates a system wherein the charter halibut fishery compensates the commercial halibut fishery for decreases in commercial halibut IFQ harvest.

In this proposed rule, NMFS proposes eligibility criteria, a transfer process, transfer restrictions, and additional reporting requirements to implement the GAF transfer program. These elements are described in the following sections, B through F, respectively.

B. Eligibility Criteria To Transfer Between IFQ and GAF

An IFQ holder is eligible to transfer halibut IFQ as GAF if he or she holds at least one unit of halibut QS and has received an annual IFQ permit authorizing harvest of IFQ in either the Area 2C and Area 3A commercial halibut fishery. A charter halibut permit holder is eligible to receive IFQ as GAF if he or she holds one or more charter halibut permits in the management area that corresponds to the IFQ permit area from which the IFQ would be transferred.

Holders of military charter halibut permits would also be eligible to receive IFQ as GAF. Military charter halibut permits are issued to U.S. Military Morale, Welfare, and Recreation programs in Alaska that offer charter halibut fishing to service members harvesting in Area 2C or Area 3A. To operate a charter vessel, the U.S. Military Morale, Welfare, and Recreation program would need to obtain a military charter halibut permit by application to NMFS or could purchase a charter halibut permit on the commercial market (see regulations at § 300.67 for additional detail).

Community Quota Entities (CQEs) holding community charter halibut permits are also eligible to receive IFQ as GAF. Regulations at § 300.67(k)(2) list the communities that are eligible to receive community charter halibut permits from NMFS. In addition to community charter halibut permits, a CQE may acquire non-community charter halibut permits by transfer. The final rule implementing the charter halibut limited access program describes community charter halibut permits and the application and eligibility requirements for CQEs to receive community charter halibut permits (75 FR 554, January 5, 2010).

There are several ways in which a CQE in Area 2C or Area 3A that is eligible to receive community charter halibut permits and holds charter halibut permits could be a party to a GAF transaction. CQEs could receive a transfer of GAF for use on a community charter halibut permit or regular charter halibut permit that it holds. Community Quota Entities that are eligible to hold charter halibut permits also are authorized to hold IFQ under the IFQ Program under regulations established by Amendment 66 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (69 FR 23681, April 30, 2004). Amendment 66 defined CQEs in the Gulf of Alaska, including in Areas 2C and 3A, and authorized those CQEs to receive transferred halibut or sablefish QS on behalf of the community it represents and to lease the resulting IFQ to fishermen who are residents of that community. Thus, a CQE holding IFQ would be eligible to transfer the IFQ as GAF to a holder of a charter halibut permit, community charter halibut permit, or military charter halibut permit if it meets all other proposed GAF transfer requirements at § 300.65(c)(5).

As proposed in regulations at § 300.65(c)(5)(ii)(D), NMFS would approve an application for transfer of IFQ and GAF between an eligible IFQ holder and an eligible holder of a charter halibut permit, community charter halibut permit, or military charter halibut permit if NMFS determines that (1) the transfer would not cause the GAF holder to exceed use limits specified (see ''GAF Transfer Restrictions'' section below); (2) there are no fines, civil penalties, sanctions, or other payments due and owing, or outstanding permit sanctions, resulting from Federal fishery violations involving either person or permit; and (3) other pertinent information requested on the application has been supplied. Additionally, in cases where the applicant is both an IFQ and a GAF holder, to approve an application for transfer, NMFS would need to determine that the transfer would not cause the applicant to exceed use limits specified for GAF holders or those for halibut IFQ holders at § 679.42. NMFS would need to make additional determinations to approve a transfer between IFQ and GAF for a CQE. In

addition to the requirements listed above, NMFS would approve the transfer upon making a determination that (1) the CQE applying to transfer IFQ to GAF is eligible to hold and receive IFQ on behalf of a eligible community in Area 2C or Area 3A, as specified at § 300.67(k)(2); (2) the CQE applying to receive GAF from an Area 2C or Area 3A IFQ holder holds one or more community charter halibut permits or charter halibut permits for the corresponding area; and (3) the CQE applying to transfer between IFQ and GAF has submitted a complete annual report(s) to NMFS as required by § 679.5(l)(8).

See the ''GAF Transfer Restrictions'' section for further discussion on the proposed regulations governing transfers between IFQ and GAF for Community Quota Entities.

C. Process To Complete a Transfer Between IFQ and GAF

1. Application To Transfer Between IFQ and GAF

For transfers between IFQ and GAF, the IFQ holder and charter halibut permit holder receiving GAF would be required to complete, sign, and submit an application to NMFS to transfer halibut in numbers of fish between IFQ and GAF. NMFS would approve the transfer provided that application is complete, both parties are eligible to transfer, and there are no other administrative reasons to disapprove the transfer.

The same application form would be used for transfers of IFQ to GAF and returns of GAF to IFQ. Application forms would be available on the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov/*. Applications could be submitted by mail, hand delivery, or facsimile. Electronic submissions other than facsimile would not be acceptable because NMFS would require the original signature of the IFQ holder and the charter halibut permit holder. Additionally, unlike emails, fax transmittals give the applicant proof of receipt and protect the confidentiality of business and personally identifiable information. The applicants also would need to attest under penalty of perjury that legal requirements were met and all statements on the application are true, correct, and complete. Neither party would be required to complete a transfer application for an automatic return of unused GAF to IFQ on or around the automatic GAF return date each year. NMFS would not approve an application for transfer between IFQ and GAF after the automatic GAF return date. NMFS may develop an online system for transfers between IFQ and GAF at a later date.

2. Conversion of IFQ Pounds to Number of GAF

NMFS would issue GAF in numbers of halibut. NMFS would post the conversion from IFQ pounds to a GAF for Area 2C and Area 3A for each fishing year on the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov*. NMFS would post the conversion factor for the current fishing year before the beginning of the commercial halibut fishing season each year. The following paragraphs describe how the conversion factors from pounds of IFQ to number of GAF would be calculated.

NMFS would require that for each GAF transferred from an IFQ holder to a charter halibut permit holder's GAF account, the equivalent number of net pounds of halibut rounded up to the nearest whole net pound would be removed from an IFQ holder's IFQ account. Conversely, CSP regulations would require that for each GAF returned from a charter halibut permit holder's GAF account, the equivalent number of net pounds of halibut IFQ rounded up to the nearest whole net pound would be returned to the IFQ holder's account. The same average net weight would be used for all conversions of IFQ to GAF and returns of GAF to IFQ within a calendar year.

A request for transfer from IFQ to GAF would be made in numbers of fish, or the number of GAF to be transferred to the GAF permit holder. For example, if a charter permit holder requested, and NMFS approved, a transfer of 5 GAF and the conversion factor for that area was 20.7 lb (9.4 kg), then 104 lb (47.2 kg) of IFQ would be debited from the IFQ holder's account for that area as follows: 5 GAF × 20.7 lb = 103.5 lb (46.9 kg) and rounded up to 104 lb (47.2 kg). In current regulations, NMFS accounts for IFQ in whole net pounds and proposes to continue accounting in whole net pounds for transfers between IFQ and GAF. This method of rounding up to the nearest whole pound results in the fewest conversion errors when GAF are converted back to IFQ, as demonstrated below.

Voluntary and automatic returns of GAF to IFQ would require NMFS to convert unharvested GAF back to net pounds of IFQ. To calculate the number of net pounds of halibut IFQ returned to the IFQ holder, NMFS would multiply the unharvested number of GAF by the conversion factor and round up to the nearest pound. In the example used above, if the parties agreed to a voluntary return of 2 GAF to the IFQ holder, NMFS would return 42 lb (19.1 kg) to the IFQ holder's account (2 GAF × 20.7 lb = 41.4 lb (18.8 kg) and rounded to 42 lb).

The conversion from IFQ pounds to number of fish for GAF would be based on the average weight of GAF from the previous year as estimated from GAF length data reported to NMFS through the proposed electronic GAF reporting system (see ''GAF Reporting Requirements'' section of this preamble for additional detail). NMFS anticipates that the average weight of GAF would likely be higher than non-GAF halibut harvested in the charter halibut fishery, particularly if charter halibut fishery management measures include a size restriction. Therefore, NMFS proposes to use average weight estimates for GAF to accurately account for GAF removals. Because average GAF lengths would not be available for the first year of the proposed CSP, NMFS would use the average net weight of a halibut landed in the charter fishery in each area (2C or 3A) during the previous year, if no size limits were in effect, or from the most recent year without a size limit in effect. These average net weights would be based on data collected during ADF&G creel surveys. If no GAF were harvested in a year, the conversion factor would be calculated using this same method as for the first year of the program (i.e., NMFS would use the most recent average weight of charter fish harvested in an area based on ADF&G creel surveys).

3. GAF Permits

Upon completion of the transfer between IFQ and GAF, NMFS would issue a GAF permit to the holder of a charter halibut permit, community charter halibut permit, or military charter halibut permit. The GAF permit would be assigned to the charter halibut permit specified by the GAF permit holder at the time of application. The GAF permit holder could offer GAF for harvest by charter vessel anglers on board the vessel on which the operator's GAF permit and the assigned charter halibut permit are used.

GAF permit holders would be required to hold a sufficient number of GAF for charter vessel anglers to retain halibut in excess of the charter angler limit and up to limits in place for the unguided sport halibut fishery for that area. In other words, charter operators would be required to already possess the GAF prior to the fish being caught, i.e., GAF could not be obtained after harvesting of the fish. The GAF permit holder also would be required to have the GAF permit and the assigned charter halibut permit on board the vessel on which charter vessel anglers retain GAF,

and to present the permits if requested by an authorized enforcement officer. Similar to the requirement that charter halibut permit holders retain their saltwater charter logbooks for two years, GAF permit holders would be required to retain all GAF permits for two years after the date of issuance. GAF permits would need to be available for inspection upon request of an authorized enforcement officer.

At the end of a charter halibut fishing trip in which GAF were retained, the GAF permit holder would be required to electronically report the total number of GAF retained under his or her GAF permit. The GAF permit holder would be required to report on the last day of a multi-day charter halibut fishing trip. NMFS would deduct this number of GAF from the GAF permit holder's account of unused GAF. NMFS proposes to require the GAF permit holder to complete a GAF electronic report by 11:59 p.m. (Alaska local time) upon completion of a charter halibut fishing trip in which GAF were retained to maintain as close to real-time accounting of GAF balances as possible.

On approval of an application for transfer between IFQ and GAF, NMFS would issue a GAF permit to the charter halibut permit holder receiving GAF. A GAF permit would authorize the GAF permit holder to offer GAF to charter vessel anglers and allow charter vessel anglers to retain halibut in excess of the charter halibut harvest restriction, up to the limits on GAF use that are in the proposed regulations at § 300.65(c). GAF could be retained under a GAF permit only if, at the time the GAF are retained, the GAF permit holder's account contained at least the number of retained GAF. All GAF permits would expire at 11:59 p.m. (Alaska local time) on the day prior to the automatic GAF return date. GAF could not be retained by charter vessel anglers after the expiration of GAF permits.

NMFS would issue a revised GAF permit to the GAF permit holder each time during the year that it approved a transfer between IFQ and GAF for that GAF permit. Each GAF permit would be assigned to only one charter halibut permit, community charter halibut permit, or military charter halibut permit in Area 2C or Area 3A. Charter halibut permit holders requesting GAF would be required to specify the charter halibut permit to which the GAF permit would be assigned on the application for transfer between IFQ and GAF. The assignment between a charter halibut permit holder's GAF permit and their specified charter halibut permit, community charter halibut permit, or military charter halibut permit could not be changed during that year. If charter vessel anglers retain GAF, the GAF permit and the assigned charter halibut permit, community charter halibut permit, or military charter halibut permit would need to be on board the vessel on which the GAF halibut are retained, and available for inspection by an authorized enforcement officer.

The proposed rule also would prohibit GAF, once transferred to a charter halibut permit holder and assigned to their specified charter halibut permit, from being transferred to another charter halibut permit, community charter halibut permit, or military charter halibut permit holder. This prohibition would prevent a charter halibut permit holder from receiving GAF by transfer with the intention of transferring the GAF to another charter halibut permit holder for compensation. The Council and NMFS generally recommend management provisions that encourage holders of harvest privileges to actively participate in the fishery for which they hold the privilege, rather than receiving financial benefits from another person who pays to use those harvest privileges. The Council's recommendation and NMFS' proposal to prohibit GAF permit holders from transferring GAF to another charter halibut permit holder is consistent with this policy objective to require a charter halibut permit holder who receives GAF by transfer to utilize GAF in conjunction with his or her charter halibut permit. In addition, these limitations would ensure that GAF could be accurately debited and tracked, and that GAF is being used only by authorized transferees.

4. Voluntary and Automatic Returns of GAF to IFQ

Returns of unused GAF to the IFQ holder would be authorized using two methods: A voluntary return that could be requested from August 1 through August 31 and that would be completed on or after September 1, and an automatic return 15 days before the end of the commercial halibut fishing season. Based on testimony from commercial and charter fishery participants, the Council recommended a voluntary return of GAF around September 1 to allow the IFQ holder sufficient time to harvest that IFQ before the end of the season (usually in mid-November). NMFS would accept applications for voluntary returns of unused GAF from August 1 through August 31 and NMFS would complete GAF returns on or after September 1. The earliest that NMFS would return GAF to IFQ is September 1. NMFS would process transfers and returns of IFQ and GAF as soon as possible after the dates stated in Federal regulations. Barring unforeseen circumstances (e.g., computer failure, weather closures, furlough, etc.), NMFS would conduct the transfer on the first business day after the stated transfer date. For example, if September 1 occurred on the Sunday of Labor Day weekend, the transfers would occur the following Tuesday, at the earliest. For this reason, the regulatory text states that transfers would occur ''on or after'' September 1. This preamble uses the term ''return'' rather than ''transfer'' to be consistent with the terminology commonly used by the public during the development of GAF transfer provisions to describe the transfer of GAF to IFQ. Regulations at § 300.65(b)(5) use the term transfer to describe the voluntary and automatic returns of GAF to IFQ. These terms are synonymous.

There would also be an automatic mandatory return of unused GAF 15 days prior to the end of the commercial halibut fishing season. The end of the commercial halibut fishing season is specified in the IPHC annual management measures published by NMFS in the **Federal Register** each year. On and after this automatic return date, unused GAF would no longer be authorized for use in the charter fishery in the current year. Applications for transfer of IFQ to GAF would not be accepted after October 15, to ensure that all GAF transactions are completed before the automatic return date. No application would be required for the automatic return of unused GAF. NMFS would return any remaining unharvested GAF to the IFQ holder from whom it was derived. NMFS recognizes that some GAF permit holders likely would have a balance of unharvested GAF after most charter fishing trips had been completed for the year. Although the charter halibut fishery has typically been open from February 1 through December 31 in recent years, most fishing in the charter fishery occurs from May through August. ADF&G data indicate that approximately 96 percent of charter halibut harvest had occurred by August 31 in either Area 2C or Area 3A. The commercial halibut fishing season typically opens in March and closes in mid-November. Based on this information, NMFS and the Council believe that NMFS should return all remaining unused GAF to the IFQ permit holder 15 days prior to the end of the commercial halibut fishing season because it would not significantly affect charter vessel business operations in

aggregate. Further, this timeline would give the IFQ holder an opportunity to harvest the IFQ before the end of the commercial fishing season for that year. The IFQ holder also may choose to count the IFQ returned from GAF toward an underage for his or her halibut IFQ account for the next fishing year, as specified in regulations at § 679.40(e). On or as soon as possible after the voluntary or automatic GAF return dates, NMFS would convert GAF in number of fish to IFQ in net pounds using the conversion factor for that year and return the converted IFQ to the IFQ holder's account.

D. GAF Transfer Restrictions

Through the GAF program, the Council intended to provide IFQ holders some flexibility in how they use their IFQ, with limitations. The Council recommended and NMFS proposes restrictions on the amount of IFQ that an IFQ holder could transfer as GAF and on the number of GAF that could be assigned to one GAF permit. The restrictions on transfers of GAF are intended to prevent a particular individual, corporation, or other entity from acquiring an excessive share of halibut fishing privileges as GAF. The restrictions on the amount of IFQ that an IFQ holder may transfer are intended to further the goals of the Council and IFQ program for an owner-onboard fishery. The proposed rule would implement the Council's recommendations for three GAF transfer restrictions.

First, IFQ holders in Area 2C would be limited to transferring up to 1,500 lb (680.4 kg) or 10 percent, whichever is greater, of their initially issued annual halibut IFQ for use as GAF. In Area 3A, IFQ holders could transfer up to 1,500 lb or 15 percent, whichever is greater, of their initially issued annual halibut IFQ for use as GAF. NMFS proposes that IFQ holders in Area 3A would be able to transfer up to 15 percent of the IFQ as GAF because IFQ holdings are generally larger in Area 3A than in Area 2C, and restricting Area 3A IFQ holders to leasing up to 10 percent of their IFQ holdings could limit the amount of IFQ available for lease as GAF (section 2.5.12.2 of the EA/RIR/IRFA). Allowing Area 3A IFQ holders to lease 15 percent of their IFQ holdings as GAF would provide Area 3A IFQ holders more flexibility in determining whether to lease IFQ as GAF and could provide more GAF to the Area 3A charter halibut fishery.

The percentage of an IFQ holder's IFQ that is available for transfer would be based on fishable pounds at the start of the fishing year before any other transfers of IFQ had occurred. Using the start-of-year balance would provide a fixed value on which to base the transfer limits that would allow NMFS and IFQ holders to accurately track the maximum amount of GAF that could be transferred. Second, under this proposed rule, no more than a total of 400 GAF would be assigned during one year to a GAF permit assigned to a charter halibut permit that is endorsed for six or fewer anglers. And third, no more than a total of 600 GAF would be assigned during one year to a GAF permit assigned to a charter halibut permit endorsed for more than six anglers. A person who holds both halibut IFQ and a CHP and would like to transfer that IFQ to GAF would be subject to the same transfer restrictions. The Council recommended different GAF limits for charter halibut permits to balance the GAF needs of different types of charter operations with its objective to maximize the opportunity for all charter operators to acquire GAF. Because holders of charter halibut permits endorsed for more than six anglers are likely to be larger charter operations, the Council was concerned these larger charter operations would have more financial resources to acquire GAF than smaller operations unless a limit was placed on the number of GAF that could be assigned to a charter halibut permit. NMFS agrees that the proposed limit for assigning GAF to charter halibut permits accommodates the GAF needs of different charter operation types and promotes the Council's objective to offer all charter businesses the opportunity to lease IFQ as GAF.

Commercial halibut IFQ regulations at § 679.42(f)(1)(i) and (ii) also include QS use limits that are intended to prevent a particular individual, corporation, or other entity from acquiring an excessive share of commercial halibut fishing privileges. NMFS determines individual and collective interest in halibut fishing privileges by summing QS used by that person and a portion of any QS used by an entity in which that person has an interest. NMFS considers the person's portion of the QS used by the entity equal to the share of interest the person has in that entity. For example, if an individual uses 50,000 units of Area 2C halibut QS and has a 5 percent interest in a company that uses 750,000 units of Area 2C halibut QS, the amount of Area 2C halibut QS that person would be considered to use for purposes of the limits at § 679.42(f)(1)(i) and (ii) is 50,000 units (his personal holdings) plus 37,500 units (5 percent interest for the 750,000 units in the company using Area 2C halibut QS). This individual's use of 87,500 units would not exceed the Area 2C QS use limit of 599,799 units.

For purposes of administering the QS use limits at § 679.42(f)(1)(i) and (ii), NMFS proposes to include the QS equivalent of IFQ transferred to GAF in the calculation of a person's QS use. Using the example above, if the QS holder transferred the equivalent of 100 lb (45.4 kg) of IFQ as GAF to a charter halibut permit holder, NMFS would continue to include the QS equivalent of the IFQ transferred to GAF in the calculation of that person's QS use for purposes of the QS use limits at § 679.42(f)(1)(i) and (ii). NMFS proposes this approach because it considers a transfer of IFQ to GAF a use of halibut QS. A transfer of IFQ to GAF would be voluntary, and the halibut QS holder likely would receive a benefit from the transfer according to the terms of the transfer agreement with the charter halibut permit holder receiving GAF. Furthermore, it is possible under the proposed CSP for a person to still use halibut IFQ that was transferred as GAF in the commercial halibut fishery before the end of the commercial fishing season if the GAF were not harvested in the charter fishery, and the IFQ was returned to the QS holder through a voluntary or automatic return as described in the preceding section.

E. Community Quota Entity GAF Transfer Restrictions

Under existing regulations at § 679.41, Community Quota Entities in Areas 2C and 3A may receive quota share by transfer and lease the resulting IFQ to eligible community residents for use in the commercial fishery. This proposed rule would not modify existing regulations on the use of IFQ by CQEs in the commercial fishery. This proposed rule would allow CQEs to transfer the IFQ derived from QS held by the CQE to be used as GAF. This proposed rule would place limitations on how much IFQ could be transferred as GAF depending on whether the GAF was used by a CQE, an eligible community resident, or by a non-resident. In addition, this proposed rule would allow a CQE to receive GAF by transfer.

Under the proposed rule, a CQE holding halibut IFQ in Area 2C or Area 3A would be authorized to transfer that IFQ as GAF. However, the Council recommended that transfers between IFQ and GAF for CQEs be exempt from the limit on the amount of GAF that can be transferred in certain circumstances. NMFS proposes and the Council recommends that any amount of IFQ

which a CQE holds could be leased as GAF to itself, to eligible community residents of the CQE community, or to other CQEs. For example, if the CQE holds IFQ it could transfer that IFQ to GAF, and then assign the resulting GAF to a community halibut permit or charter halibut permit held by the CQE, to an eligible community resident holding a charter halibut permit, or to another CQE holding community charter halibut permits or charter halibut permits. In these cases, the amount of GAF that could be transferred would not be subject to limitations based on the amount of IFQ initially issued to the CQE (i.e., the entire amount of IFQ held by a CQE could be transferred as GAF and assigned to these entities). NMFS believes that exempting CQEs from GAF transfer restrictions in these circumstances would provide a CQE with more flexibility in determining how to utilize its holdings of IFQ, community charter halibut permits, or charter halibut permits. These exemption provisions allow the CQE to determine how to use halibut fishery privileges to maximize benefits for the CQE community and its residents.

If the CQE is transferring IFQ as GAF and assigning that GAF to an individual that is not an eligible community resident, the CQE would be subject to the same limitations as other halibut quota share holders (i.e., up to 10 percent or 1,500 lb of his or her annual Area 2C IFQ, whichever is greater; and up to 15 percent or 1,500 lb of his or her annual Area 3A IFQ, whichever is greater).

NMFS agrees that CQE transfers between IFQ and GAF should be exempt from GAF transfer restrictions in the instances described in the Regulatory Impact Review (see **ADDRESSES**). Although the Council used the term ''eligible community resident'' in recommending exemptions to the GAF transfer restrictions for CQEs under the CSP, the term eligible community resident as currently defined at § 679.2 is not directly applicable to the charter halibut limited access program because businesses are expected to hold charter halibut permits, whereas the definition of an eligible community resident refers to an individual. Although a business could consist solely of an individual, it is possible for a business to be a partnership, corporation, or other legal entity. Therefore, NMFS is proposing that ''eligible community resident,'' for purposes of exempting transfers of IFQ to GAF from a CQE to an eligible community resident from GAF transfer restrictions, means that the charter halibut permit holder receiving GAF from the Community Quota Entity must operate that business out of the community. Current regulations at § 300.67(k)(5) require that every charter vessel fishing trip authorized by a community charter halibut permit must begin or end within the boundaries of the community represented by the CQE holding the permit. The regulations do not require that an eligible community resident of the CQE community use the community charter halibut permit. NMFS is preparing another proposed rule that would further modify the definition of ''eligible community resident,'' but the changes proposed in that rule would not affect the changes proposed here.

NMFS proposes to apply the same requirement for using community charter halibut permits currently applicable to CQEs to the definition of eligible community resident for purposes of IFQ to GAF transfers involving CQEs. The proposed rule would revise the definition of eligible community resident for purposes of IFQ to GAF transfers under the Area 2C and Area 3A CSP. A person (either an individual or a non-individual entity) holding a charter halibut permit would need to either begin or end a charter vessel fishing trip authorized by their charter halibut permit within the boundaries of the community represented by the CQE to qualify as an eligible community resident of that CQE for purposes of IFQ to GAF transfers.

This proposed rule would also allow a CQE to receive GAF directly by transfer from either a CQE or other persons holding GAF. Although any GAF a CQE receives by transfer would be exempt from limits on the amount of IFQ that can be transferred as GAF in the circumstances described above, all transfers of IFQ to GAF in which the IFQ is held by a CQE would be limited by an existing halibut IFQ regulation at § 679.42(f)(6). This regulation specifies that ''[n]o individual that receives IFQ derived from halibut QS held by a Community Quota Entity may hold, individually or collectively, more than 50,000 lb (22.7 mt) of IFQ halibut derived from any halibut QS source.'' As described above, NMFS determines individual and collective ownership interest by summing IFQ held or used by that person and a portion of any IFQ held or used by an entity in which that person has an interest. NMFS considers the person's portion of the IFQ held or used by the entity equal to the share of interest the person has in that entity. For example, if an individual holds or uses 100 lb (45.4 kg) of IFQ and has a 5 percent interest in a company that holds or uses 100 lb of IFQ that was derived from halibut QS held by a CQE, the amount of IFQ that person would be considered to hold for the IFQ limit calculation at § 679.42(f)(6) is 100 lb (his personal holdings) plus 5 lb (2.3 kg) (5 percent interest for the 100 lb in the company holding IFQ). In this example, this individual's holdings of 105 lb (47.6 kg) would not exceed the IFQ limit of 50,000 lb for purposes of § 679.42(f)(6).

The Council recommended, and this rule proposes, to include GAF derived from halibut IFQ held by a CQE in this individual and collective IFQ holding limit. Hence, the proposed rule would limit an individual receiving either IFQ or GAF derived from IFQ held by a CQE to holding individually or collectively, no more than 50,000 lb (22.7 mt) of halibut IFQ and GAF derived from the IFQ, combined. This proposed rule does not modify existing regulations at § 679.42(f)(6), but this discussion provides notice to the public on how the use caps applicable in this regulation would be calculated. Thus, for an individual that holds GAF derived from IFQ held by a CQE, IFQ derived from QS held by a Community Quota Entity, or both, NMFS would calculate that individual's total halibut IFQ and GAF holdings by (1) multiplying the total number of GAF held individually and collectively by the conversion factor for that year (see ''Conversion between IFQ and GAF'' section above) to determine the equivalent number of halibut net pounds held, and (2) adding the equivalent number of halibut net pounds held to the total number of IFQ equivalent pounds held individually and collectively by that person.

F. GAF Reporting Requirements

The proposed rule would implement new recordkeeping and reporting requirements for GAF in the ADF&G saltwater charter logbooks, in addition to saltwater charter logbook reporting requirements currently specified at § 300.65(d). It also would require GAF permit holders to record information on the GAF permit; separately report retained GAF by 11:59 p.m. (Alaska local time) on the last day of the fishing trip in which GAF were retained using a NMFS-approved electronic reporting system; and retain the GAF permits for two years.

The ADF&G Statewide Sport Fishing Charter Trip Logbook is the primary reporting requirement for operators in the charter fisheries for all species harvested in saltwater in Areas 2C and 3A. The ADF&G developed the saltwater charter logbook program in 1998 to provide information on actual participation and harvest by individual vessels and businesses in charter

fisheries for halibut as well as other state-managed species. The saltwater charter logbook data are compiled to show where fishing occurs, the extent of participation, and the species and numbers of fish caught and retained by individual anglers. This information is essential for regulation and management of the charter halibut fisheries in Area 2C and Area 3A. In recent years, ADF&G has added saltwater charter logbook reporting requirements to collect information required to implement and enforce Federal charter halibut regulations, such as the Area 2C one-halibut per day bag limit and the charter halibut limited access program.

This proposed rule would continue to require the ADF&G saltwater charter logbook as the primary reporting method for operators in the charter halibut fishery. The CSP would require the person to whom ADF&G issued a saltwater charter logbook to retain and make available for inspection by authorized enforcement personnel the completed original logbooks for two years following the charter vessel fishing trip. This requirement would be necessary to enforce annual management measures and GAF reporting requirements.

Charter guides would be required to mark retained GAF by removing the tips of the upper and lower lobes of the caudal (tail) fin. Additionally, the charter vessel guide would be required to retain the carcass showing caudal fin clips until the halibut fillets were offloaded so that enforcement could verify the length and that the fish was retained as GAF. These measures would aid in the monitoring and enforcement of GAF provisions.

For each charter vessel fishing trip on which charter vessel anglers retain GAF, charter vessel guides would be required to report on an ADF&G saltwater charter logbook (1) the GAF permit number under which the GAF were retained, and (2) the number of GAF retained by each charter vessel angler during the trip. For charter vessel fishing trips completed on a single day, charter vessel guides would be required by Federal regulations to complete these fields in the saltwater charter logbook before any halibut are offloaded or charter vessel anglers disembark from the vessel. For multi-day charter vessel fishing trips, charter vessel guides would be required to complete the GAF reporting requirements in a saltwater charter logbook on board the vessel by the end of each day of the trip. These saltwater charter logbook reporting requirements would facilitate GAF recordkeeping and enforcement of charter vessel angler daily bag and possession limits. NMFS also would use the GAF reporting fields in the saltwater charter logbook to verify information reported in the electronic GAF reporting system.

NMFS proposes that for each halibut retained as GAF, charter vessel guides would immediately record on the GAF permit the date and total halibut length in inches. This requirement would facilitate on-the-water enforcement and improve the accuracy of the GAF lengths reported electronically to NMFS.

NMFS would use an electronic GAF reporting system to manage GAF accounts and report GAF lengths. Near real-time reporting of GAF landings, and other GAF account and permit information is essential to support participant access to current account balances for account management and regulatory compliance, and to monitor account transfers and GAF landings history. Management personnel need near real-time account information to manage permit accounts, conduct transfers, and assess fees. Enforcement personnel need real-time account information to monitor transfers between IFQ and GAF and monitor compliance with authorized GAF harvests and other program rules.

In the commercial IFQ program, regulations at § 679.5(e) require that Registered Buyers report fisheries landings electronically using a secure, password-protected Internet-based system approved by NMFS. The final steps of the electronic IFQ reporting process generate a time-stamped receipt displaying landings data. Commercial Registered Buyers must print, and along with the individual IFQ fisherman, must sign copies of the receipt, which must be maintained and made available for a specified time period for inspection by authorized NMFS or enforcement personnel. Printing of this receipt indicates the report sequence is complete and the IFQ account(s) has been properly debited.

Under the CSP GAF program, NMFS would also require secure electronic reporting. Multiple technologies may be needed to provide essential services to a GAF fleet that would be widely distributed throughout remote locations in Area 2C and Area 3A. NMFS is proposing an Internet-based reporting system for GAF electronic reporting because that is likely to be the most efficient and convenient method for charter operators to report GAF, given the prevalence of Internet use among the general public.

Although real-time data are necessary for accurate account management, the data requirements for inseason GAF account management are relatively minor and simple relative to that required for saltwater charter logbooks. GAF permit holders would be required to complete the GAF electronic report before 11:59 p.m. (Alaska local time) on the last day of a charter vessel fishing trip in which a charter vessel angler retained GAF using a GAF permit.

The GAF permit holder would be required to record the following information in the GAF electronic reporting system: (1) ADF&G saltwater charter logbook number in which GAF were recorded; (2) vessel identification number (State of Alaska issued boat registration number or U.S. Coast Guard documentation number) for the vessel on which GAF were retained; (3) GAF permit number used to retain GAF; (4) ADF&G Sport Fishing Guide license number held by the charter vessel guide who certified the ADF&G saltwater charter logbook sheet on which GAF were recorded; (5) total number of GAF caught and retained under the GAF permit number; and (6) total length in inches of each GAF retained. Charter vessel operators using a GAF permit assigned to a community charter halibut permit for a charter vessel fishing trip on which GAF were retained also would be required to report the community or port where the charter vessel fishing trip began and ended.

Upon receipt of an electronic GAF report from a GAF permit holder, NMFS would respond with a confirmation number as evidence that NMFS received the GAF harvest report and the GAF account was properly debited. The GAF permit holder would be required to record this confirmation number on the corresponding GAF permit.

The Council recommended that GAF permit holders landing GAF on private property be required to allow enforcement personnel access to the point of landing. The Council recognized, and NMFS agrees, that enforcing the harvest restrictions and GAF use restrictions may require enforcement staff to search for or inspect halibut retained by all charter vessel anglers in the charter fishery, including charter vessel anglers landing such halibut on private property. Section 773i(b) of the Halibut Act states that any authorized officer may, ''at reasonable times, enter and search or inspect, shoreside facilities in which fish taken subject to this subchapter are processed, packed or held.''

The Council also recommended that GAF permit holders be required to allow ADF&G and IPHC scientific sampling personnel access to landed halibut on private property owned by the GAF permit holder, in addition to their

normal access in public areas. The Council recommended this element to facilitate monitoring of charter halibut harvest and the collection of scientific information from halibut, primarily GAF, harvested in the charter fishery. NMFS is uncertain about the potential impacts of requiring such access and is not currently proposing this provision. NMFS is considering how best to implement this proposed aspect of the CSP to provide the Council with the requested information to monitor GAF use, and provide the public with predictability regarding the procedural aspects of this provision. NMFS may propose this requirement after further research and consideration of public comments.

G. Cost Recovery for GAF

The Magnuson-Stevens Fishery Conservation and Management Act at section 304(d)(2)(A) requires that cost recovery fees be collected for the costs directly related to the management, data collection, and enforcement of any limited access privilege programs. This includes programs such as the commercial halibut IFQ program, under which a dedicated allocation is provided to IFQ permit holders. Fees owed are a percentage, not to exceed 3 percent, of the ex-vessel value of fish landed and debited from IFQ permits. Each year, NMFS sends fee statements to IFQ holders whose annual IFQ was used; and those holders must remit fees by January 31 of the following year. The fee percentage has rarely exceeded 2 percent of the ex-vessel value of sablefish and halibut landings.

NMFS does not expect allocation of additional funds to support the GAF program other than those derived from IFQ cost recovery fees. Therefore, under the proposed rule, commercial IFQ holders would be responsible for all cost recovery fees on IFQ equivalent pounds harvested for their IFQ permit(s) and also for net pounds transferred and harvested as GAF which originated from their IFQ account(s). NMFS would levy IFQ cost recovery fees on all net pounds of halibut harvested as IFQ in the commercial fishery and as GAF in the charter fishery.

The IFQ permit holders who transfer IFQ to GAF would owe cost recovery fees for those GAF retained in the charter fishery. Fees for unharvested GAF converted back to IFQ equivalent pounds and harvested as commercial IFQ pounds would be assessed fees as commercial landings with value estimated as specified in current regulations at § 679.45. IFQ holders might share these costs with GAF users through contractual agreements, but those contractual arrangements would not be regulated or reviewed under the provisions of this proposed rule. IFQ and GAF that are not harvested during the year would not be subject to the cost recovery fee. Fish harvested in excess of the amount authorized by a GAF permit, or in excess of allowed IFQ permit overages, would not result in cost recovery fees owed because such overages would be handled as enforcement actions.

NMFS establishes commercial cost recovery fee assessments in November each year. To determine cost recovery fee liabilities for IFQ holders, NMFS uses data reported by Registered Buyers to compute annual standard ex-vessel IFQ prices by month and port (or, if confidential, by port group). NMFS publishes these standard prices in the **Federal Register** each year. For example, NMFS published the 2012 standard ex-vessel IFQ prices in the **Federal Register** on December 4, 2012 (77 FR 71783). NMFS uses the standard prices to compute the total annual value of the IFQ fisheries. NMFS determines the fee percentage by dividing actual total management and enforcement costs by total IFQ fishery value. Only those halibut and sablefish holders who had landings on their permits owe cost recovery fees. The fee owed by an IFQ holder is the computed annual fee percentage multiplied by the value of his or her IFQ landings.

NMFS would also apply standard ex-vessel values computed by area for commercial IFQ harvests to harvest of GAF. The proposed regulations specify that the IFQ permit holder may not challenge the standard ex-vessel value applied to GAF landings by NMFS.

Only ''incremental'' costs, i.e., those incurred as a result of IFQ management that include a GAF component, are assessable as cost recovery fees. Under the proposed rule, NMFS would determine the cost recovery liability for IFQ permit holders based on the value of all landed IFQ and GAF derived from his or her IFQ permits. NMFS would convert landings of GAF in Area 2C or Area 3A to IFQ equivalent pounds as specified in the ''Conversion between IFQ and GAF'' section above, and multiply the IFQ equivalent pounds by the standard ex-vessel value computed for that area to determine the value of IFQ landed as GAF. The value of IFQ landed as GAF as based on NMFS' standard prices would be added to the value of the IFQ permit holder's landed IFQ, and the sum would be multiplied by the IFQ fee percentage to estimate the person's IFQ fee liability. Additionally, the costs to develop the regulations, accounting, and reporting systems for the GAF program would be considered incremental and extensions of the IFQ program and would be submitted for cost recovery. Agency costs related to development of the GAF program in previous years have already been included in the IFQ cost recovery fee assessment, and costs associated with developing the GAF portion of this proposed rule would be submitted for cost recovery.

V. Other Regulatory Changes

This action proposes four additional regulatory changes. These are minor changes that clarify existing regulations, but do not substantively change how the halibut fishery is managed. The first proposed change would clarify the regulations to describe the current process by which the IPHC Area 4 catch sharing plan is promulgated. The Area 4 catch sharing plan was codified in Federal regulations at § 300.65(b) in 1998. The Area 4 catch sharing plan allocates the Area 4 commercial catch limit among Areas 4C, 4D, and 4E. Each year, the Area 4CDE catch sharing plan subarea allocations are applied to the Area 4CDE commercial catch limit recommended by the IPHC and published in the final rule implementing the annual management measures. The proposed regulatory change would clarify the description of this process in § 300.65(b).

The second proposed change would update instructions in regulations at § 679.5(l)(7) for Registered Buyers to complete and submit the IFQ Registered Buyer Ex-vessel Value and Volume Report form. Registered Buyers submit this form to NMFS to report ex-vessel IFQ prices by month and port. These changes would remove unnecessary regulations listing specific information that is already provided on the IFQ Registered Buyer Ex-vessel Value and Volume Report form and IFQ Fee Submission form, and clarify the submission process. NMFS uses data reported by Registered Buyers to compute annual standard ex-vessel IFQ prices to determine cost recovery fee liabilities for IFQ holders.

The third proposed change would clarify regulations at § 679.40 to describe the separate processes for allocating halibut IFQ and sablefish IFQ. The proposed regulations would also clarify that commercial halibut fishery overage adjustments from the previous year will be subtracted from a person's IFQ, and commercial halibut fishery underage adjustments from the previous year will be added to a person's IFQ. Current regulations provide for administrative adjustment of IFQ permits as a result of under- and

overfishing the IFQ the prior year. NMFS applies administrative adjustments at the beginning of each fishing year when annual IFQ accounts are created and IFQ pounds are allocated to QS holders.

The fourth proposed change would revise regulations at § 679.45(a)(4) to update instructions for IFQ permit holders for submitting cost recovery fee payments to NMFS. NMFS proposes to update the fee payment form and instructions to incorporate GAF in the calculation of an IFQ permit holder's cost recovery fee liability.

VI. Classification

Regulations governing the U.S. fisheries for Pacific halibut are developed by the IPHC, the Pacific Fishery Management Council, the North Pacific Fishery Management Council, and the Secretary of Commerce. Section 5 of the Northern Pacific Halibut Act of 1982 (Halibut Act, 16 U.S.C. 773c) allows the Regional Council having authority for a particular geographical area to develop regulations governing fishing for halibut in U.S. Convention waters as long as those regulations do not conflict with IPHC regulations. The Halibut Act at section 773c(a) and (b) provides the Secretary with the general responsibility to carry out the Convention with the authority to, in consultation with the Secretary of the department in which the U.S. Coast Guard is operating, adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. This proposed action is consistent with the North Pacific Halibut Act and other applicable laws.

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866. This proposed rule also complies with the Secretary of Commerce's authority under the Halibut Act to implement management measures for the halibut fishery.

Regulatory Flexibility Act

An initial regulatory flexibility analysis (IRFA) was prepared as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action may be found at the beginning of this preamble. A summary of the IRFA follows. Copies of the IRFA are available from the Council or NMFS (see **ADDRESSES**).

The action would establish a CSP for the commercial and charter halibut fisheries in Area 2C and Area 3A. In addition to establishing allocations to each fishery, the Council's preferred alternative (Alternative 3 for Area 2C and Alternative 4 for Area 3A) would establish a new management system for the charter halibut fishery in these areas. Beginning February 1, 2011, operators of vessels with charter vessel anglers on board were required to have on board the vessel a valid charter halibut permit issued by NMFS. Therefore, the universe of regulated entities for the proposed CSP would be the holders of one or more charter halibut permits in Area 2C and Area 3A. In October 2012, NMFS published an implementation report for the charter halibut limited access program after all interim permits had been adjudicated and resolved. This report is available at *http://alaskafisheries.noaa.gov/ram/charter/chp_review1012.pdf*. At the time of publication, a total of 972 charter halibut permits had been issued to 356 businesses in Area 2C and 439 businesses in Area 3A. Of these, 372 charter halibut permits in Area 2C and 339 permits in Area 3A are transferable. A charter halibut permit holder may transfer a transferable permit, subject to NMFS approval, to a qualified person at any time. The exact number of businesses that would be regulated by the proposed CSP therefore cannot be determined because some businesses hold CHPs in each regulatory area and may be counted twice, and because permits are continually being transferred, sold, or retired, or additional community charter halibut permits are being issued. As of October 2012, 107 community CHPs had been issued to 20 CQEs, and 7 U.S. Military Morale, Welfare and Recreation Program permits had been issued to 3 permit holders.

The Small Business Administration (SBA) specifies that for marinas and charter or party vessels, a small business is one with annual receipts less than $7.0 million. The largest of these charter vessel operations, which are lodges, may be considered large entities under SBA standards, but that cannot be confirmed because NMFS does not have or collect economic data on lodges necessary to definitively determine total annual receipts. Thus, all charter vessel operations regulated by the proposed CSP would likely be considered small entities, based on SBA criteria, because they would be expected to have gross revenues of less than $7.0 million on an annual basis.

Regulations that directly regulate entities representing small, remote communities in Areas 2C and 3A are included in this action. These regulations would authorize holding community charter halibut permits or regular charter halibut permits to use GAF as proposed under the CSP. GAF would offer charter vessel anglers in Area 2C or Area 3A an opportunity to harvest halibut in addition to the halibut harvested under the charter halibut management measure, up to the harvest limits in place for unguided sport anglers in that area. Eligibility for community charter halibut permits required that the community be represented by a non-profit community quota entity approved by NMFS. Of the 22 CQEs that formed, 11 Area 2C communities were eligible and each received 4 halibut community charter halibut permits and 9 Area 3A communities were eligible and each received 7 halibut community charter halibut permits. A maximum of 18 communities in Area 2C and 14 communities in Area 3A are eligible to form CQEs and apply for charter halibut permits at any time. Therefore, there is a maximum of 32 eligible community entities that could be authorized by the proposed action to use GAF. All of these eligible communities would be considered small entities under the SBA definitions.

An IRFA is required to describe significant alternatives to the proposed rule that accomplish the stated objectives of the Halibut Act and other applicable statutes and that would minimize any significant economic impact of the proposed rule on small entities.

The status quo alternative (Alternative 1) specifies the GHL as a target amount of halibut that anglers in the charter fishery can harvest in Area 2C and Area 3A. However, charter halibut harvests that exceed the GHL may have a de facto allocation effect of reducing the amount of halibut that may be harvested by the commercial fishery in the following year. Additionally, charter halibut fishery harvests beyond the GHL also can undermine overall harvest strategy goals established by the IPHC for the halibut resource, which affects all users. The primary objectives of the CSP are to define an annual process for allocating halibut between the charter and commercial fisheries in Area 2C and Area 3A, establish allocations that balance the differing needs of the charter and commercial fisheries that vary with changing levels of annual halibut abundance, and specify a process for determining harvest restrictions for charter anglers that are intended to limit harvest to the annual charter fishery catch limit.

The Council considered four alternatives to the status quo for the proposed CSP. The Council selected a different preferred allocation alternative for Area 2C (Alternative 3) than Area 3A (Alternative 4). The Council's preferred alternative incorporated analysis, public testimony, and public comment provided on the first proposed rule for a CSP (76 FR 44156, July 22, 2011). The Council determined that Alternatives 3 and 4 were more likely than the status quo to meet its objective to establish a catch sharing plan for the commercial and charter fisheries by managing the charter halibut fishery to ensure that harvests stay within the fishery's allocated range. The Council also considered the charter halibut fishery's need to have a stable in-season regulatory environment. Management of the charter halibut fishery under the preferred alternatives is intended to ensure that it is given advance notice and predictability with respect to application of management tools (e.g., bag limits, size restrictions) and season length. The preferred alternatives would facilitate the recommended process for recommending and implementing annual management measures for the charter halibut fishery prior to the beginning of the fishing season. NMFS agrees that the annual implementation of the CSP allocations and GAF under the preferred alternatives likely would facilitate management of the charter fishery in a way that is timely and responsive to changes in halibut abundance while providing participants in the charter halibut fishery with advance notice of the charter fishery management measures to be effective in the upcoming season. The other alternatives that were considered are described below.

Alternatives 2 through 5 all recommend for Area 2C and Area 3A the implementation of a catch sharing plan with separate accountability by fishery for wastage, and a program to allow charter operators to lease IFQ from participants in the commercial halibut fishery, called the ''guided angler fish'' or GAF program. All alternatives include fixed allocation percentages to the charter and commercial halibut fisheries. The Council determined that a fixed percentage allocation best met its objectives with the least impact to affected entities. Additionally, a fixed percentage allocation would be equitable because both the commercial and charter halibut fisheries would have allocations that vary with the abundance of the halibut resource. Thus, both the charter and commercial halibut fisheries would share in the benefits and costs of managing the resource for long-term sustainability under a combined catch limit.

The main differences among Alternatives 2 through 5 are in how the allocation percentages are calculated. Allocation percentages to the charter halibut fishery are the lowest under Alternative 2 and highest under Alternative 5. Alternative 2 is the 2008 preferred alternative for a catch sharing plan. This alternative included allocation percentages that did not include upward adjustments for the switch from the Statewide Harvest Survey to ADF&G saltwater charter logbooks as the primary data source. Alternative 3 increased the allocations to the charter halibut fishery from Alternative 2 by the adjustment required to account for catch using the saltwater charter logbook instead of the SWHS. Alternative 4 would establish allocations for the charter halibut fishery based on the same methodology used in Alternative 2, plus an additional 3.5 percent of the combined catch limit at levels of combined catch limit less than 20 million pounds. At combined catch limits greater than 25 million pounds, the allocation would be the same as in Alternative 2. And finally, Alternative 5 was based on the allocations in Alternative 3, plus an additional 3.5 percent of the combined catch limit. The Council recommended Alternative 3 for Area 2C and Alternative 4 for Area 3A as its preferred alternative. When considering which charter allocation percentages were most appropriate and equitable for each management area, the Council took into account recent charter halibut harvests adjusted for both the logbook correction and crew harvest.

Alternatives 2 through 5 differ in how annual charter halibut harvest restrictions would be implemented. Alternative 2 contains a pre-determined and fixed set of harvest restrictions that would be triggered automatically under the CSP depending on the combined catch limit determined each year by the IPHC. The other alternatives did not prescribe annual charter harvest restrictions as part of this rule and the CSP. Instead, charter harvest restrictions would continue to be set through a separate annual process of Council recommendations to the IPHC that was first used in 2012 and detailed in the ''Annual Process for Setting Charter Management Measures'' section of this preamble. The fixed management measures proposed under Alternative 2 were determined to be too rigid and did not give managers enough discretion to modify those measures as needed to best achieve harvest objectives. The process proposed under Alternatives 3 through 5 was considered more flexible, responsive to the most recent information available on halibut removals, and allowed greater stakeholder input in the selection of annual harvest restrictions.

Projected Reporting and Recordkeeping Requirements

This action would impose new recordkeeping requirements. Applications to transfer between IFQ and GAF would be required to be submitted to and approved by NMFS for each transfer from IFQ to GAF. The application would require information about the IFQ permit holder and the charter halibut permit holder, including each permit holder's contact information, the IFQ permit holder's account from which halibut pounds are to be transferred, and the GAF account to which GAF are to be transferred. NMFS would rely on data already collected through the ADF&G saltwater charter logbooks for additional management and enforcement needs. In addition, CQEs eligible to receive community charter halibut permits would be required to submit information to NMFS (1) on the application for a transfer between IFQ and GAF, and (2) regarding the CQE's activity in an annual report by January 31 of the following year. NMFS would require charter vessel guides to record on the GAF permit the date and length of any GAF halibut caught and kept, immediately upon harvest. NMFS would also require GAF permit holders to report via an online system information about each GAF halibut caught and retained at the end of each fishing trip, and to record the GAF electronic reporting confirmation number on the GAF permit. The proposed recordkeeping and reporting requirements would not likely represent a ''significant'' economic burden on the small entities operating in this fishery.

Duplicate, Overlapping, or Conflicting Federal Rules

NMFS has not identified other Federal rules that may duplicate, overlap, or conflict with the proposed rule.

Collection-of-Information

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval.

The collections are listed below by OMB control number.

OMB Control No. 0648–0398

Public reporting burden per response is estimated to average 2 hours for the IFQ Permit Holder Fee Submission Form, and 2 hours for the IFQ Registered Buyer Ex-Vessel Value and Volume Report.

OMB Control No. 0648–0575

Public reporting burden per response is estimated to average 4 minutes for ADF&G Saltwater Charter Logbook entry for vessel guide and submittal; 1 minute per angler for angler signatures of ADF&G Saltwater Sport Fishing Charter Trip Logbook; 1 minute to measure each GAF, 1 minute to record GAF lengths on the GAF permit, 4 minutes to enter data into the GAF electronic reporting system, and 1 minute to record the GAF electronic reporting confirmation number on the GAF permit.

OMB Control No. 0648–0592

Public reporting burden per response is estimated to average 1 hour for an Application for Transfer Between IFQ and GAF; and 1 hour for an Application for Transfer Between IFQ and GAF by a Community Quota Entity.

OMB Control No. 0648–0272

The IFQ permit is mentioned in this proposed rule; however, the public reporting burden for the IFQ permit in this collection-of-information is not directly affected by this proposed rule.

Public reporting burden includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology.

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

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

This proposed rule is consistent with Executive Order 12962 as amended September 26, 2008, which required Federal agencies to ensure that recreational fishing is managed as a sustainable activity and is consistent with existing law.

List of Subjects

50 CFR Part 300

Administrative practice and procedure, Antarctica, Canada, Exports, Fish, Fisheries, Fishing, Imports, Indians, Labeling, Marine resources, Reporting and recordkeeping requirements, Russian Federation, Transportation, Treaties, Wildlife.

50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: June 24, 2013.

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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 parts 300 and 679 as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart E—Pacific Halibut Fisheries

■ 1. The authority citation for part 300, subpart E, continues to read as follows:

Authority: 16 U.S.C. 773–773k.

■ 2. In § 300.61:

■ a. Add definitions for ''Annual combined catch limit'', ''Annual commercial catch limit'', ''Annual guided sport catch limit'', ''Guided Angler Fish (GAF)'', ''Guided Angler Fish (GAF) permit'', and ''Guided Angler Fish (GAF) permit holder'' in alphabetical order;

■ b. Remove the definition for ''Guideline harvest level (GHL)''; and

■ c. Revise the definition for ''Individual Fishing Quota (IFQ)''.

The additions and revision read as follows:

§ 300.61 Definitions.

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Annual combined catch limit, for purposes of commercial and sport fishing in Commission regulatory areas 2C and 3A, means the annual total allowable halibut removals (halibut harvest plus wastage) by persons fishing IFQ and by charter vessel anglers.

Annual commercial catch limit, for purposes of commercial fishing in Commission regulatory areas 2C and 3A, means the annual commercial allocation minus an area-specific estimate of commercial halibut wastage.

Annual guided sport catch limit, for purposes of sport fishing in Commission regulatory areas 2C and 3A, means the annual guided sport allocation minus an area-specific estimate of guided sport halibut wastage.

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Guided Angler Fish (GAF) means halibut transferred within a year from a Commission regulatory area 2C or 3A IFQ permit holder to a GAF permit that is issued to a person holding a charter halibut permit, community charter halibut permit, or military charter halibut permit for the corresponding area.

Guided Angler Fish (GAF) permit means an annual permit issued by the National Marine Fisheries Service pursuant to § 300.65(c)(5)(iii).

Guided Angler Fish (GAF) permit holder means the person identified on a GAF permit.

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Individual Fishing Quota (IFQ), for purposes of this subpart, means the annual catch limit of halibut that may be harvested by a person who is lawfully allocated a harvest privilege for a specific portion of the annual commercial catch limit of halibut.

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■ 3. In § 300.65, revise paragraphs (b), (c), and (d) to read as follows:

§ 300.65 Catch sharing plan and domestic management measures in waters in and off Alaska.

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(b) The catch sharing plan for Commission regulatory area 4 allocates the annual commercial catch limit among Areas 4C, 4D, and 4E and will be adopted by the Commission as annual management measures and published in the **Federal Register** as required in § 300.62.

(c) *Catch sharing plan (CSP) for Commission Regulatory Areas 2C and 3A*—(1) *General.* The catch sharing plan for Commission regulatory areas 2C and 3A:

(i) Allocates the annual combined catch limit for Commission regulatory areas 2C and 3A in order to establish the annual commercial catch limit and the annual guided sport catch limit for the

halibut commercial fishing and sport fishing seasons, pursuant to paragraphs (c)(3) and (4) of this section; and

(ii) Authorizes the use of Commission regulatory areas 2C and 3A halibut IFQ as guided angler fish (GAF) for harvest by charter vessel anglers in the corresponding area, pursuant to paragraph (c)(5) of this section.

(2) *Implementation.* The Commission regulatory areas 2C and 3A CSP annual allocations and guided sport catch limits are adopted by the Commission as annual management measures and published by NMFS in the **Federal Register** as required in § 300.62.

(3) *Annual commercial catch limits.* (i) The Commission regulatory areas 2C and 3A annual commercial catch limits are determined by subtracting wastage from the allocations in Tables 1 and 2 of this subpart E, adopted by the Commission as annual management measures, and published in the **Federal Register** as required in § 300.62.

(ii) Commercial fishing in Commission regulatory areas 2C and 3A is governed by the Commission's annual management measures and by regulations at 50 CFR part 679, subparts A, B, D, and E.

(4) *Annual guided sport catch limits.* (i) The Commission regulatory areas 2C and 3A annual guided sport catch limits are determined by subtracting wastage from the allocations in Tables 3 and 4 of this subpart E, adopted by the Commission as annual management measures, and published in the **Federal Register** as required in § 300.62.

(ii) Sport fishing by charter vessel anglers in Commission regulatory areas 2C and 3A is governed by the Commission's annual management measures and by regulations at 50 CFR part 300, subparts A and E.

(5) *Guided Angler Fish (GAF).* This paragraph (§ 300.65(c)(5)) governs the transfer of Commission regulatory areas 2C and 3A halibut between individual fishing quota (IFQ) and guided angler fish (GAF), the issuance of GAF permits, and GAF use.

(i) *General.* (A) GAF is derived from halibut IFQ that is transferred from a Commission regulatory area 2C or 3A IFQ permit holder's account held by a person who also holds quota share (QS), as defined in § 679.2 of this title, to a GAF permit holder's account for the same regulatory area.

(B) A GAF permit authorizes a charter vessel angler to retain GAF that are caught in the Commission regulatory area specified on a GAF permit:

(*1*) During the sport halibut fishing season adopted by the Commission as annual management measures and published in the **Federal Register** as required in § 300.62, and

(*2*) Subject to the GAF use restrictions at paragraphs (c)(5)(iv)(A) through (K) of this section.

(C) NMFS will return unharvested GAF to the IFQ permit holder's account from which the GAF were derived on or after fifteen calendar days prior to the closing of the commercial halibut fishing season each year, subject to paragraph (c)(5)(ii) of this section and underage provisions at § 679.40(e) of this title.

(ii) *Transfer Between IFQ and GAF*—(A) *General.* A transfer between IFQ and GAF means any transaction in which halibut IFQ passes between an IFQ permit holder and a GAF permit holder as:

(*1*) A transfer of IFQ to GAF, in which halibut IFQ equivalent pounds, as defined in § 679.2 of this title, are transferred from a Commission regulatory area 2C or 3A IFQ permit account, converted to number(s) of GAF as specified in paragraph (c)(5)(ii)(E) of this section, and assigned to a GAF permit holder's account in the same management area;

(*2*) A transfer of GAF to IFQ, in which GAF in number(s) of fish are transferred from a GAF permit holder's account in Commission regulatory area 2C or 3A, converted to IFQ equivalent pounds as specified in paragraph (c)(5)(ii)(E) of this section, and assigned to the same IFQ permit holder's account from which the GAF were derived; or

(*3*) The return of unharvested GAF by NMFS to the IFQ permit holder's account from which it was derived, on or after 15 calendar days prior to the closing of the commercial halibut fishing season.

(B) *Transfer procedure*—(*1*) *Application for Transfer Between IFQ and GAF.* A transfer between IFQ and GAF requires Regional Administrator review and approval of a complete Application for Transfer Between IFQ and GAF. Both the transferor and the transferee are required to complete and sign the application. Transfers will be conducted via methods approved by NMFS. The Regional Administrator shall provide an Application for Transfer Between IFQ and GAF on the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov/ram/default.htm.* An Application for Transfer Between IFQ and GAF is not required for the return of unharvested GAF by NMFS to the IFQ permit holder's account from which it was derived, 15 calendar days prior to the closing of the commercial halibut fishing season for that year.

(*2*) *Application timing.* The Regional Administrator will not approve any Application for Transfer Between IFQ and GAF before annual IFQ is issued for each year or after October 15. Applications to transfer GAF to IFQ will be accepted from August 1 through August 31 only.

(*3*) *Transfer due to court order, operation of law, or as part of a security agreement.* NMFS may approve an Application for Transfer Between IFQ and GAF to return GAF to the IFQ permit holder's account from which it derived pursuant to a court order, operation of law, or a security agreement.

(*4*) *Notification of decision on application.* (*i*) Persons who submit an Application for Transfer Between IFQ and GAF to the Regional Administrator will receive notification of the Regional Administrator's decision to approve or disapprove the application for transfer.

(*ii*) If an Application for Transfer Between IFQ and GAF is disapproved, NMFS will provide the reason(s) in writing by mail, posted on the date of that decision.

(*iii*) Disapproval of an Application for Transfer Between IFQ and GAF may be appealed pursuant to § 679.43 of this title.

(*iv*) The Regional Administrator will not approve a transfer between IFQ and GAF on an interim basis if an applicant appeals a disapproval of an Application for Transfer Between IFQ and GAF pursuant to § 679.43 of this title.

(*5*) *IFQ and GAF accounts.* (*i*) Accounts affected by either a Regional Administrator-approved Application for Transfer Between IFQ and GAF or the return of unharvested GAF to IFQ on or after 15 calendar days prior to the closing of the commercial halibut fishing season for that year will be adjusted on the date of approval or return. Applications for Transfer Between IFQ and GAF that are transfers of GAF to IFQ that have been approved by the Regional Administrator will be completed not earlier than September 1. Any necessary permits will be sent with the notification of the Regional Administrator's decision on the Application for Transfer Between IFQ and GAF.

(*ii*) Upon approval of an Application for Transfer Between IFQ and GAF for an initial transfer from IFQ to GAF, NMFS will establish a new GAF account for the GAF applicant's account and issue the resulting new GAF and IFQ permits. If a GAF account already exists from a previous transfer from the same IFQ account in the corresponding management area in that year, NMFS will modify the GAF recipient's GAF

account and the IFQ transferor's permit account and issue modified GAF and IFQ permits upon approval of an Application for Transfer Between IFQ and GAF.

(*iii*) On or after 15 calendar days prior to the closing of the commercial halibut fishing season, NMFS will convert unharvested GAF from a GAF permit holder's account back into IFQ equivalent pounds as specified in paragraph (c)(5)(ii)(E)(*2*) of this section, and return the resulting IFQ equivalent pounds to the IFQ permit holder's account from which the GAF were derived, unless prevented by regulations at 15 CFR part 904.

(C) *Complete application.* Applicants must submit a completed Application for Transfer Between IFQ and GAF to the Regional Administrator as instructed on the application. NMFS will notify applicants with incomplete applications of the specific information necessary to complete the application.

(D) *Application for Transfer Between IFQ and GAF approval criteria.* An Application for Transfer Between IFQ and GAF will not be approved until the Regional Administrator has determined that:

(*1*) The person applying to transfer IFQ to GAF or receive IFQ from a transfer of GAF to IFQ:

(*i*) Possesses at least one unit of halibut quota share (QS), as defined in § 679.2 of this title, in the applicable Commission regulatory area, either Area 2C or Area 3A, for which the transfer of IFQ to GAF is requested;

(*ii*) Has been issued an annual IFQ Permit, as defined in § 679.4(d)(1) of this title, for the Commission regulatory area corresponding to the person's QS holding, either Area 2C or Area 3A, resulting from that halibut QS; and

(*iii*) Has an IFQ permit holder's account with an IFQ amount equal to or greater than amount of IFQ to be transferred in the Commission regulatory area, either Area 2C or Area 3A, for which the transfer of IFQ to GAF is requested.

(*2*) The person applying to receive or transfer GAF possesses a valid charter halibut permit, community charter halibut permit, or military charter halibut permit in the Commission regulatory area (Area 2C or Area 3A) that corresponds to the IFQ permit area from or to which the IFQ will be transferred.

(*3*) For a transfer of IFQ to GAF:

(*i*) The transfer between IFQ and GAF must not cause the GAF permit issued to exceed the GAF use limits in paragraphs (c)(5)(iv)(H)(*1*) and (*2*) of this section;

(*ii*) The transfer must not cause the person applying to transfer IFQ to exceed the GAF use limit in paragraph (c)(5)(iv)(H)(*3*) of this section; and

(*iii*) There must be no fines, civil penalties, sanctions, or other payments due and owing, or outstanding permit sanctions, resulting from Federal fishery violations involving either person or permit.

(*4*) If a Community Quota Entity (CQE), as defined in § 679.2 of this title, submits a ''Community Quota Entity Application for Transfer Between Individual Fishing Quota (IFQ) and Guided Angler Fish (GAF),'' the application will not be approved until the Regional Administrator has determined that:

(*i*) The CQE applying to transfer IFQ to GAF is eligible to hold IFQ on behalf of the eligible community in Commission regulatory area 2C or 3A designated in Table 21 to 50 CFR part 679;

(*ii*) The CQE applying to transfer IFQ to GAF has received notification of approval of eligibility to receive IFQ for that community as described in paragraph § 679.41(d)(1) of this title;

(*iii*) The CQE applying to receive GAF from a Commission regulatory area 2C or 3A IFQ permit holder holds one or more charter halibut permits or community charter halibut permits for the corresponding area; and

(*iv*) The CQE applying to transfer between IFQ and GAF has submitted a complete annual report(s) as required by § 679.5(l)(8) of this title.

(E) *Conversion between IFQ and GAF*—(*1*) *General.* An annual conversion factor will be calculated to convert between net pounds (whole number, no decimal points) of halibut IFQ and number(s) of GAF (whole number, no decimal points) for Area 2C and Area 3A. This conversion factor will be posted on the NMFS Alaska Region Web site before the beginning of each commercial halibut fishing season.

(*2*) *Conversion calculation.* The net pounds of IFQ transferred to or from an IFQ permit holder in Commission regulatory area 2C or 3A will be equal to the number(s) of GAF transferred to or from the GAF account of a GAF permit holder in the corresponding area, multiplied by the estimated average net weight determined as follows. For the first calendar year after the effective date of this rule, the average net weight will be estimated for all halibut harvested by charter vessel anglers during the most recent year without a size limit in effect. After the first calendar year after the effective date of this rule, the average net weight will be estimated from the average length of GAF retained in that area during the previous year as reported to RAM via the GAF electronic reporting system. If no GAF were harvested in a year, the conversion factor would be calculated using the same method as for the first calendar year after the effective date of this rule. NMFS will round up to the nearest whole number (no decimals) when transferring IFQ to GAF and when transferring GAF to IFQ. Expressed algebraically, the conversion formula is:

IFQ net pounds = (number of GAF × average net weight)

(*3*) The total number of net pounds converted from unharvested GAF and transferred to the IFQ permit holder's account from which it derived cannot exceed the total number of net pounds NMFS transferred from the IFQ permit holder's account to the GAF permit holder's account for that area in the current year.

(iii) *Guided Angler Fish (GAF) permit*—(A) *General.* (*1*) A GAF permit authorizes a charter vessel angler to catch and retain GAF in the specified Commission regulatory area, subject to the limits in paragraphs (c)(5)(iv)(A) through (K) of this section, during a charter vessel fishing trip authorized by the charter halibut permit, community charter halibut permit, or military charter halibut permit that designated on the GAF permit.

(*2*) A GAF permit authorizes a charter vessel angler to catch and retain GAF in the specified Commission regulatory area from the time of permit issuance until any of the following occurs:

(*i*) The amount of GAF in the GAF permit holder's account is zero;

(*ii*) The permit expires at 11:59 p.m. (Alaska local time) on the day prior to 15 days prior to the end of the commercial halibut fishing season for that year;

(*iii*) NMFS replaces the GAF permit with a modified GAF permit following NMFS approval of an Application for Transfer Between IFQ and GAF; or

(*iv*) The GAF permit is revoked or suspended under 15 CFR part 904.

(*3*) A GAF permit is issued for use in a Commission regulatory area (2C or 3A) to the person who holds a valid charter halibut permit, community charter halibut permit, or military charter halibut permit in the corresponding Commission regulatory area. Regulations governing issuance, transfer, and use of charter halibut permits are located in § 300.67.

(*4*) A GAF permit is assigned to only one charter halibut permit, community charter halibut permit, or military charter halibut permit held by the GAF permit holder in the corresponding Commission regulatory area (2C or 3A).

(*5*) A legible copy of a GAF permit and the assigned charter halibut permit, community charter halibut permit, or military charter halibut permit appropriate for the Commission regulatory area (2C or 3A) must be carried on board the vessel used to harvest GAF at all times that such fish are retained on board and must be presented for inspection on request of any authorized officer.

(*6*) No person may alter, erase, mutilate, or forge a GAF permit or document issued under this section (§ 300.65(c)(5)(iii)). Any such permit or document that has been intentionally altered, erased, mutilated, or forged is invalid.

(*7*) GAF permit holders must retain GAF permit(s) for two years after the end of the fishing year for which the GAF permit(s) was issued and make the GAF permit available for inspection upon the request of an authorized officer (as defined in Commission regulations).

(B) *Issuance.* The Regional Administrator will issue a GAF permit upon approval of an Application to Transfer Between IFQ and GAF.

(C) *Transfer.* GAF authorized by a GAF permit under this section (§ 300.65(c)(5)(iii)) are not transferable to another GAF permit, except as provided under paragraph (c)(5)(ii) of this section.

(iv) *GAF use restrictions.* (A) A charter vessel angler may harvest GAF only on board a vessel on which the operator has on board a valid GAF permit and the valid charter halibut permit, community charter halibut permit, or military charter halibut permit assigned to the GAF permit for the area of harvest.

(B) The total number of GAF on board a vessel cannot exceed the number of unharvested GAF in the GAF permit holder's GAF account at the time of harvest.

(C) The total number of halibut retained by a charter vessel angler harvesting GAF cannot exceed the sport fishing daily bag limit in effect for unguided sport anglers at the time of harvest adopted by the Commission as annual management measures and published in the **Federal Register** as required in § 300.62.

(D) Retained GAF are not subject to any length limit implemented by the Commission's annual management measures and published in the **Federal Register** as required in § 300.62, if applicable.

(E) Each charter vessel angler retaining GAF must comply with the halibut possession requirements adopted by the Commission as annual management measures and published in the **Federal Register** as required in § 300.62.

(F) The charter vessel guide must ensure that each charter vessel angler complies with (c)(5)(iv)(A) through (E) of this section.

(G) The charter vessel guide must immediately remove the tips of the upper and lower lobes of the caudal (tail) fin to mark all halibut caught and retained as GAF.

(H) Except as provided in paragraph (c)(5)(iv)(I) of this section, during the halibut sport fishing season adopted by the Commission as annual management measures and published in the **Federal Register** as required in § 300.62, the following GAF use and IFQ transfer limits shall apply:

(*1*) no more than 400 GAF may be assigned to a GAF permit that is assigned to a charter halibut permit or community charter halibut permit endorsed for six (6) or fewer charter vessel anglers in a year,

(*2*) no more than 600 GAF may be assigned to a GAF permit that is assigned to a charter halibut permit endorsed for more than six (6) charter vessel anglers in a year; and

(*3*) In Commission regulatory area 2C, a maximum of 1,500 pounds or ten (10) percent, whichever is greater, of the start year fishable IFQ pounds for an IFQ permit, may be transferred from IFQ to GAF. In Commission regulatory area 3A, a maximum of 1,500 pounds or fifteen (15) percent, whichever is greater, of the start year fishable IFQ pounds for an IFQ permit, may be transferred from IFQ to GAF. Start year fishable pounds is the sum of IFQ equivalent pounds, as defined in § 679.2 of this title, for an area, derived from QS held, plus or minus adjustments made to that amount pursuant to § 679.40(d) and (e) of this title.

(I) The halibut QS equivalent of net pounds of halibut IFQ that is transferred to GAF is included in the computation of halibut QS use caps in § 679.42(f)(1)(i) and (ii) of this title.

(J) A CHP holder receiving GAF from a CQE is subject to § 679.42(f)(6) of this title. For a CHP holder who receives GAF from a CQE, the net poundage equivalent of all halibut IFQ received as GAF is included in the computation of that person's IFQ halibut holdings in § 679.42(f)(6) of this title.

(K) Applicability of GAF use restrictions to CQEs. The GAF use restrictions in paragraph (c)(5)(iv)(H) of this section do not apply if:

(*1*) A CQE transfers IFQ as GAF to a GAF permit that is assigned to one or more charter halibut permits held by that CQE or community charter halibut permits held by that CQE;

(*2*) A CQE transfers IFQ as GAF to another CQE holding one or more charter halibut permits or community charter halibut permits; or

(*3*) A CQE transfers IFQ as GAF to a GAF permit that is assigned to a charter halibut permit held by an eligible community resident (as defined at § 679.2) of that CQE community, as defined for purposes of the Catch Sharing Plan for Commission regulatory areas 2C and 3A in § 679.2 of this title, holding one or more charter halibut permits.

(d) *Charter vessels in Commission regulatory area 2C and 3A*—(1) *General requirements*—(i) *Logbook submission.* For a charter vessel fishing trip during which halibut were caught and retained on or after the first Monday in April and on or before December 31, Alaska Department of Fish and Game (ADF&G) Saltwater Sport Fishing Charter Trip Logbook data sheets must be submitted to the ADF&G and postmarked or received no later than 14 calendar days after the Monday of the fishing week (as defined in 50 CFR 300.61) in which the halibut were caught and retained. Logbook sheets for a charter vessel fishing trip during which halibut were caught and retained on January 1 through the first Sunday in April, must be submitted to the ADF&G and postmarked or received no later than the second Monday in April.

(ii) The charter vessel guide is responsible for complying with the reporting requirements of this paragraph (d). The person to whom the Alaska Department of Fish and Game issues the Saltwater Sport Fishing Charter Trip Logbook is responsible for ensuring that the charter vessel guide complies with the reporting requirements of this paragraph (d).

(2) *Retention and inspection of logbook.* The person to whom the Alaska Department of Fish and Game issues the Saltwater Sport Fishing Charter Trip Logbook and who retains halibut is required to:

(i) Retain the logbook for 2 years after the end of the fishing year for which the logbook was issued, and

(ii) Make the logbook available for inspection upon the request of an authorized officer (as defined in Commission regulations).

(3) *Charter vessel guide and crew restriction in Commission regulatory areas 2C and 3A.* A charter vessel guide, charter vessel operator, or crew member may not catch and retain halibut during a charter vessel fishing trip in Commission regulatory area 2C or 3A

while on a vessel with charter vessel anglers on board.

(4) *Recordkeeping and reporting requirements in Commission regulatory area 2C and 3A*—(i) *General requirements.* Each charter vessel angler and charter vessel guide on board a vessel in Commission regulatory area 2C or 3A must comply with the following recordkeeping and reporting requirements, except as specified in paragraph (d)(4)(ii)(C) of this section, by the end of the calendar day or by the end of the charter vessel fishing trip, whichever comes first, unless otherwise specified:

(ii) *Logbook reporting requirements*—(A) *Charter vessel angler signature requirement.* Each charter vessel angler who retains halibut caught in Commission regulatory area 2C or 3A must acknowledge that his or her name, license number (if required), and number of halibut retained (kept) are recorded correctly by signing the Alaska Department of Fish and Game Saltwater Charter Logbook data sheet on the line that corresponds to the angler's information.

(B) *Charter vessel guide requirements.* If halibut were caught and retained in Commission regulatory area 2C or 3A, the charter vessel guide must record the following information (see paragraphs (d)(4)(ii)(B)(*1*) through (*10*) of this section) in the Alaska Department of Fish and Game Saltwater Charter Logbook:

(*1*) *Guide license number.* The Alaska Department of Fish and Game sport fishing guide license number held by the charter vessel guide who certified the logbook data sheet.

(*2*) *Date.* Month and day for each charter vessel fishing trip taken. A separate logbook data sheet is required for each charter vessel fishing trip if two or more trips were taken on the same day. A separate logbook data sheet is required for each calendar day that halibut are caught and retained during a multi-day trip. A separate logbook sheet is also required if more than one charter halibut permit is used on a trip.

(*3*) *Charter halibut permit (CHP) number.* The NMFS CHP number(s) authorizing charter vessel anglers on board the vessel to catch and retain halibut.

(*4*) *Guided Angler Fish (GAF) permit number.* The NMFS GAF permit number(s) authorizing charter vessel anglers on board the vessel to harvest GAF.

(*5*) *Statistical area.* The primary Alaska Department of Fish and Game six-digit statistical area code in which halibut were caught and retained.

(*6*) *Angler sport fishing license number and printed name.* Before a charter vessel fishing trip begins, record for the first and last name of each paying or non-paying charter vessel angler on board that will fish for halibut. For each angler required to be licensed, record the Alaska Sport Fishing License number for the current year, resident permanent license number, or disabled veteran license number. For youth anglers not required to be licensed, record the word ''youth'' in place of the license number.

(*7*) *Number of halibut retained.* For each charter vessel angler, record the total number of non-GAF halibut caught and kept.

(*8*) *Number of GAF retained.* For each charter vessel angler, record the total number of GAF kept.

(*9*) *Guide signature.* The charter vessel guide acknowledges that the recorded information is correct by signing the logbook data sheet.

(*10*) *Angler signature.* The charter vessel guide is responsible for ensuring that charter vessel anglers that retain halibut comply with the signature requirements at paragraph (d)(4)(ii)(A) of this section.

(iii) *GAF reporting requirements*—(A) *General.* (*1*) Upon retention of a GAF halibut, the charter vessel guide must immediately record on the GAF permit the date that the fish was caught and retained and the total length of that fish as described in paragraph (d)(4)(iii)(D)(*6*) of this section.

(*2*) In addition to the recordkeeping and reporting requirements in paragraphs (d)(4)(i) and (ii) of this section, a GAF permit holder must use the NMFS-approved electronic reporting system on the Alaska Region Web site at *http://alaskafisheries.noaa.gov/* to submit a GAF landings report.

(*3*) A GAF permit holder must submit a GAF landings report by 11:59 p.m. (Alaska local time) on the last calendar day of a fishing trip for each day on which a charter vessel angler retained GAF authorized by the GAF permit held by that permit holder.

(*4*) If a GAF permit holder is unable to submit a GAF landings report due to hardware, software, or Internet failure for a period longer than the required reporting time, or a correction must be made to information already submitted, the GAF permit holder must contact NOAA Office of Law Enforcement, Juneau, AK, at 800–304–4846 (Select Option 1).

(B) *Electronic Reporting of GAF.* A GAF permit holder must obtain, at his or her own expense, the technology to submit GAF landing reports to the NMFS-approved reporting system for GAF landings.

(C) *NMFS-Approved Electronic Reporting System.* The GAF permit holder agrees to the following terms (see paragraphs (d)(4)(iii)(C)(*1*) through (*3*) of this section):

(*1*) To use any NMFS online service or reporting system only for authorized purposes;

(*2*) To safeguard the NMFS Person Identification Number and password to prevent their use by unauthorized persons; and

(*3*) To accept the responsibility of and acknowledge compliance with § 300.4(a) and (b), § 300.65(d), and § 300.66(p) and (q).

(D) *Information entered for each GAF caught and retained.* The GAF permit holder must enter the following information for each GAF retained under the authorization of the permit holder's GAF permit into the NMFS-approved electronic reporting system (see paragraphs (d)(4)(iii)(D)(*1*) through (*8*) of this section) by 11:59 p.m. (Alaska local time) on the last day of a charter fishing trip in which a charter vessel angler retained GAF:

(*1*) Logbook number from the Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip Logbook.

(*2*) Vessel identification number for vessel on which GAF were caught and retained:

(*i*) State of Alaska issued boat registration (AK number), or

(*ii*) U.S. Coast Guard documentation number.

(*3*) GAF permit number under which GAF were caught and retained.

(*4*) Alaska Department of Fish and Game sport fishing guide license number held by the charter vessel guide who certified the logbook data sheet.

(*5*) Number of GAF caught and retained.

(*6*) Lengths of GAF caught and retained. Halibut lengths are measured in inches in a straight line from the anterior-most tip of the lower jaw with the mouth closed to the extreme end of the middle of the tail.

(*7*) Community charter halibut permit only: Community or Port where the charter vessel fishing trip began (i.e., where charter vessel anglers boarded the vessel).

(*8*) Community charter halibut permit only: Community or Port where the charter vessel fishing trip ended (i.e., where charter vessel anglers or fish were offloaded from the vessel).

(E) *Properly reported landing.* (*1*) All GAF harvested on board a vessel must be debited from the GAF permit holder's account under which the GAF were retained.

(*2*) A GAF landing confirmation number issued by the NMFS-approved electronic reporting system and recorded on the GAF permit used to record the dates and lengths of retained GAF, as required in paragraph (d)(4)(iii)(A)(*1*) of this section, constitutes confirmation that the GAF permit holder's GAF landing is properly reported and the GAF permit holder's account is properly debited.

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■ 4. In § 300.66:

■ a. Redesignate paragraphs (i) through (v) as paragraphs (j) through (w), respectively;

■ b. Revise paragraph (h) introductory text;

■ c. Add new paragraph (i); and

■ d. Revise newly redesignated paragraphs (n) and (s) through (w).

The revisions and addition read as follows:

§ 300.66 Prohibitions.

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(h) Conduct subsistence fishing for halibut and commercial fishing for halibut from the same vessel on the same calendar day, or possess on board a vessel, halibut harvested while subsistence fishing with halibut harvested while commercial fishing or sport fishing, as defined in § 300.61, except that persons authorized to conduct subsistence fishing under § 300.65(g), and who land their total annual harvest of halibut:

* * * * *

(i) Conduct commercial and sport fishing for halibut, as defined in § 300.61, from the same vessel on the same calendar day.

* * * * *

(n) Exceed any of the harvest or gear limitations specified at § 300.65(c)(5) or adopted by the Commission as annual management measures and published in the **Federal Register** as required in § 300.62.

* * * * *

(s) Be an operator of a vessel in Commission regulatory area 2C or 3A without an original valid charter halibut permit for the regulatory area in which the vessel is operating when one or more charter vessel anglers are on board that are catching and retaining halibut.

(t) Be an operator of a vessel in Commission regulatory area 2C or 3A with more charter vessel anglers on board catching and retaining halibut than the total angler endorsement number specified on the charter halibut permit or permits on board the vessel.

(u) Be an operator of a vessel in Commission regulatory area 2C or 3A with more charter vessel anglers on board catching and retaining halibut than the angler endorsement number specified on the community charter halibut permit or permits on board the vessel.

(v) Be an operator of a vessel on which one or more charter vessel anglers on board are catching and retaining halibut in Commission regulatory areas 2C and 3A during one charter vessel fishing trip.

(w) Be an operator of a vessel in Commission regulatory area 2C or 3A with one or more charter vessel anglers on board that are catching and retaining halibut without having on board the vessel a State of Alaska Department of Fish and Game Saltwater Charter Logbook that specifies the following:

(1) The person named on the charter halibut permit or permits being used on board the vessel;

(2) The charter halibut permit or permits number(s) being used on board the vessel; and

(3) The name and State issued boat registration (AK number) or U.S. Coast Guard documentation number of the vessel.

■ 5. In § 300.67:

■ a. Redesignate paragraphs (i)(2)(v) and (vi) as paragraphs (i)(2)(vi) and (vii), respectively; and

■ b. Add new paragraph (i)(2)(v) to read as follows:

§ 300.67 Charter halibut limited access program.

* * * * *

(i) * * *

(2) * * *

(v) The GAF permit is not assigned to a charter halibut permit for which the GAF account contains unharvested GAF, pursuant to § 300.65 (c)(5)(iii)(A)(*3*) and (*4*);

* * * * *

■ 6. Add Tables 1 through 4 to subpart E of part 300 to read as follows:

TABLE 1—TO SUBPART E OF PART 300—DETERMINATION OF COMMISSION REGULATORY AREA 2C ANNUAL COMMERCIAL ALLOCATION FROM THE ANNUAL COMBINED CATCH LIMIT FOR HALIBUT

If the Area 2C annual combined catch limit (CCL) in net pounds is:	then the Area 2C annual commercial allocation is:
<5,000,000 lb	81.7% of the Area 2C CCL.
≥5,000,000 and ≤5,755,000 lb	the Area 2C CCL minus a fixed 915,000 lb allocation to the charter halibut fishery.
>5,755,000 lb	84.1% of the Area 2C CCL.

TABLE 2—TO SUBPART E OF PART 300—DETERMINATION OF COMMISSION REGULATORY AREA 3A ANNUAL COMMERCIAL ALLOCATION FROM THE ANNUAL COMBINED CATCH LIMIT FOR HALIBUT

If the Area 3A annual combined catch limit (CCL) in net pounds is:	then the Area 3A annual commercial allocation is:
<10,000,000 lb	81.1% of the Area 3A CCL.
≥10,000,000 and ≤10,800,000 lb	the Area 3A CCL minus a fixed 1,890,000 lb allocation to the charter halibut fishery.
>10,800,000 and ≤20,000,000 lb	82.5% of the Area 3A CCL.
>20,000,000 and ≤25,000,000 lb	the Area 3A CCL minus a fixed 3,500,000 lb allocation to the charter halibut fishery.
>25,000,000 lb	86.0% of the Area 3A CCL.

TABLE 3—TO SUBPART E OF PART 300—DETERMINATION OF COMMISSION REGULATORY AREA 2C ANNUAL CHARTER HALIBUT ALLOCATION FROM THE ANNUAL COMBINED CATCH LIMIT

If the Area 2C annual combined catch limit for halibut in net pounds is:	then the Area 2C annual charter allocation is:
<5,000,000 lb	18.3% of the Area 2C CCL.

TABLE 3—TO SUBPART E OF PART 300—DETERMINATION OF COMMISSION REGULATORY AREA 2C ANNUAL CHARTER HALIBUT ALLOCATION FROM THE ANNUAL COMBINED CATCH LIMIT—Continued

If the Area 2C annual combined catch limit for halibut in net pounds is:	then the Area 2C annual charter allocation is:
≥5,000,000 and ≤5,755,000 lb	915,000 lb.
>5,755,000 lb	15.9% of the Area 2C CCL.

TABLE 4—TO SUBPART E OF PART 300—DETERMINATION OF COMMISSION REGULATORY AREA 3A ANNUAL CHARTER HALIBUT ALLOCATION FROM THE ANNUAL COMBINED CATCH LIMIT

If the Area 3A annual combined catch limit (CCL) for halibut in net pounds is:	then the Area 3A annual charter allocation is:
<10,000,000 lb	18.9% of the Area 3A annual combined catch limit.
≥10,000,000 and ≤10,800,000 lb	1,890,000 lb.
>10,800,000 and ≤20,000,000 lb	17.5% of the Area 3A annual combined catch limit.
>20,000,000 and ≤25,000,000 lb	3,500,000 lb.
>25,000,000 lb	14.0% of the Area 3A annual combined catch limit.

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 7. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108–447.

■ 8. In § 679.2, revise the definitions of ''Eligible community resident'', ''IFQ equivalent pound(s)'', ''IFQ fee liability'', and ''IFQ standard ex-vessel value'' to read as follows:

§ 679.2 Definitions.

* * * * *

Eligible community resident means:

(1) For purposes of the IFQ Program, any individual who:

(i) Is a citizen of the United States;

(ii) Has maintained a domicile in a rural community listed in Table 21 to this part for the 12 consecutive months immediately preceding the time when the assertion of residence is made, and who is not claiming residency in another community, state, territory, or country, except that residents of the Village of Seldovia shall be considered to be eligible community residents of the City of Seldovia for the purposes of eligibility to lease IFQ from a CQE; and

(iii) Is an IFQ crew member.

(2) For purposes of the Area 2C and Area 3A catch sharing plan (CSP) in § 300.65(c) of this title, means any individual or non-individual entity who:

(i) Holds a charter halibut permit as defined in § 300.61 of this title;

(ii) Has been approved by the Regional Administrator to receive GAF, as defined in § 300.61 of this title, from a CQE in a transfer between IFQ and GAF pursuant to § 300.65(c)(5)(ii) of this title; and

(iii) Begins or ends every charter vessel fishing trip, as defined in § 300.61 of this title, authorized by the charter halibut permit issued to that person, and on which halibut are retained, at a location(s) within the boundaries of the community represented by the CQE from which the GAF were received. The geographic boundaries of the eligible community will be those defined by the United States Census Bureau.

* * * * *

IFQ equivalent pound(s) means the weight amount, recorded in pounds and calculated as round weight for sablefish and headed and gutted weight for halibut for an IFQ landing or for estimation of the fee liability of halibut landed as guided angler fish (GAF), as defined in § 300.61 of this title. Landed GAF are converted to IFQ equivalent pounds as specified in § 300.65(c) of this title.

IFQ fee liability means that amount of money for IFQ cost recovery, in U.S. dollars, owed to NMFS by an IFQ permit holder as determined by multiplying the appropriate standard ex-vessel value or, for non-GAF landings, the actual ex-vessel value of his or her IFQ halibut or IFQ sablefish landing(s), by the appropriate IFQ fee percentage and the appropriate standard ex-vessel value of landed GAF derived from his or her IFQ by the appropriate IFQ fee percentage.

* * * * *

IFQ standard ex-vessel value means the total U.S. dollar amount of IFQ halibut or IFQ sablefish landings as calculated by multiplying the number of landed IFQ equivalent pounds plus landed GAF in IFQ equivalent pounds by the appropriate IFQ standard price determined by the Regional Administrator.

* * * * *

■ 9. In § 679.4, add paragraph (a)(1)(xv) and revise paragraph (a)(2) to read as follows:

§ 679.4 Permits.

(a) * * *

(1) * * *

If program permit type is:	Permit is in effect from issue date through the end of:	For more information, see * * *
* * *	* * *	*
(xv) Guided sport halibut fishery permits:		
(A) Charter halibut permit	Indefinite	§ 300.67 of this title.
(B) Community charter halibut permit	Indefinite	§ 300.67 of this title.
(C) Military charter halibut permit	Indefinite	§ 300.67 of this title.
(D) Guided Angler Fish (GAF) permit	Until expiration date shown on permit	§ 300.65 of this title.

(2) *Permit and logbook required by participant and fishery.* For the various types of permits issued, refer to § 679.5 for recordkeeping and reporting requirements. For subsistence and GAF permits, refer to § 300.65 of this title for recordkeeping and reporting requirements.

* * * * *

■ 10. In § 679.5, revise paragraphs (l)(7)(i) and (ii) to read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

* * * * *

(l) * * *

(7) * * *

(i) *IFQ Registered Buyer Ex-vessel Value and Volume Report*—(A) *Requirement.* An IFQ Registered Buyer that also operates as a shoreside processor and receives and purchases IFQ landings of sablefish or halibut must submit annually to NMFS a complete IFQ Registered Buyer Ex-vessel Value and Volume Report as described in this paragraph (l) and as provided by NMFS for each reporting period, as described at paragraph (1)(7)(i)(E), in which the Registered Buyer receives IFQ fish.

(B) *Due date.* A complete IFQ Registered Buyer Ex-vessel Value and Volume Report must be postmarked or received by the Regional Administrator by October 15 following the reporting period in which the IFQ Registered Buyer receives the IFQ fish.

(C) *Completed application.* NMFS will process an IFQ Registered Buyer Ex-vessel Value and Volume Report provided that a paper or electronic report is completed by the Registered Buyer, with all applicable fields accurately filled in, and all required additional documentation is attached.

(*1*) *Certification, Electronic submittal.* NMFS ID and password of the IFQ Registered Buyer; or

(*2*) *Certification, Non-electronic submittal.* Printed name and signature of the individual submitting the IFQ Registered Buyer Ex-vessel Value and Volume Report on behalf of the IFQ Registered Buyer, and date of signature.

(D) *Submission address.* The IFQ Registered Buyer must complete an IFQ Registered Buyer Ex-vessel Value and Volume Report and submit by mail to: Administrator, Alaska Region, NMFS, Attn: RAM Program, P.O. Box 21668, Juneau, AK 99802–1668; by fax to: (907) 586–7354; or electronically at *http://alaskafisheries.noaa.gov*. Report forms are available on the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov*, or by contacting NMFS at (800) 304–4846, Option 2.

(E) *Reporting period.* The reporting period of the IFQ Registered Buyer Ex-vessel Value and Volume Report shall extend from October 1 through September 30 of the following year, inclusive.

(ii) *IFQ Permit Holder Fee Submission Form*—(A) *Applicability.* An IFQ permit holder who holds an IFQ permit against which a landing was made must submit to NMFS a complete IFQ Permit Holder Fee Submission Form provided by NMFS.

(B) *Due date and submittal.* A complete IFQ Permit Holder Fee Submission Form must be postmarked or received by the Regional Administrator not later than January 31 following the calendar year in which any IFQ landing was made.

(C) *Completed application.* NMFS will process an IFQ Permit Holder Fee Submission Form provided that a paper or electronic form is completed by the permit holder, with all applicable fields accurately filled in, and all required additional documentation is attached.

(D) *IFQ landing summary and estimated fee liability.* NMFS will provide to an IFQ permit holder an IFQ Landing and Estimated Fee Liability page as required by § 679.45(a)(2). The IFQ permit holder must either accept the accuracy of the NMFS estimated fee liability associated with his or her IFQ landings for each IFQ permit, or calculate a revised IFQ fee liability in accordance with paragraph (l)(7)(ii)(E) of this section. The IFQ permit holder may calculate a revised fee liability for all or part of his or her IFQ landings.

(E) *Revised fee liability calculation.* To calculate a revised fee liability, an IFQ permit holder must multiply the IFQ percentage in effect by either the IFQ actual ex-vessel value or the IFQ standard ex-vessel of the IFQ landing. If parts of the landing have different values, the permit holder must apply the appropriate values to the different parts of the landings.

(F) *Documentation.* If NMFS requests in writing that a permit holder submit documentation establishing the factual basis for a revised IFQ fee liability, the permit holder must submit adequate documentation by the 30th day after the date of such request. Examples of such documentation regarding initial sales transactions of IFQ landings include valid fish tickets, sales receipts, or check stubs that clearly identify the IFQ landing amount, species, date, time, and ex-vessel value or price.

(G) *Reporting period.* The reporting period of the IFQ Permit Holder Fee Submission Form shall extend from January 1 to December 31 of the year prior to the January 31 due date.

* * * * *

■ 11. In § 679.40, revise the introductory text and paragraph (c)(1) to read as follows:

§ 679.40 Sablefish and halibut QS.

The Regional Administrator shall annually divide the annual commercial fishing catch limit of halibut as defined in § 300.61 of this title and published in the **Federal Register** pursuant to § 300.62 of this title, among qualified halibut quota share holders. The Regional Administrator shall annually divide the TAC of sablefish that is apportioned to the fixed gear fishery pursuant to § 679.20, minus the CDQ reserve, among qualified sablefish quota share holders.

* * * * *

(c) *Calculation of annual IFQ allocation*—(1) *General.* (i) The annual allocation of halibut IFQ to any person (person p) in any IFQ regulatory area (area a) will be equal to the product of the annual commercial catch limit as defined in § 300.61 of this title, after adjustment for purposes of the Western Alaska CDQ Program, and that person's QS divided by the QS pool for that area. Overage adjustments will be subtracted from a person's IFQ pursuant to paragraph (d) of this section; underage adjustments will be added to a person's IFQ pursuant to paragraph (e) of this section. Expressed algebraically, the annual halibut IFQ allocation formula is as follows:

$$IFQ_{pa} = [(\text{fixed gear } TAC_a - \text{CDQ reserve}_a) \times (QS_{pa}/\text{QS pool}_a)] - \text{overage adjustment of } IFQ_{pa} + \text{underage adjustment of } IFQ_{pa}$$

(ii) The annual allocation of sablefish IFQ to any person (person p) in any IFQ regulatory area (area a) will be equal to the product of the TAC of sablefish by fixed gear for that area (after adjustment for purposes of the Western Alaska CDQ Program) and that person's QS divided by the QS pool for that area. Overage adjustments will be subtracted from a person's IFQ pursuant to paragraph (d) of this section; underage adjustments will be added to a person's IFQ pursuant to paragraph (e) of this section. Expressed algebraically, the annual IFQ allocation formula is as follows:

$$IFQ_{pa} = [(\text{fixed gear } TAC_a - \text{CDQ reserve}_a) \times (QS_{pa}/\text{QS pool}_a)] - \text{overage adjustment of } IFQ_{pa} + \text{underage adjustment of } IFQ_{pa}$$

* * * * *

■ 12. In § 679.41, add paragraph (a)(3) to read as follows:

§ 679.41 Transfer of quota shares and IFQ.

(a) * * *

(3) Any transaction involving a transfer between IFQ and guided angler fish (GAF), as defined in § 300.61 of this title, is governed by regulations in § 300.65(c) of this title.

* * * * *

■ 13. In § 679.42 revise paragraphs (f)(1)(i) and (ii) and (f)(6) to read as follows:

§ 679.42 Limitations on use of QS and IFQ.

* * * * *

(f) * * *

(1) * * *

(i) *IFQ regulatory Area 2C.* 599,799 units of halibut QS, including halibut QS issued as IFQ and transferred to GAF, as defined in § 300.61 of this title.

(ii) *IFQ regulatory area 2C, 3A, and 3B.* 1,502,823 units of halibut QS, including halibut QS issued as IFQ and transferred to GAF, as defined in § 300.61 of this title.

* * * * *

(6) No individual that receives IFQ derived from halibut QS held by a CQE, including GAF as defined in § 300.61 of this title, may hold, individually or collectively, more than 50,000 pounds (22.7 mt) of IFQ halibut, including IFQ halibut received as GAF, derived from any halibut QS source.

* * * * *

■ 14. In § 679.45:

■ a. Revise paragraphs (a)(1) through (3), (a)(4)(i) through (iii), and (b);

■ b. Remove and reserve paragraph (c); and

■ c. Revise the paragraph (d)(2) heading and paragraphs (d)(2)(i)(A) through (C), (d)(2)(ii), (d)(3)(i), (d)(4), (e), and (f).

The revisions read as follows:

§ 679.45 IFQ cost recovery program.

(a) * * *

(1) *Responsibility.* An IFQ permit holder is responsible for cost recovery fees for landings of his or her IFQ halibut and sablefish, including any halibut landed as guided angler fish (GAF), as defined in § 300.61 of this title, derived from his or her IFQ accounts. An IFQ permit holder must comply with the requirements of this section.

(2) *IFQ Fee Liability Determination*—(i) *General.* IFQ fee liability means a cost recovery liability based on the value of all landed IFQ and GAF derived from the permit holder's IFQ permit(s).

(A) Each year, the Regional Administrator will issue each IFQ permit holder a summary of his or her IFQ equivalent pounds landed as IFQ and GAF as part of the IFQ Landing and Estimated Fee Liability page described at § 679.5(l)(7)(ii)(D).

(B) The summary will include information on IFQ and GAF landings and an estimated IFQ fee liability using the IFQ standard ex-vessel value for IFQ and GAF landings. For fee purposes:

(*1*) Landings of GAF in IFQ regulatory area 2C or 3A are converted to IFQ equivalent pounds and assessed at the IFQ regulatory area 2C or 3A IFQ standard ex-vessel value.

(*2*) GAF that is returned to the IFQ permit holder's account pursuant to § 300.65(c) of this title, and subsequently landed as IFQ during the IFQ fishing year, is included in the IFQ fee liability and subject to fee assessment as IFQ equivalent pounds.

(C) The IFQ permit holder must either accept NMFS' estimate of the IFQ fee liability or revise NMFS' estimate of the IFQ fee liability using the IFQ Permit Holder Fee Submission Form described at § 679.5(l)(7)(ii), except that the standard ex-vessel value used to determine the fee liability for GAF is not subject to challenge. If the IFQ permit holder revises NMFS' estimate of his or her IFQ fee liability, NMFS may request in writing that the permit holder submit documentation establishing the factual basis for the revised calculation. If the IFQ permit holder fails to provide adequate documentation on or by the 30th day after the date of such request, NMFS will determine the IFQ permit holder's IFQ fee liability based on standard ex-vessel values.

(ii) *Value assigned to GAF.* The IFQ fee liability is computed from all net pounds allocated to the IFQ permit holder that are landed, including IFQ landed as GAF.

(A) NMFS will determine the IFQ equivalent pounds of GAF landed in IFQ regulatory area 2C or 3A that are derived from the IFQ permit holder's account.

(B) The IFQ equivalent pounds of GAF landed in IFQ regulatory area 2C or 3A are multiplied by the standard ex-vessel value computed for that area to determine the value of IFQ landed as GAF.

(iii) The value of IFQ landed as GAF is added to the value of the IFQ permit holder's landed IFQ, and the sum is multiplied by the annual IFQ fee percentage to estimate the IFQ permit holder's IFQ fee liability.

(3) *Fee Collection.* An IFQ permit holder with IFQ and/or GAF landings is responsible for collecting his or her own fee during the calendar year in which the IFQ fish and/or GAF are landed.

(4) * * *

(i) *Payment due date.* An IFQ permit holder must submit his or her IFQ fee liability payment(s) to NMFS at the address provided at paragraph (a)(4)(iii) of this section not later than January 31 of the year following the calendar year in which the IFQ and/or GAF landings were made.

(ii) *Payment recipient.* Make payment payable to IFQ Fee Coordinator, OMI.

(iii) *Payment address.* Mail payment and related documents to: Administrator, Alaska Region, NMFS, Attn: IFQ Fee Coordinator, Office of Operations, Management, and Information, P.O. Box 21668, Juneau, AK 99802–1668; submit by fax to (907) 586–7354; or submit electronically through the NMFS Alaska Region Home Page at *http://alaskafisheries.noaa.gov.* If paying by credit card, ensure that all requested card information is provided.

* * * * *

(b) *IFQ ex-vessel value determination and use*—(1) *General.* An IFQ permit holder must use either the IFQ actual ex-vessel value or the IFQ standard ex-vessel value when determining the IFQ fee liability based on ex-vessel value, except that landed GAF are assessed at the standard values derived by NMFS. An IFQ permit holder must base all IFQ fee liability calculations on the ex-vessel value that correlates to the landed IFQ in IFQ equivalent pounds.

(2) *IFQ actual ex-vessel value.* An IFQ permit holder that uses actual ex-vessel value, as defined in § 679.2, to determine IFQ fee liability for landed IFQ must document actual ex-vessel value for each IFQ permit. The actual ex-vessel value cannot be used to assign value to halibut landed as GAF.

(3) *IFQ standard ex-vessel value*—(i) *Use of standard price.* An IFQ permit holder that uses standard ex-vessel value to determine the IFQ fee liability, as part of a revised IFQ fee liability submission, must use the corresponding standard price(s) as published in the **Federal Register**.

(ii) All landed GAF must be valued using the standard ex-vessel value for the year and for the IFQ regulatory area of harvest—Area 2C or Area 3A.

(iii) *Duty to publish list.* Each year the Regional Administrator will publish a list of IFQ standard prices in the **Federal Register** during the last quarter of the calendar year. The IFQ standard prices will be described in U.S. dollars per IFQ equivalent pound, for IFQ halibut and sablefish landings made during the current calendar year.

(iv) *Effective duration.* The IFQ standard prices will remain in effect until revised by the Regional Administrator by notification in the **Federal Register** based upon new information of the type set forth in this

section. IFQ standard prices published in the **Federal Register** by NMFS shall apply to all landings made in the same calendar year as the IFQ standard price publication and shall replace any IFQ standard prices previously provided by NMFS that may have been in effect for that same calendar year.

(v) *Determination.* NMFS will apply the standard price, aggregated IFQ regulatory area 2C or 3A, to GAF landings. NMFS will calculate the IFQ standard prices to reflect, as closely as possible by month and port or port-group, the variations in the actual ex-vessel values of IFQ halibut and IFQ sablefish landings based on information provided in the IFQ Registered Buyer Ex-Vessel Value and Volume Report as described in § 679.5(l)(7)(i). The Regional Administrator will base IFQ standard prices on the following types of information:

(A) Landed net pounds by IFQ species, port-group, and month;

(B) Total ex-vessel value by IFQ species, port-group, and month; and

(C) Price adjustments, including IFQ retro-payments.

* * * * *

(d) * * *

(2) *Calculating the fee percentage.* * * *

(i) * * *

(A) The IFQ and GAF landings to which the IFQ fee will apply;

(B) The ex-vessel value of that landed IFQ and GAF; and

(C) The costs directly related to the management and enforcement of the IFQ program, which include GAF costs.

(ii) *Methodology.* NMFS must use the following equation to determine the fee percentage:

$100 \times (DPC/V)$

Where:

''DPC'' is the direct program costs for the IFQ fishery for the previous fiscal year, and

''V'' is the ex-vessel value determined for IFQ landed as commercial catch or as GAF subject to the IFQ fee liability for the current year.

(3) * * *

(i) *General.* During or before the last quarter of each calendar year, NMFS shall publish the IFQ fee percentage in the **Federal Register**. NMFS shall base any IFQ fee liability calculations on the factors and methodology in paragraph (d)(2) of this section.

* * * * *

(4) *Applicable percentage.* The IFQ permit holder must use the IFQ fee percentage in effect for the year in which the IFQ and GAF landings are made to calculate his or her fee liability for such landed IFQ and GAF. The IFQ permit holder must use the IFQ fee percentage in effect at the time an IFQ retro-payment is received by the IFQ permit holder to calculate his or her IFQ fee liability for the IFQ retro-payment.

(e) *Non-payment of fee.* (1) If an IFQ permit holder does not submit a complete IFQ Permit Holder Fee Submission Form and corresponding payment by the due date described in § 679.45(a)(4), the Regional Administrator will:

(i) *Send Initial Administrative Determination (IAD).* Send an IAD to the IFQ permit holder stating that the IFQ permit holder's estimated fee liability, as calculated by the Regional Administrator and sent to the IFQ permit holder pursuant to § 679.45(a)(2), is the amount of IFQ fee liability due from the IFQ permit holder. An IFQ permit holder who receives an IAD may appeal the IAD, as described in paragraph (h) of this section.

(ii) *Disapprove transfer.* Disapprove any transfer of GAF, IFQ, or QS to or from the IFQ permit holder in accordance with § 300.65(c) of this title and § 679.41(c), until the IFQ fee liability is reconciled, except that NMFS may return unused GAF to the IFQ permit holder's account from which it was derived on or after the automatic GAF return date.

(2) Upon final agency action determining that an IFQ permit holder has not paid his or her IFQ fee liability, as described in paragraph (f) of this section, any IFQ fishing permit held by the IFQ permit holder is not valid until all IFQ fee liabilities are paid.

(3) If payment is not received on or before the 30th day after the final agency action, the matter will be referred to the appropriate authorities for purposes of collection.

(f) *Underpayment of IFQ fee.* (1) When an IFQ permit holder has incurred a fee liability and made a timely payment to NMFS of an amount less than the NMFS estimated IFQ fee liability, the Regional Administrator will review the IFQ Permit Holder Fee Submission Form and related documentation submitted by the IFQ permit holder. If the Regional Administrator determines that the IFQ permit holder has not paid a sufficient amount, the Regional Administrator will:

(i) *Disapprove transfer.* Disapprove any transfer of GAF, IFQ, or QS to or from the IFQ permit holder in accordance with § 300.65(c) of this title and § 679.41(c), until the IFQ fee liability is reconciled, except that NMFS may return unused GAF to the IFQ permit holder's account from which it was derived 15 days prior to the closing of the commercial halibut fishing season each year.

(ii) *Notify permit holder.* Notify the IFQ permit holder by letter that an insufficient amount has been paid and that the IFQ permit holder has 30 days from the date of the letter to either pay the amount determined to be due or provide additional documentation to prove that the amount paid was the correct amount.

(2) After the expiration of the 30-day period, the Regional Administrator will evaluate any additional documentation submitted by an IFQ permit holder in support of his or her payment. If the Regional Administrator determines that the additional documentation does not meet the IFQ permit holder's burden of proving his or her payment is correct, the Regional Administrator will send the permit holder an IAD indicating that the permit holder did not meet the burden of proof to change the IFQ fee liability as calculated by the Regional Administrator based upon the IFQ standard ex-vessel value. The IAD will set out the facts and indicate the deficiencies in the documentation submitted by the permit holder. An IFQ permit holder who receives an IAD may appeal the IAD, as described in paragraph (h) of this section.

(3) If the permit holder fails to file an appeal of the IAD pursuant to § 679.43, the IAD will become the final agency action.

(4) If the IAD is appealed and the final agency action is a determination that additional sums are due from the IFQ permit holder, the IFQ permit holder must pay any IFQ fee amount determined to be due not later than 30 days from the issuance of the final agency action.

(5) Upon final agency action determining that an IFQ permit holder has not paid his or her IFQ fee liability, any IFQ fishing permit held by the IFQ permit holder is not valid until all IFQ fee liabilities are paid.

(6) If payment is not received on or before the 30th day after the final agency action, the matter will be referred to the appropriate authorities for purposes of collection.

* * * * *

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Part IV

The President

Executive Order 13646—Establishing the President's Advisory Council on Financial Capability for Young Americans

Federal Register
Vol. 78, No. 125
Friday, June 28, 2013

Presidential Documents

Title 3—

The President

Executive Order 13646 of June 25, 2013

Establishing the President's Advisory Council on Financial Capability for Young Americans

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy.* To contribute to the Nation's future financial stability and increase upward economic mobility, it is the policy of the Federal Government to promote financial capability among young Americans and encourage building the financial capability of young people at an early stage in schools, families, communities, and the workplace. By starting early, young people can begin to learn the difference between wants and needs, the importance and power of saving, and the positive and productive role money can play in their lives. Having a basic understanding of money management from an early age will make our young people better equipped to tackle more complex financial decisions in their transition to adulthood, when critical decisions about financing higher education and saving for retirement can have lasting consequences for financial security. Strengthening the financial capability of our young people is an investment in our Nation's economic prosperity.

Financial capability is the capacity, based on knowledge, skills, and access, to manage financial resources prudently and effectively. Efforts to improve financial capability, which should be based on evidence of effectiveness, empower individuals to make informed choices, plan and set goals, avoid pitfalls, know where to seek help, and take other actions to better their present and long-term financial well-being.

Sec. 2. *Establishment of the Council.* There is established within the Department of the Treasury the President's Advisory Council on Financial Capability for Young Americans (Council).

Sec. 3. *Membership and Operation of the Council.* (a) The Council shall consist of:

(i) the Secretary of the Treasury (Secretary), and the Secretary of Education, who may designate a senior official from each of their respective departments to perform their Council duties; and

(ii) not more than 22 members appointed by the President from among individuals not employed by the Federal Government.

(b) Members of the Council shall include individuals with demonstrated experience or clear commitment to improving the financial capability of young people, such as individuals working with youth-serving organizations; educators and education policy experts; business leaders and employers of young workers; State, tribal, and local government policy makers; financial services providers; and innovators in financial capability. The composition of the Council shall reflect the views of diverse stakeholders.

(c) The Secretary shall invite the Director of the Bureau of Consumer Financial Protection to participate as a member of the Council, to the extent consistent with the Bureau's statutory authorities and legal obligations.

(d) The President shall designate a Chair and a Vice Chair from among the members of the Council appointed pursuant to subsection (a)(ii) of this section.

(e) Subject to the direction of the Secretary, the Chair shall convene and preside at meetings of the Council, determine its agenda, direct its work, and, as appropriate to deal with particular subjects, establish and direct the work of subgroups of the Council that shall consist exclusively of members of the Council.

(f) The Vice Chair shall perform:

(i) the duties of the Chair when the position of Chair is vacant; and

(ii) such other functions as the Chair may from time to time assign.

Sec. 4. *Functions of the Council.* To assist in implementing the policy set forth in section 1 of this order, the Council shall:

(a) collect information and views concerning financial capability from:

(i) executive departments and agencies (agencies), including members of the Financial Literacy and Education Commission established under title V of the Fair and Accurate Credit Transactions Act of 2003 (20 U.S.C. 9702);

(ii) State, local, territorial, and tribal officials; and

(iii) financial capability innovators, educators and education policy experts, financial services providers, corporate leaders, and employers of young workers, as well as other experts;

(b) advise the President and the Secretary on means to effectively implement the policy set forth in section 1 of this order, including means to:

(i) build strong public-private partnerships between and among members of the Financial Literacy and Education Commission; other agencies; State, tribal, and local governments; and private entities to coordinate the use of high quality financial capability resources and practices in schools, families, communities, and elsewhere in order to build the financial capability of young Americans;

(ii) support ongoing research and evaluation of financial education and capability activities aimed at young people to determine and disseminate effective approaches;

(iii) effectively assess the financial capability, including both financial knowledge and financial behaviors, of young Americans;

(iv) identify and develop strategies to pilot financial capability approaches in schools and among young people that are likely to have significant effects on young Americans' financial capability, and determine ways to test and implement such innovations in a large-scale and sustainable manner;

(v) identify, develop, and measure the effectiveness of technology-driven approaches to promote financial capability among young people;

(vi) identify and test promising and tested approaches for increasing planning, saving, and investing for retirement by young people; and

(vii) promote the importance of starting to plan and act early for financial success broadly among Americans through public awareness campaigns or other means;

(c) periodically report to the President, through the Secretary, on:

(i) progress made in implementing the policy set forth in section 1 of this order; and

(ii) recommended means to further implement the policy set forth in section 1 of this order, including with respect to the matters set forth in subsection (b) of this section; and

(d) where appropriate in providing advice and recommendations, take into consideration the particular needs of traditionally underserved populations—including women and minorities.

Sec. 5. *Administration of the Council.* (a) To the extent permitted by law, the Department of the Treasury shall provide funding and administrative support for the Council, as determined by the Secretary, to implement this order.

(b) The heads of agencies shall provide, as appropriate and to the extent permitted by law, such assistance and information to the Council as the Secretary may request to implement this order.

(c) Members of the Council appointed under section 3(a)(ii) of this order shall serve without any compensation for their work on the Council.

(d) Members of the Council, while engaged in the work of the Council, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in Government service (5 U.S.C. 5701–5707), consistent with the availability of funds.

(e) The Secretary shall designate an official within the Department of the Treasury to serve as an Executive Director to supervise the administrative support for the Council.

Sec. 6. *Termination of the Council.* Unless extended by the President, the Council shall terminate 2 years after the date of this order.

Sec. 7. *General Provisions.* (a) Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.) (the ''Act''), may apply to the Council, any functions of the President under the Act, except for that of reporting to the Congress, shall be performed by the Secretary in accordance with the guidelines issued by the Administrator of General Services.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof, or the status of that department or agency within the Federal Government; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,

June 25, 2013.

[FR Doc. 2013–15782

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H.R. 475/P.L. 113–15

To amend the Internal Revenue Code of 1986 to include vaccines against seasonal influenza within the definition of taxable vaccines. (June 25, 2013; 127 Stat. 476)

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