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Contents

Federal Register

Vol. 78, No. 185

Tuesday, September 24, 2013

Agriculture Department
See Animal and Plant Health Inspection Service
See Farm Service Agency
See Natural Resources Conservation Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58511

Animal and Plant Health Inspection Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Communicable Diseases in Horses, 58513–58514
Importation of Horses, Ruminants, Swine, and Dogs; Inspection and Treatment for Screwworm, 58511–58512
Swine Health, 58512–58513
Environmental Assessments; Availability, etc.:
Field Testing of a DNA Immunostimulant, 58514–58515
Environmental Impact Statements; Availability, etc.:
John F. Kennedy International Airport Bird Hazard Reduction Program, 58515–58516

Antitrust Division
NOTICES
National Cooperative Research and Production Act Changes in Standards:
American Society of Mechanical Engineers, 58558
National Cooperative Research and Production Act Membership Changes:
Cable Television Laboratories, Inc., 58559
Sematech, Inc. d/b/a International Sematech, 58558
U.S. Photovoltaic Manufacturing Consortium, Inc., 58559
Proposed Final Judgments:
United States v. Anheuser–Busch InBev SA/NV, et al., 58559–58566

Antitrust
See Antitrust Division

Bureau of Safety and Environmental Enforcement
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58549–58553

Centers for Disease Control and Prevention
NOTICES
Meetings:
Advisory Board on Radiation and Worker Health; National Institute for Occupational Safety and Health, 58543–58544

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58544–58545

Coast Guard
RULES
Drawbridge Operations:
Quogue Canal, Southampton, NY, 58458–58459

Commerce Department
See Economic Development Administration
See Foreign-Trade Zones Board
See Industry and Security Bureau
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration

Consumer Product Safety Commission
PROPOSED RULES
Magnet Sets:
Opportunity for Oral Presentation of Comments, 58491–58492

Defense Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58525
Meetings:
National Commission on the Structure of the Air Force, 58525–58526
Strategic Environmental Research and Development Program, Scientific Advisory Board, 58526–58528

Department of Transportation
See Pipeline and Hazardous Materials Safety Administration

Economic Development Administration
NOTICES
Eligibility for Trade Adjustment Assistance; Petitions, 58518

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Early Childhood Longitudinal Study Kindergarten Class of 2010–11 Spring Third-Grade National Collection, Fourth-Grade Recruitment, and Fifth-Grade Tracking, 58528

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Air Quality State Implementation Plans:
California; Antelope Valley Air Quality Management District, Santa Barbara County Air Pollution Control District, etc., 58459–58460
California; Placer County Air Pollution Control District and Feather River Air Quality Management District, Stationary Source Permits, 58460–58462
Air Quality State Implementation Plans; Approvals and Promulgations:
Connecticut; Redesignation of Connecticut Portion of New York New Jersey Connecticut Nonattainment Area to Attainment of 1997 Annual and 2006 24 hour Standards for Fine Particulate Matter, 58467–58470
Delaware; Update to Materials Incorporated by Reference, 58465–58467

Virginia; Infrastructure Requirements for the 2008 Lead National Ambient Air Quality Standards, 58462–58465
PROPOSED RULES
Water Quality Standards:
Regulatory Clarifications; Public Meetings and Webinars, 58500–58501
NOTICES
Meetings:
Science Advisory Board Panel; Water Body Connectivity Report, 58536–58537

Farm Credit Administration
RULES
Disclosure to Shareholders; CFR Correction, 58449

Farm Service Agency
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Direct Loan Servicing—Regular, 58516–58517

Federal Aviation Administration
PROPOSED RULES
Airworthiness Directives:
The Boeing Company Airplanes, 58487–58489
Amendment of Class E Airspace:
McMinnville, TN, 58489–58490
Establishment of Class E Airspace:
Donlin Creek, AK, 58490–58491
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Domestic and International Flight Plans, 58597
Extended Operations of Multi-Engine Airplanes, 58598–58599
National Air Tour Safety Standards, 58597
Physiological Training, 58598
Verification of Authenticity of Foreign License, Rating, and Medical Certification, 58598
Petitions for Exemption; Summaries, 58599

Federal Communications Commission
RULES
Television Broadcasting Services:
Cedar Rapids, IA, 58470

Federal Contract Compliance Programs Office
RULES
Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Individuals with Disabilities, 58682–58752
Affirmative Action and Nondiscrimination Obligations:
Contractors and Subcontractors Regarding Special Disabled Veterans, Veterans of the Vietnam Era, Disabled Veterans, Recently Separated Veterans, Active Duty Wartime or Campaign Badge Veterans, and Armed Forces Service Medal Veterans, 58614–58679

Federal Deposit Insurance Corporation
NOTICES
Meetings:
FDIC Advisory Committee on Economic Inclusion, 58537–58538

Federal Emergency Management Agency
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58549

Federal Energy Regulatory Commission
RULES
Generator Requirements at the Transmission Interface, 58449–58458
PROPOSED RULES
Generator Verification Reliability Standards, 58492–58500
NOTICES
Applications:
Floridian Natural Gas Storage Company, LLC, 58529–58530
Puget Sound Energy, Inc., 58530–58531
Upper Peninsula Power Co., 58528–58529
Combined Filings, 58531–58533
License Transfer Applications:
FirstEnergy Generation, LLC, Allegheny Energy Supply Company, LLC, and Green Valley Hydro, LLC, etc., 58533–58534
Meetings:
Warm Springs Irrigation District, 58534
Preliminary Permit Applications:
White Pine Waterpower, LLC, 58534–58535
Workshop:
Hydropower Regulatory Efficiency Act of 2013, 58535–58536

Federal Highway Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58600

Federal Mine Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 58538

Federal Motor Carrier Safety Administration
RULES
General Technical, Organizational, and Conforming Amendments, 58470–58486

Federal Railroad Administration
RULES
Hours of Service Laws as Amended in 2008:
Second Interim Statement of Agency Policy and Interpretation, 58830–58854

Federal Reserve System
NOTICES
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 58538

Federal Transit Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58601–58602

Fish and Wildlife Service
PROPOSED RULES
Endangered and Threatened Wildlife and Plants:
90-Day Finding on a Petition To List 10 Sturgeon Species, 58507–58510
Refuge-Specific Hunting and Sport Fishing Regulations, 58754–58783

Food and Drug Administration
RULES
Unique Device Identification System, 58786–58828
NOTICES
Draft Guidance for Industry; Availability:
Global Unique Device Identification Database, 58545–58546

Foreign-Trade Zones Board
NOTICES
Proposed Production Activity:
Benteler Automotive Corp., Duncan, SC, 58518–58519

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58538–58539
National Standards for Culturally and Linguistically Appropriate Services in Health and Health Care, 58539–58543

Health Resources and Services Administration
NOTICES
Funding Availabilities:
Maternal and Child Health Bureaus States System Development Initiative Grant; Single-Case Deviation from Competition Requirements, 58546–58547

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency

Industry and Security Bureau
NOTICES
Denial of Export Privileges:
Sixing Liu, 58519–58520

Interior Department
See Bureau of Safety and Environmental Enforcement
See Fish and Wildlife Service
See Land Management Bureau

Internal Revenue Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58605–58609

International Trade Administration
NOTICES
Antidumping Duty Administrative Reviews; Results, Extensions, Amendments, etc.:
Extruded Rubber Thread from Malaysia, 58520
U.S. Environmental Solutions Toolkit, 58520–58521

International Trade Commission
NOTICES
Determinations:
Silicomanganese from India, Kazakhstan, and Venezuela, 58556

Justice Department
See Antitrust Division
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Semi-Annual Progress Report for the Services to Advocate for and Respond to Youth Program, 58556–58557
Semi-Annual Progress Report for the Tribal Sexual Assault Services Program, 58557–58558

Labor Department
See Federal Contract Compliance Programs Office
See Mine Safety and Health Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Securing Financial Obligations Under the Longshore and Harbor Workers' Compensation Act and its Extensions, 58566–58567

Land Management Bureau
NOTICES
Meetings:
Application for Withdrawal Extension, Desert National Wildlife Range; NV, 58554–58555
Public Land Orders:
Withdrawal of National Forest System Land for Steamboat Rock Picnic Grounds; SD, 58555
Segregation of Public Lands for the Proposed Stateline Solar Farm, CA, 58555–58556

Maritime Administration
NOTICES
Requests for Administrative Waivers of Coastwise Trade Laws:
Vessel ALL GOOD, 58603
Vessel CAROL LYNN, 58602
Vessel DRUMBEAT, 58603–58604
Vessel PHANTOM, 58602–58603

Mine Safety and Health Administration
NOTICES
Criteria to Certify Coal Mine Rescue Teams, 58567–58568

Mine Safety and Health Federal Review Commission
See Federal Mine Safety and Health Review Commission

National Institute of Standards and Technology
NOTICES
Meetings:
National Construction Safety Team Advisory Committee, 58521–58522

National Institutes of Health
NOTICES
Meetings:
Center for Scientific Review, 58547–58548
National Institute of Biomedical Imaging and Bioengineering, 58547
Requests for Information:
Vinpocetine; Use, Human Exposure, and Toxicity; National Toxicology Program, 58548

National Oceanic and Atmospheric Administration
NOTICES
Meetings:
Advisory Committee to the U.S. Section of the International Commission for the Conservation of Atlantic Tunas, 58523–58524

Fisheries of the Caribbean; Southeast Data, Assessment and Review, 58522–58523
Takes of Marine Mammals:
U.S. Navy Training and Testing Activities in the Mariana Islands Training and Testing Study Area, 58524–58525

National Science Foundation
NOTICES
Antarctic Conservation Act Permits, 58568
Antarctic Conservation Act Permit Applications, 58568–58569
Meetings:
Synchrotron Subcommittee of the Advisory Committee for Mathematical and Physical Sciences, 58569

Natural Resources Conservation Service
NOTICES
Environmental Assessments; Availability, etc.:
Bayou Meto Basin Project, AR, 58517–58518
Grand Prairie Area Demonstration Project, 58517

Nuclear Regulatory Commission
NOTICES
Environmental Assessments; Availability, etc.:
Entergy Nuclear Operations, Inc., Big Rock Point, 58570–58571
Exemptions:
Maine Yankee Atomic Power Co.; Connecticut Yankee Atomic Power Co.; Yankee Atomic Electric Co., 58571–58573
Meetings:
Subcommittee on Planning and Procedures, Advisory Committee on Reactor Safeguards, 58573
Meetings; Sunshine Act, 58573–58574
Regulatory Guides:
Maintenance, Testing, and Replacement of Vented Lead-Acid Storage Batteries for Nuclear Power Plants, 58574–58575
Review of Experiments for Research Reactors; Withdrawal, 58575–58576

Pipeline and Hazardous Materials Safety Administration
PROPOSED RULES
Hazardous Materials:
Failure to Pay Civil Penalties, 58501–58507
NOTICES
Safety Advisory:
Unauthorized Filling of Compressed Gas Cylinders, 58604–58605
Unauthorized Marking of Compressed Gas Cylinders, 58604

Securities and Exchange Commission
NOTICES
Self-Regulatory Organizations; Proposed Rule Changes:
BATS Exchange, Inc., 58583–58585
BATS Y-Exchange, Inc, 58578–58580
Financial Industry Regulatory Authority, Inc., 58580–58583
ICE Clear Europe Limited, 58576–58578
New York Stock Exchange LLC, 58587–58589
NYSE MKT LLC, 58585–58587

Special Inspector General For Iraq Reconstruction
NOTICES
Reconstruction Spending in Iraq; Final Listing of Audit and Other Reports, 58589–58596

State Department
NOTICES
Meetings:
Shipping Coordinating Committee, 58596
Memorandum of Understanding:
United States and Honduras; mposition of Import Restrictions on Archaeological Material from the Pre-Columbian Cultures of Honduras, 58596–58597

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Motor Carrier Safety Administration
See Federal Railroad Administration
See Federal Transit Administration
See Maritime Administration
See Pipeline and Hazardous Materials Safety Administration

Treasury Department
See Internal Revenue Service

Veterans Affairs Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application for Refund of Educational Contributions, 58610–58611
Application for Supplemental Service Disabled Veterans Insurance, 58611
Claim, Authorization and Invoice for Prosthetic Items and Services, 58609–58610
Veterans Mortgage Life Insurance Statement, 58611
Funding Availabilites:
Applications for the Rural Veterans Coordination; Amendment, 58611–58612
Meetings:
Genomic Medicine Program Advisory Committee, 58612

Separate Parts In This Issue

Part II
Labor Department, Federal Contract Compliance Programs Office, 58614–58679

Part III
Labor Department, Federal Contract Compliance Programs Office, 58682–58752

Part IV
Interior Department, Fish and Wildlife Service, 58754–58783

Part V
Health and Human Services Department, Food and Drug Administration, 58786–58828

Part VI
Transportation Department, Federal Railroad Administration, 58830–58854

Reader Aids
Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

12 CFR
620 58449

14 CFR

Proposed Rules:
39 58487
71 (2 documents) 58489, 58490

16 CFR

Proposed Rules:
1240 58491

18 CFR
40 58449

Proposed Rules:
40 58492

21 CFR
16 58786
801 58786
803 58786
806 58786
810 58786
814 58786
820 58786
821 58786
822 58786
830 58786

33 CFR
117 58458

40 CFR
52 (5 documents) 58459, 58460, 58462, 58465, 58468
81 58468

Proposed Rules:
131 58500

41 CFR
60-250 58614
60-300 58614
60-741 58682

47 CFR
73 58470

49 CFR
App. G to Subch. B 58470
228 58830
325 58470
350 58470
355 58470
365 58470
369 58470
370 58470
372 58470
375 58470
376 58470
380 58470
381 58470
382 58470
383 58470
384 58470
385 58470
386 58470
387 58470
389 58470
390 58470
391 58470
393 58470
395 58470
396 58470
397 58470

Proposed Rules:
107 58501
109 58501

50 CFR

Proposed Rules:
17 58507
25 58754
32 58754

Rules and Regulations

Federal Register

Vol. 78, No. 185

Tuesday, September 24, 2013

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

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

FARM CREDIT ADMINISTRATION

12 CFR Part 620

Disclosure to Shareholders

CFR Correction

In Title 12 of the Code of Federal Regulations, Parts 600 to 899, revised as of January 1, 2013, on page 253, in § 620.5, paragraphs (i), (j) and (k) are removed and paragraphs (l), (m) and (n) are redesignated as (i), (j) and (k).

[FR Doc. 2013–23370 Filed 9–23–13; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM12–16–000; Order No. 785]

Generator Requirements at the Transmission Interface

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: Pursuant to section 215 of the Federal Power Act, the Federal Energy Regulatory Commission (Commission) approves modifications to four existing Reliability Standards submitted by the North American Electric Reliability Corporation (NERC), the Commission certified Electric Reliability Organization. Specifically, the Commission approves Reliability Standards FAC–001–1 (Facility Connection Requirements), FAC–003–3 (Transmission Vegetation Management), PRC–004–2.1a (Analysis and Mitigation of Transmission and Generation Protection System Misoperations), and PRC–005–1.1b (Transmission and Generation Protection System Maintenance and Testing). The modifications improve reliability either by extending applicability of the Reliability Standard to certain generator interconnection facilities, or by clarifying that the existing Reliability Standard is and remains applicable to generator interconnection facilities. The Commission also approves the related Violation Risk Factors and Violation Severity Levels, as well as the implementation plan and effective dates proposed by NERC.

DATES: *Effective Date:* This rule will become effective November 25, 2013.

FOR FURTHER INFORMATION CONTACT:

Susan Morris (Technical Information), Office of Electric Reliability, Division of Reliability Standards and Security, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6803, *susan.morris@ferc.gov.*

Julie Greenisen (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 (202) 502–6362, *julie.greenisen@ferc.gov.*

SUPPLEMENTARY INFORMATION:

144 FERC ¶ 61,221

Order No. 785

Final Rule

Issued September 19, 2013

1. Pursuant to section 215 of the Federal Power Act (FPA),[1] the Commission hereby approves modifications to four existing Reliability Standards submitted by the North American Electric Reliability Corporation (NERC), the Commission certified Electric Reliability Organization. Specifically, the Commission approves Reliability Standards FAC–001–1 (Facility Connection Requirements), FAC–003–3 (Transmission Vegetation Management), PRC–004–2.1a (Analysis and Mitigation of Transmission and Generation Protection System Misoperations), and PRC–005–1.1b (Transmission and Generation Protection System Maintenance and Testing). The modifications to these standards improve reliability either by extending their applicability to certain generator interconnection facilities, or by clarifying that the existing Reliability Standard is and remains applicable to generator interconnection facilities. The Commission also approves the related Violation Risk Factors and Violation Severity Levels, as well as the implementation plan and effective dates proposed by NERC.

I. Background

A. Regulatory Background—Section 215 of the FPA

Section 215 of the FPA requires a Commission-certified Electric Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards, which are subject to Commission review and approval.[2] Once approved, the Reliability Standards may be enforced either by the ERO (subject to Commission oversight), or by the Commission independently.[3]

In 2006, the Commission established a process to select and certify an ERO[4] and, subsequently, certified NERC as the ERO.[5] In 2007, in Order No. 693, the Commission approved 83 Reliability Standards submitted by NERC, including initial versions of Reliability Standards FAC–001, FAC–003, PRC–004, and PRC–005.[6] Further, in Order No. 693, the Commission approved NERC's compliance registry process, including NERC's Statement of Compliance Registry Criteria (Registry Criteria), which describes how NERC and the Regional Entities[7] will identify the entities that should be registered for compliance with mandatory Reliability Standards.[8] While that process allows a Regional Entity to register an entity over its objection, NERC's Rules of Procedure provide a mechanism for NERC review

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

[2] *Id.* 824o(c) and (d).

[3] *See id.* 824o(e).

[4] *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).

[5] *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).

[6] *Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, FERC Stats. & Regs. ¶ 31,242 (2007) (Order No. 693), *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007).

[7] NERC is authorized to delegate certain authority to regional entities as prescribed by FPA section 215(e)(4). *See* 16 U.S.C. 824o(e)(4).

[8] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at PP 92–95. The Commission has approved subsequent amendments to the Registry Criteria. *See, e.g., North American Electric Reliability Corp.,* 122 FERC ¶ 61,101 (2008).

of the Regional Entity's registration decision and, ultimately, for appeal to the Commission if NERC upholds the Regional Entity's decision.[9]

B. Related Commission Orders and Genesis of Project 2010–07

4. In several fact-specific cases on appeal from a NERC registration determination, the Commission has addressed the need to apply Reliability Standard requirements that are generally applicable to a registered transmission owner or transmission operator to the owner or operator of a generator interconnection facility or tie-line. In *New Harquahala Generating Co., LLC,* 123 FERC ¶ 61,173 (2008) (*Harquahala*), the Commission upheld NERC's registration of New Harquahala Generating Company (Harquahala) as a transmission owner and transmission operator, agreeing that Harquahala's 26-mile, 500 kV generator tie-line was ''material to the reliability of the bulk power system.'' [10] The Commission went into some detail concerning the impact on the transmission network of an event on Harquahala's facilities,[11] and noted that it was affirming the Western Electricity Coordinating Council's (WECC's) and NERC's findings ''based on the specific facts of this case.'' [12] Similarly, in *Cedar Creek Wind Energy, LLC,* 135 FERC ¶ 61,241 (2011) (*Cedar Creek*), the Commission upheld the registration of two wind farm owners, Milford Wind Corridor Phase I, LLC (Milford) and Cedar Creek Wind Energy, LLC (Cedar Creek), as transmission owners and transmission operators, again based on the specific tie-line facilities involved.[13]

5. In both *Harquahala* and *Cedar Creek,* the Commission found that there would be a reliability risk if certain Reliability Standards generally applicable to transmission owners and operators were not also applied to Harquahala, Cedar Creek and Milford, and cited to specific Reliability Standards and requirements that should apply to those entities. However, the Commission recognized that it may not be appropriate to require these entities to comply with all Reliability Standards otherwise applicable to transmission owners and operators, and in each case ordered NERC to negotiate with the generating company to develop a list of transmission owner and transmission operator Reliability Standard requirements applicable to that individual entity.[14] On December 21, 2011, NERC submitted its compliance filing to the *Cedar Creek* order identifying which standards should apply to the registered entities subject to that order. In accepting NERC's filing, the Commission noted that the *Cedar Creek* order did not preclude NERC from pursuing a generic approach through the standards development process to determine which Reliability Standards should apply to generators.[15]

6. After the *Harquahala* decision, NERC announced the formation of an Ad Hoc Group for Generator Requirements at the Transmission Interface (Ad Hoc Group) to address concerns about perceived reliability gaps associated with generator interconnection facilities.[16] The Ad Hoc Group issued a report (Ad Hoc Group Report) suggesting a fairly broad approach to address these perceived gaps, including proposed changes to standard applicability and requirement language, as well as the introduction of two new terms for the Glossary of Terms Used in NERC Reliability Standards (NERC Glossary or Glossary).[17] NERC initiated Project 2010–07 on January 15, 2010, following the issuance of a standard authorization request as developed by the Ad Hoc Group.[18]

C. Revised Reliability Standards and NERC Petition

7. On July 30, 2012, NERC filed a petition (NERC Petition or Petition) seeking Commission approval of proposed Reliability Standards FAC–001–1, FAC–003–3, PRC–004–2.1a, and PRC–005–1.1b. The FAC–001 and FAC–003 standards currently in effect are applicable only to transmission owners and operators, and NERC is proposing to extend their applicability to certain generator interconnection facilities. By contrast, the current version of PRC–004 and PRC–005 do apply to generator owners as well as transmission owners. Accordingly, NERC asserted that the proposed modifications in Reliability Standards PRC–004–2.1a and PRC–005–1.1b are designed merely to clarify that their requirements extend not only to protection systems associated with the generating facility or station itself, but also to any protection systems associated with the generator interconnection facilities.

8. In its Petition, NERC maintained that the changes proposed for these four Reliability Standards will address the reliability gap for generator interconnection facilities ''for the vast majority of Generator Owners and Generator Operators.'' [19] NERC also explained that the proposed modifications to these standards will result in the application of certain Reliability Standards to generator owners without the need to register them as transmission owners or transmission operators only as a result of the generator interconnection facilities.[20] NERC stated that these are the only standards that need to be applied to generator owners and generator operators to ensure appropriate coverage of generator interconnection facilities ''[e]xcept as necessary on a fact-specific basis.'' [21] NERC specifically acknowledged that some generator interconnection facilities may require a more expansive approach:

> The drafting team acknowledges that some Facilities used solely to connect generators to the transmission system are more complex and may therefore require individual assessment. The reliability gaps associated with such Facilities should not be addressed simply through application of all standards applicable to Transmission Owners and Transmission Operators, but instead through an assessment of the impact of such a Facility on neighboring transmission Facilities. Such assessment should then be used to determine exactly which Reliability Standards and requirements should apply to that Facility and whether additional entity registration is warranted. This assessment should, at a minimum, be based upon the output of

[9] Rules of Procedure of the North American Electric Reliability Corporation, Rule 501.1.3.4.

[10] *Harquahala,* 123 FERC ¶ 61,173 at P 44.

[11] *See id.* PP 45–55.

[12] *Id.* P 44.

[13] *Cedar Creek Wind Energy, LLC,* 135 FERC ¶ 61,241 (*Cedar Creek*), *order on reh'g and clarification,* 137 FERC ¶ 61,141 (2011), *order on compliance filing,* 139 FERC ¶ 61,214 (2012) (*Cedar Creek Compliance Order*).

[14] *See Harquahala,* 123 FERC ¶ 61,173 at PP 56–57; *Cedar Creek,* 135 FERC ¶ 61,241 at PP 88–89.

[15] *Cedar Creek Compliance Order,* 139 FERC ¶ 61,214 at P 19.

[16] *See* NERC Petition at 11.

[17] *Id.; see also* Final Report of the Ad Hoc Group for Generator Requirements at the Transmission Interface (Nov. 16, 2009), *available at: www.nerc.com/files/GO-TO_Final_Report_Complete_2009Nov16.pdf.*

[18] NERC Petition at 11, 28.

[19] *Id.* at 5.

[20] *Id.* at 12.

[21] *Id.* at 5. NERC noted in its Petition that the standard drafting team reviewed and assessed the Reliability Standards as identified in the Ad Hoc Group's Report, as well as the Reliability Standards identified in *Cedar Creek.* According to NERC, the Project 2010–07 standard drafting team reviewed 34 Reliability Standards and 102 requirements to determine what requirements should be extended to generator owners and generator operators that own or operate generator interconnection facilities, many of which had also been addressed in the Ad Hoc Group's Report. *Id.* at 11. However, the Project 2010–07 standard drafting team ultimately chose a different approach than that proposed in the Ad Hoc Group Report. The standard drafting team elected not to include clarifying language about a Reliability Standard's applicability to generator interconnection facilities in most standards otherwise applicable to generator owners or generator operators, and to instead focus on modifying certain Reliability Standards not currently applicable to generating entities. *Id.* at 11–12.

transmission planning and operating studies used by the Reliability Coordinator, Transmission Operator and Transmission Planner in complying with applicable Reliability Standards (specifically, IRO, TOP and TPL).[22]

9. With respect to implementation, NERC requested an effective date of one year following the first quarter after regulatory approvals for FAC–001–1, and for FAC–003–3 Requirement R3. For the remaining requirements of FAC–003–3, NERC requested an effective date of two years following the first calendar quarter after regulatory approvals. NERC requested that PRC–004–2.1a and PRC–005–1.1b become effective upon receiving required regulatory approvals.

D. Notice of Proposed Rulemaking

10. On April 18, 2013, the Commission issued a Notice of Proposed Rulemaking proposing to approve Reliability Standards FAC–001–1, FAC–003–3, PRC–004–2.1a and PRC–005–1.1b.[23] The Commission explained that the modifications to FAC–001 and FAC–003 would enhance reliability by extending certain requirements to appropriate generator interconnection facilities.[24] In addition, the Commission found that the clarifications proposed in PRC–004–2.1a and PRC–005–1.1b would mitigate the possibility that the standards' requirements could be interpreted to exclude the generator interconnection facilities.[25]

11. In addition to the proposal to approve the four revised Reliability Standards and to accept NERC's overall approach to registration of generator owners and operators going forward, the Commission sought comment in the NOPR in two areas. First, the Commission sought further comment on its understanding of the meaning of the term ''generator interconnection facility,'' as used in the proposed standards. The Commission indicated that it understood the term to refer to ''generator interconnection tie-lines and their associated facilities extending from the secondary (high) side of a generator owner's step-up transformer(s) to the point of interconnection with the host transmission owner.'' [26]

12. Second, the Commission stated that ''our proposal to approve the revised Reliability Standards is based on the understanding that additional Reliability Standards or individual requirements may need to be applied to generator interconnection facilities as NERC acknowledges in its Petition, based on 'individual assessments.' '' [27] The Commission sought further information and comment on the particular circumstances that could trigger an ''individual assessment'' of generation interconnection facilities.

13. Finally, the NOPR proposed to approve the Violation Risk Factors and Violation Severity Levels, as well as the implementation plan and effective dates for each modified Reliability Standard as proposed by NERC.[28]

14. Comments were due regarding the NOPR on June 24, 2013. In addition to the comments filed by NERC, the Commission received twelve sets of substantive comments (identified in the Appendix to the Final Rule). In addition, on July 9, 2013, NERC filed reply comments in response to certain arguments raised by other commenters.

II. Discussion

15. Pursuant to Section 215(d) of the FPA, we approve Reliability Standards FAC–001–1, FAC–003–3, PRC–004–2.1a and PRC–005–1.1b, including the associated implementation plan, as just, reasonable, not unduly discriminatory or preferential, and in the public interest. As discussed in Section A below, we believe the revised Reliability Standards will enhance reliability by extending certain obligations to generator owners and operators and by clarifying certain existing obligations for protective relay systems on generator interconnection facilities. We also discuss the following: (1) Use of the term generator interconnection facilities; (2) criteria and process for conducting individual assessments; and (3) sufficiency of NERC's proposed revisions.

A. Reliability Standards To Be Applied to Generator Owners and Generator Operators

NOPR Proposal

16. In the NOPR, the Commission proposed to approve the four revised Reliability Standards as proposed in NERC's petition, but noted that ''this NOPR addresses the four Reliability Standards for which NERC seeks approval and makes no proposal about . . . other Reliability Standards and requirements that NERC identified in its Petition for informational purposes.'' [29] The Commission also recognized that ''while certain facilities may be adequately addressed through a generic evaluation, other facilities may, as NERC indicates, require 'individual assessment' to properly determine which Reliability Standards apply to a facility.'' [30] Accordingly, the Commission's proposed approval of the four revised Reliability Standards was ''based on the understanding that additional Reliability Standards or individual requirements may need to be applied to generator interconnection facilities . . . based on 'individual assessments.' '' [31]

Comments

17. NERC and all other entities filing comments support the approval of the revised Reliability Standards, with many noting their strong support for NERC's package of revisions as a whole. EPSA/ELCON views the revised Reliability Standards and NERC's modified approach to registration as a ''substantial improvement in addressing reliability concerns with respect to generator interconnection Facilities.'' [32] APPA similarly supports approval of NERC's petition, claiming that such approval ''will ensure reliability, clarify roles and responsibilities in the area of bulk electric system reliability for both generators and their host transmission owner/operators, and lessen ambiguity regarding registration questions for existing generators.'' [33]

18. BP Wind Energy strongly supports the NOPR's proposed approval of the revised Reliability Standards, asserting that the NOPR's approach is ''a tailored approach that addresses perceived generator interconnection reliability gap issues from a practical perspective without resulting in unnecessary increased costs and burdens on generator owners and generator operators. . . .'' [34] Likewise, ITC supports approval of each of the revised standards, and notes that ''[a]pplying these standards to the facilities as the NOPR proposes will not only improve reliability, but will also level the playing field between transmission owners and owners of facilities which are similar in terms of operation and potential system impact.'' [35]

Commission Determination

19. We approve each of the four revised Reliability Standards as proposed by NERC, as discussed further

[22] *Id.* at 12–13.

[23] *Generator Requirements at the Transmission Interface,* Notice of Proposed Rulemaking, 143 FERC ¶ 61,049 (2013) (NOPR).

[24] *Id.* PP 19–20.

[25] *Id.* P 21.

[26] *Id.* P 22 (footnotes omitted).

[27] *Id.* P 24.

[28] *Id.* P 25.

[29] NOPR, 143 FERC ¶ 61,049 at P 23.

[30] *Id.* P 24.

[31] *Id.*

[32] EPSA/ELCON Comments at 8.

[33] APPA Comments at 2.

[34] BP Wind Energy Comments at 5.

[35] ITC Comments at 5–6; *see also* CDWR Comments at 5 (supporting approval of the four modified Reliability Standards); PPL Comments at 3.

below. We agree with NERC that the changes proposed for these four Reliability Standards will address the reliability gap for generator interconnection facilities for the majority of generator owners and generator operators. Closing these gaps is an important reliability benefit. We also confirm our understanding that additional Reliability Standards or individual requirements may need to be applied on a case-by-case basis to generator interconnection facilities in certain circumstances, but that for the majority of generator owners and operators, NERC will not pursue registration of generator owners and operators as transmission owners or transmission operators due solely to their ownership or operation of generator interconnection facilities.

1. Approval of Reliability Standard FAC–001–1 NOPR Proposal

20. In the NOPR, the Commission proposed to approve changes to the existing FAC–001 Reliability Standard, which requires transmission owners to document, maintain, and publish facility connection requirements that comply with NERC, regional, and individual criteria for generation facilities, transmission facilities, and end-user facilities. The proposed modification would extend the standard's obligations to any generator owner that has executed an ''[a]greement to evaluate the reliability impact of interconnecting a third party Facility to the Generator Owner's existing Facility . . . used to interconnect to the interconnected Transmission systems.'' [36] The Commission proposed to approve this modification, finding it would enhance reliability by extending obligations to develop and make available facility connection requirements as appropriate, i.e., in the relatively uncommon situation where an agreement stemming from an interconnection request has been executed.[37]

Comments

21. None of the commenters object to the revisions reflected in FAC–001–1. ITC explicitly supports the revision, asserting that the proposed changes are ''critical to avoid any potential gap in reliability standards prior to a generator owner's registration as a new functional entity.'' [38] ITC further notes that the information required under Requirement R3.1 enhances ITC's ability to maintain safe and reliable transmission service, and will be useful in its and other ISOs'/RTOs' transmission planning processes as it will allow them to account for any third party interconnections and their impacts on the overall transmission system.

22. Similarly, AWEA supports the modifications reflected in FAC–001–1 due to its limited application to generator owners and operators that have executed an agreement to evaluate the impacts of interconnection, which AWEA argues is ''appropriately balanced.'' [39] However, AWEA expresses concern about the uncertainties as to when a generator owner must offer interconnection or transmission service to third parties, and therefore (1) asks NERC to ensure that FAC–001–1 is not applied to generators that are not required to accept interconnection requests; and (2) asks the Commission to clarify that the standard only applies when a generator is required to accept an interconnection request, and not merely upon receipt of such a request.

Commission Determination

23. We approve proposed Reliability Standard FAC–001–1, as it will enhance reliability by expanding the obligation to develop and make available facility connection requirements to generators who have executed an agreement to interconnect with a third party, which will assist in the transmission planning process. With respect to AWEA's request for clarification, we do not believe the standard itself is unclear as to when it will apply to a generator owner or operator, but note that a mere request for interconnection would not immediately trigger the application of the standard to a generator owner or operator receiving such a request. Instead, FAC–001–1 would apply as soon as an agreement to evaluate the reliability impact of an interconnection is executed, whether the generator owner is required to do so by regulatory order or has entered into such an agreement without such a regulatory mandate.

2. Approval of Reliability Standard FAC–003–3

NOPR Proposal

24. In the NOPR, the Commission proposed to approve the modifications in Reliability Standard FAC–003–3, which would extend the FAC–003–2 vegetation management requirements to certain generator interconnection facilities, indicating that the proposal addresses a potential reliability gap in the currently-effective standard.

Comments

25. None of the commenters object to the approval of Reliability Standard FAC–003–3, and several commenters explicitly state their support for it. ITC states that the extension of the vegetation management standards to generator interconnection facilities that meet the proposed criteria ''will help avoid future vegetation-related events,'' and notes that the types of generator interconnection facilities that will be subject to the vegetation management requirements under FAC–003–3 are ''functionally similar to transmission facilities with respect to the significant impact that failure or misoperations of such tie line facilities could potentially have on the bulk electric system.'' [40] AWEA supports the limitations on applicability reflected in the proposed standard as a ''reasonable and balanced approach,'' asserting that application of the vegetation management requirements of FAC–003–3 to all generator interconnection facilities would be excessive, especially for interconnection facilities of limited length, and points out that generator owners and operators have ''every incentive'' to maintain the facilities in order to deliver energy.[41]

Commission Determination

26. We approve Reliability Standard FAC–003–3. Consistent with the NOPR, we find that the modifications to FAC–003 address a potential reliability gap in the current set of Reliability Standards, since they do not include a requirement for generator owners to perform vegetation management on their tie-lines or to maintain minimum levels of clearance between vegetation and significant overhead generator interconnection facilities. Further, we conclude that the proposed limits on applicability reflected in FAC–003–3 are reasonable, as it is common for generator interconnection facilities of

[36] NOPR, 143 FERC ¶ 61,049 at P 9 (citing to NERC Petition at Ex. B (Proposed FAC–001–1, Requirement R1)). The NOPR noted NERC's characterization of the circumstances the modification was designed to address as being the ''rare'' circumstance where a generator owner is required by a regulatory body to interconnect a third party generator to its tie-line. While NERC recognized that the arrangement could result in the generator owner ultimately being registered as a transmission owner or operator, the modification to FAC–001–1 would provide ''appropriate reliability coverage until any additional registration is required,'' while ensuring that ''the standard does not impact any Generator Owner that never executes an [a]greement as described in the standard.'' *See id.* P 10.

[37] *Id.* P 19.

[38] ITC Comments at 6.

[39] AWEA Comments at 5.

[40] ITC Comments at 7.

[41] AWEA Comments at 6.

relatively short span (i.e., less than one mile) to cross only areas with limited or no vegetation.[42]

27. Further, we adopt our proposed guidance that the exemption for overhead lines with a clear line of sight from the generator to the point of interconnection should be ''interpreted narrowly,'' meaning there should be ''no obstructions . . . that prevent personnel from identifying potential reliability hazards over the full length of the line.'' [43]

3. Approval of Reliability Standards PRC–004–2.1a and PRC–005–1.1b

NOPR Proposal

28. In the NOPR, the Commission proposed to approve the clarifying language NERC proposed for PRC–004 and PRC–005.

Comments

29. None of the commenters object to the changes to Reliability Standards PRC–004 and PRC–005, and several expressly support the changes. AWEA states that the proposed modifications provide greater certainty to generator owners and operators regarding their responsibilities under the standards.[44] Similarly, ITC believes the changes will avoid future misunderstandings as to rights and responsibilities.[45]

Commission Determination

30. approve Reliability Standards PRC–004–2.1a and PRC–005–1.1b. We agree with NERC that the changes mitigate the possibility that entities could interpret the standards to exclude generator interconnection facilities.[46]

B. Definition of Generator Interconnection Facility

NOPR Proposal

31. While proposing to approve the use of the term ''generator interconnection facility'' as proposed in the revised Reliability Standards, the Commission indicated in the NOPR that further clarification of that term may be warranted. The Commission stated its understanding of the term to refer to ''generator interconnection tie-lines and their associated facilities extending from the secondary (high) side of a generator owner's step-up transformer(s) to the point of interconnection with the host transmission owner.'' [47] The Commission sought comment on its understanding of the term, as well as its understanding that a generator owner or operator's compliance obligations with respect to the generator interconnection facilities extend to the point of interconnection with the host transmission owner.[48]

Comments

32. NERC agrees with the Commission's understanding of the term ''generator interconnection facility'' as well as its understanding of the extent of the generator owner or operator's obligations with respect to those facilities.[49] EPSA/ELCON also agree that the Commission's understanding of the term is consistent with that used during the standard development process (i.e., Project 2010–07), and with common industry practice and understanding.[50]

33. However, a number of commenters argue that the Commission's understanding of the term generator interconnection facility requires further refinement or modification, and several of these commenters ask the Commission to adopt a formal definition of the term, either within the context of the relevant Reliability Standard or as a defined Glossary term. AWEA and E.ON Renewables ask the Commission to clarify that a generator owner/operator's compliance obligations extend only to the point where there is a change in ownership to another transmission owner, ''whether those facilities are classified as interconnection, or transmission facilities.'' [51] E.ON Renewables states that this proposed refinement will ensure that the obligations of the generator owner or operator extend only to the facilities it owns or operates, and is consistent with the concept of point of change of ownership as commonly reflected in generator interconnection agreements.[52] BP Wind Energy argues for a similar clarification, but asserts that the term as clarified should also be memorialized either in the NERC Glossary or in each relevant standard.[53]

34. BPA also contends that the term ''generator interconnection facility'' should be formally defined, but seeks a more substantial modification to the Commission's understanding of the term. BPA is concerned that in situations where the host transmission owner owns the tie-line and other interconnection facilities down to the high-side of the step-up transformer, the generator owner would not own a ''generator interconnection facility'' at all as the Commission would define the term.[54]

35. Alameda raises a concern with respect to the Commission's understanding of the term ''generator interconnection facility,'' asserting that it fails to address the situation where a generator interconnection facility is *not* owned by the generator owner or operator of the facility, but by a third party. Alameda suggests that the term should encompass generator interconnection tie-lines and associated facilities owned by entities *other* than the generator owner/operator of the relevant generating resource, and argues that these entities, like the generator owner or generator operator, should not be required to register as a transmission owner or operator solely because of its interconnection facilities.[55]

36. NERC responds to the comments of AWEA and E.ON Renewables, *inter alia,* by asserting that their requested modification is unnecessary, since generator owners and operators are responsible only for the facilities they own or operate (or for which they volunteer to be responsible) under NERC's Reliability Standards framework.[56] In response to comments seeking adoption of a formal definition of the term ''generator interconnection facility,'' NERC states that the standard drafting team considered and rejected that approach. NERC notes nonetheless that interested parties are free to initiate the development of a defined term pursuant to the procedures outlined in its standard processes manual.[57]

Commission Determination

37. We affirm our understanding that the term ''generator interconnection facility'' refers to ''generator interconnection tie-lines and their associated facilities extending from the secondary (high) side of a generator owner's step-up transformer(s) to the point of interconnection with the host transmission owner.'' [58] We are not persuaded by the commenters that further refinement of this understanding is warranted.

38. Further, we agree with NERC that a generator owner or operator would not

[42] *See* NOPR, 143 FERC ¶ 61,049 at P 20.

[43] *Id.*

[44] AWEA Comments at 6–7.

[45] ITC Comments at 7.

[46] *See* NOPR, 143 FERC ¶ 61,049 at P 21.

[47] *Id.* P 22 (footnotes omitted).

[48] *Id.*

[49] NERC Comments at 3–4.

[50] EPSA/ELCON Comments at 4.

[51] AWEA Comments at 9; *see also* E.ON Renewables at 3 (proposing that the term as clarified should include facilities ''to the point of interconnection where there is a change in ownership with the host transmission owner's interconnection or transmission facilities, as applicable'').

[52] E.ON Renewables Comments at 3–4.

[53] BP Wind Energy Comments at 10–11.

[54] BPA Comments at 3–4.

[55] Alameda Comments at 6.

[56] NERC Reply Comments at 4–5.

[57] NERC Reply Comments at 5–6.

[58] NOPR, 143 FERC ¶ 61,049 at P 22 (footnotes omitted).

have compliance obligations associated with facilities it does not own or operate (unless it volunteers to undertake such obligations).[59] While we do not agree that a modification of the term is necessary to address AWEA and E.ON Renewables' concerns, we confirm that our intent is to ensure that a generator owner or operator's obligations with respect to generator interconnection facilities extend to the point of change of ownership from the generator owner/operator to the next interconnected registered entity, which may not occur at the point of interconnection between the tie-line as a whole and the larger, interconnected transmission grid.

39. Nor are we persuaded that BPA's suggested modification is necessary to cover a potential reliability gap. In the situation described by BPA, the Reliability Standards and requirements normally applicable to generator interconnection facilities would apply due to the owner's status as a registered transmission owner, and any facilities below the high side of the step-up transformer should be covered as part of the Reliability Standards and requirements generally applicable to generator owners and operators.

40. Finally, we reject Alameda's requested modification to the term ''generator interconnection facility'' in order to address the circumstance where a third entity owns or operates all or a portion of the interconnection facilities between the generating resource and the interconnected transmission system. In such cases, we agree that it *may* be more appropriate for the entity to be subject to the Reliability Standards applicable to generator owners and operators (including the four standards at issue here) rather than to the full panoply of standards applicable to transmission owners and operators, but we will not make such a blanket finding here. Rather, NERC and the Regional Entities can consider the appropriate registry status for an entity in this position on a case-by-case basis. Further, any categorical change to applicability of specific Reliability Standards should be addressed in the Reliability Standards development process.

Individual Assessments

NOPR Proposal

41. In the NOPR, the Commission proposed to accept NERC's approach to the registration of generator owners and operators going forward, whereby most generator owners and operators would not, solely as a result of their interconnection facilities, be registered as transmission owners and operators, and would only be subject to the Reliability Standards and requirements applicable to generator owners and operators (including the four revised standards at issue in this proceeding). The Commission explicitly based its approval of this approach on its ''understanding that additional Reliability Standards or individual requirements may need to be applied to generator interconnection facilities . . . based on 'individual assessments.' '' [60] The Commission sought comment on several aspects of NERC's expectations for these individual assessments, as follows:

> [W]e seek comment as to what circumstances could trigger such an individual assessment. We also seek comment on how NERC envisions the individual assessments will be performed as part of the transmission planning and operating studies NERC mentions in the Petition, when the individual assessments will occur, what percentage of generator interconnection facilities are ''complex'' and thereby likely to trigger such an individual assessment (including the number of existing generator interconnection facilities that will be required to adhere to additional transmission owner or transmission operator Reliability Standards), and how the results of the individual assessments will be coordinated among the interested parties.[61]

Comments

42. NERC comments that ''several events'' could trigger an individual assessment, including: (1) NERC gaining new information, for example, from NERC's analysis of an event or off-normal occurrence on the system, which NERC would pursue through development of a new or revised standard if of a general nature; (2) NERC gaining additional information specific to an individual generator owner or operator, which might lead NERC and the Regional Entity to pursue additional registration; and (3) through review of an element as part of the bulk electric system definition exception process.[62] NERC adds that ''the existing processes and roles and responsibilities of NERC and the regions should ensure that 'complex' generator interconnection facilities will be identified and appropriately addressed on a case-specific basis.'' [63]

43. With respect to the prevalence of such individual assessments going forward, NERC states that it ''expects that widespread registration of Generator Owner or Generator Operators as Transmission Owners and Transmission Operators should not be necessary in the future.'' [64] NERC further states that, with the approval of the four modified Reliability Standards, it ''believes it has addressed the reliability concerns that caused NERC to pursue registration of certain Generator Owners and Generator Operators as Transmission Owners and Transmission Operators (thereby subjecting them to some additional Requirements).'' [65]

44. EPSA/ELCON agrees with NERC's general approach, i.e., identification of the set of standards and requirements that need to be applied to generator owners and operators in general to close any reliability gap, with the expectation that ''only a limited narrow subset of generators could potentially be 'complex' and thereby subject to further assessment for either application of limited TO or TOP Reliability Standards and specific limited requirements therein.'' [66] To the extent that individual circumstances warrant additional registration as a transmission owner or transmission operator, EPSA/ELCON argues for development of a specific process for that assessment, which should be used only as a last resort. EPSA/ELCON argues for the development of a process, utilizing industry input and modeled after the bulk electric system exception process, which will allow independent assessment of the perceived reliability gap by a technical review panel. Dominion and APPA support EPSA/ELCON's proposed approach in developing a process required for individual assessment,[67] although Dominion adds that the process ''should involve an assessment by the entity's Balancing Authority, Reliability Coordinator, Transmission Operator, and Transmission Provider.'' [68]

45. E.ON Renewables comments that NERC's description of the circumstances that might trigger an individual assessment is vague.[69] E.ON Renewables and AWEA argue that NERC should be required to identify the specific criteria to be used to establish a facility as ''complex,'' with examples and an explanation of the reliability gap associated with that example, as well an

[59] *See* NERC Reply Comments at 4–5.

[60] NOPR, 143 FERC ¶ 61,049 at P 24.

[61] *Id.*

[62] NERC Comments at 5–6. PPL concurs with NERC's identified triggering events, and supports NERC's proposed approach for individual assessments. PPL Comments at 4–5.

[63] NERC Comments at 6.

[64] *Id.* at 5.

[65] *Id.* at 6–7.

[66] EPSA/ELCON Comments at 5.

[67] Dominion Comments at 3; APPA Comments at 2–3 (commenting that ''it is difficult to identify in advance the factors and considerations that may come into play as part of a specific complex generator interconnection'').

[68] Dominion Comments at 3–4.

[69] E.ON Renewables Comments at 4.

explanation of how assessments will be performed. E.ON Renewables argues that these criteria and processes should be identified on the record in this or another proceeding, and be subject to industry comment. Finally, E.ON Renewables asks the Commission to find, in this proceeding, that (1) generator interconnection facilities that connect to the transmission system at a single point of interconnection are not ''complex,'' and (2) the only additional requirements that can be applied to the owner or operator of ''complex'' generator interconnection facilities are those needed to close the identified reliability gap, rather than ''classification as a TO or TOP and the attendant registry and compliance associated with a TO and TOP.'' [70]

46. BP Wind Energy makes similar arguments regarding the need for the establishment of ''clear and defined parameters regarding individual assessments, set forth either in the NERC registry or other Commission-approved rule, procedure or document.'' [71] BP Wind Energy asserts that generator owners and operators should be involved in the development of the parameters and process.

47. TDU Systems states it does not object to individual assessment of ''truly complex generator interconnection facilities,'' but argues that such assessments must be narrowly tailored to ensure that the vast majority of generator owners and operators are not subject to such an assessment.[72] Despite TDU Systems' recognition that individual assessments may be warranted in some cases, it asks the Commission to ''confirm'' that an entity owning or operating generator interconnection facilities and no other transmission facilities need not be registered as a transmission owner or transmission operator going forward (i.e., after approval of the four Reliability Standards at issue in this proceeding).[73]

48. In its Response, NERC states that a process for conducting individual assessments is unnecessary at this time because there are existing mechanisms under the NERC Rules of Procedure to deal with any registration changes that may be warranted.[74] Accordingly, NERC further maintains that the development of such a process is premature.[75]

49. In responding to the requests for further clarification or ''confirmation'' that generator owners and operators will not be subject to registration as a transmission owner or operator based solely on their interconnection facilities, NERC reiterates that it ''will generally no longer pursue registration of Generator Owners and Generator Operators as Transmission Owners and Transmission Operators.'' [76] However, NERC asserts that it ''cannot *guarantee* that it will never be necessary to register a Generator Owner or Generator Operator as a Transmission Owner or Transmission Operator as such a statement would be inconsistent with NERC's obligations as the Electric Reliability Organization.'' [77]

Commission Determination

50. We find NERC's proposed approach to determining whether an individual assessment, or whether additional Reliability Standards need to be more broadly applied, to be reasonable. Given NERC's expectation that ''the number of such facilities is low,'' it seems unnecessary at this time to require a new process tailored to such individual assessments.[78] Should greater transparency and consistency across the regions become necessary, there are existing mechanisms under the NERC Rules of Procedure to deal with any changes to the registration criteria that may be warranted.[79]

51. We reject E.ON Renewable's request for a finding that generator interconnection facilities that connect to the transmission system at a single point of interconnection are categorically not ''complex.'' We believe it is inappropriate to make a blanket finding as to any specific configuration, and note that we upheld NERC's registration of Harquahala as a transmission owner although the generator interconnection facilities in that case connected to the transmission system at a single point.

52. We also reject TDU Systems' and other commenters' request to ''clarify'' that generator owners and operators will no longer be asked to register as transmission owners or operators under any circumstances. Quite the contrary, as we stated in the NOPR, our proposed approval of the revised Reliability Standards was ''based on the understanding that additional Reliability Standards or individual requirements may need to be applied to the generator interconnection facilities . . . based on 'individual assessments.' '' [80] We leave open the possibility that in some cases, the interconnection facilities may be so extensive that the entity should not only be registered as a transmission owner or operator, but should be subject to all of the Reliability Standards and requirements applicable to such an entity. In other cases, it may be appropriate to waive a significant portion of the standards or requirements generally applicable to transmission owners and operators, even if the entity is technically registered as a transmission owner or operator.

53. However, consistent with our prior decisions in *Harquahala* and *Cedar Creek,* we clarify that for the anticipated small number of generator owners and operators owning facilities deemed to be ''complex'' and therefore potentially subject to additional Reliability Standards, NERC should evaluate, in consultation with the Regional Entity, which Reliability Standards should apply to the particular entity based on the specific facts and circumstances. We further clarify that the generator owner or operator should only be obligated to comply with those Reliability Standards and requirements necessary to close the identified reliability gap.[81] To the extent that disputes remain about the appropriate application of Reliability Standards and requirements, we note that generator owners and operators continue to have the right to bring any such dispute to the Commission.

D. Impact on Current Registrations and Registration Process

NOPR Proposal

54. In the NOPR, the Commission noted NERC's position that acceptance of its proposed revisions would ''not have the effect of de-registering any entity from the NERC Compliance Registry.'' [82] The Commission also recognized that the Petition was not intended to overturn any previous orders, citing to *Cedar Creek* and *Harquahala*.[83]

Comments

55. TDU Systems asks for clarification regarding the process by which entities currently registered as a transmission owner or operator may seek de-registration.[84] In particular, TDU Systems seeks clarification that a request for de-registration under NERC's

[70] *Id.* at 5–6. *See also* AWEA Comments at 7–8.

[71] BP Wind Energy Comments at 8.

[72] TDU Systems at 6–7.

[73] *Id.* at 4–5.

[74] NERC Response at 2–3.

[75] NERC notes that it will be reviewing its registration process in 2014. NERC Response at 3 & n.7.

[76] *Id.* at 3 (quoting NERC Comments at 7).

[77] *Id.*

[78] NERC Comments at 6.

[79] *See* NERC Rules of Procedure §§ 500 and 1400; *see also* NERC Response at 3.

[80] NOPR, 143 FERC ¶ 61,049 at P 24.

[81] *See* NERC Comments at 6.

[82] NOPR, 143 FERC ¶ 61,049 at P 17.

[83] *Id.* n.37.

[84] TDU Systems at 5–6.

Rules of Procedure will not be treated as an appeal of an existing registration listing, i.e., it will not be subject to the 21 day deadline for filing an appeal from an initial registration decision. In the alternative, TDU Systems asks the Commission to direct NERC to explain the process that should be used for de-registration of an entity currently registered as a transmission owner or operator. BP Wind Energy also seeks clarification that entities are free to seek a change in their registry status as a transmission owner or operator, or to modify the requirements with which they are required to comply.[85]

56. In its response, NERC reiterates that this proceeding will not have the effect of de-registering any entity from the NERC Compliance Registry, and states that any changes to registration will be governed by its Rules of Procedure.[86]

Commission Determination

57. We confirm that this final rule does not have the effect of de-registering any entity from the NERC Compliance Registry. However, we grant the requested clarification that this order does not alter an entity's right to seek a change in its registration status under NERC's Rules of Procedure.

III. Information Collection Statement

58. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting and recordkeeping requirements (collections of information) imposed by an agency.[87] Upon approval of a collection of information, OMB will assign an OMB control number and expiration date. Respondents subject to the filing or recordkeeping 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.

59. The Commission is submitting these reporting and recordkeeping requirements to OMB for its review and approval under section 3507(d) of the Paperwork Reduction Act (PRA). The Commission solicited comments on the need for this information, whether the information will have practical utility, the accuracy of the provided burden estimate, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing the respondent's burden, including the use of automated information techniques. The Commission did not receive any comments on the reporting burden estimate.

60. This Final Rule approves Reliability Standards FAC–001–1, FAC–003–3, PRC–004–2.1a, and PRC–005–1.1b, which would replace currently effective Reliability Standards FAC–001–0, FAC–003–1,[88] PRC–004–2a, and PRC–005–1b. The modifications included in PRC–004–2.1a and PRC–005–1.1b are clarifications of existing requirements, do not extend those existing requirements to any new entity or to additional facilities, and do not affect the existing burden related to those standards.[89]

61. The modifications reflected in FAC–001–1 extend the obligation to document, maintain, and publish interconnection requirements to any generator owner that has an executed agreement with a third party to evaluate the reliability impact of a requested or required interconnection. NERC states, and we agree, that the number of affected generator owners is likely to be extremely small.[90] Moreover, it is likely that any increase in an entity's recordkeeping and reporting requirements would occur through a change in that entity's NERC registration status in any case, i.e., NERC would likely be considering registration of the entity as a transmission owner, with the corresponding responsibilities. Accordingly, the Commission views the potential increase in recordkeeping and reporting burden from revised standard FAC–001–1 as minimal, but has provided an estimate of that burden in the table set out below.

62. The modifications reflected in FAC–003–3 extend NERC's vegetation management requirements to certain generator interconnection facilities, including requirements to create and maintain records related to the generator owner's vegetation management work plan and performance of inspections. Generator owners typically already maintain the vegetation surrounding the right-of-way for the generator interconnection facility that connects the generating station switchyard to the point of interconnection with a transmission owner's facility. However, the proposed requirements outlined in FAC–003–3 may exceed a generator owner's current vegetation management program, particularly with respect to recordkeeping and reporting.

63. *Public Reporting Burden:* The burden and cost estimates below are based on the increase in the reporting and recordkeeping burden imposed by the proposed Reliability Standards. Our estimate of the number of respondents affected is based on the NERC Compliance Registry as of July 30, 2013. According to the Compliance Registry, NERC has registered 881 generator owners within the United States, and we estimate that approximately 10 percent (or 88) of these generator owners have interconnection facilities that meet the proposed requirements for applicability of the new standard (i.e., having overhead lines that are greater than 200 kV or are part of an IROL or WECC Transfer Path, and that are either longer than one mile or without a clear sightline to the point of interconnection with the host transmission system).

64. The burden estimates reflect the changes in the standards and the number of affected entities (e.g., the generator owner's one-time burden to develop, or review and modify, an existing vegetation management program, and the on-going, relatively minor burden of preparing quarterly reports of relevant outages). Estimates for the proposed additional burden imposed by the Final Rule in RM12–16 follow.[91]

[85] BP Wind Energy Comments at 9–10.

[86] NERC Response at 2–3.

[87] 5 CFR 1320.11 (2013).

[88] As of the date of issuance of this Final Rule, the currently effective standard is FAC–003–1. While a revised version of that standard, FAC–003–2, was approved in Docket No. RM12–4–000, it has yet to go into effect.

The information collection requirements of Reliability Standard FAC–003–2 were approved by the OMB on May 29, 2013, under FERC–725A (OMB Control No. 1902–0244).

[89] The information collection requirements and related burden (both unchanged in this Final Rule) of Reliability Standards PRC–004–2a and PRC–005–1b are covered under FERC–725A(OMB Control No. 1902–0244).

[90] *See* NERC Petition at 20.

[91] The NOPR used the identifier FERC–725A (OMB Control No. 1902–0244). However, for administrative purposes and to submit the information collection requirements to OMB timely, the requirements were labeled FERC–725M (OMB Control No. 1902–0263) in the submittal to OMB associated with the NOPR. We are using FERC–725M in this Final Rule and in the associated submittal to OMB.

FERC–725M	No. of respondents [92]	No. of responses per respondent	Average burden hours per response	Total annual burden hours	Total annual cost
	(1)	(2)	(3)	(1) × (2) × (3)	
FAC–003–3 (Transmission Vegetation Management)					
Strategies, documentation, processes, & procedures (M3).	88	1	32	2,816 (one-time)	$146,432 one-time [@ $52/hr.]
Quarterly Reporting (Compliance 1.4)	[94] 96	4	0.25	96	6,720 [@$70/hr.]
Annual Veg. Inspect. Doc. (M6); annual veg. work plan (M7); evidence of mgt. of veg. (M1 & M2), confirmed veg. condition (M4) & corrective action (M5).	88	1	2	176	12,320 [@$70/hr.]
Record Retention (Compliance 1.2)	88	1	1	88	2,464 [@$28/hr.]
FAC–001–1 (Facility Connection Requirements)					
Facility connection reqs. (R2, R3, M2, & M3).	5	1	16	80 (one-time)	5,600 (one-time) [@ $70/hr.]
Record Retention [95]	5	1	1	5	140 [@$28/hr.]
Total in First Year				3,261	173,676

Title: Mandatory Reliability Standards for the Bulk-Power System.

Action: Proposed revisions to FERC–725M.

OMB Control No.: 1902–0263.

Respondents: Businesses or other for-profit institutions; not-for-profit institutions.

Frequency of Responses: One-time, annual, and quarterly.

Necessity of the Information: The revisions to the four Reliability Standards noted above are part of the implementation of the Congressional mandate of the Energy Policy Act of 2005, to develop mandatory and enforceable Reliability Standards to better ensure the reliability of the nation's Bulk-Power System.

Internal Review: The Commission has reviewed the revisions to the four Reliability Standards 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 estimate associated with the information requirements.

65. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director, email: *DataClearance@ferc.gov,* phone: (202) 502–8663, fax: (202) 273–0873].

66. For submitting comments concerning the collection of information and the associated burden estimates, please send your comments to the Commission, and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–4718, fax: (202) 395–7285]. For security reasons, comments to OMB should be submitted by email to: *oira_submission@omb.eop.gov.* Comments submitted to OMB should include Docket Number RM12–16, FERC–725M and OMB Control Number 1902–0263.

IV. Regulatory Flexibility Act Certification

67. The Regulatory Flexibility Act of 1980 (RFA) [96] 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 (SBA's) Office of Size Standards develops the numerical definition of a small business.[97] The SBA 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 sale and its total electric output for the preceding twelve months did not exceed four million megawatt hours.[98]

68. Reliability Standards FAC–001–1, FAC–003–3, PRC–004–2.1a, and PRC–005–1.1b will help to ensure that generator interconnection facilities are properly maintained and operated. The number of small business entities affected is expected to be small, because FAC–001–1 will apply only to the small subset of generator owners that have executed an agreement to interconnect with a third party, and FAC–003–3 will only affect generator owners with overhead transmission lines that: (1) Are operated at 200 kV or higher, or, are elements of an IROL or of a Major WECC Transfer Path, and (2) are longer than one mile or lacking in clear sightlines to the point of interconnection with the host transmission system.[99] Comparison of the NERC Compliance Registry with data submitted to the Energy Information Administration on Form EIA–861 indicates that, of the 881 generator owners in the United States

[92] GO = Generator Owner; RE = Regional Entity. The respondents are generator owners, unless otherwise indicated.

[93] The estimates for cost per hour are derived as follows:

- $52/hour, the average of the salary plus benefits for an engineer and a forester, from Bureau of Labor and Statistics at *http://bls.gov/oes/current/naics3_221000.htm.*
- $70/hour, the average of the salary plus benefits for a manager and an engineer, from Bureau of Labor and Statistics at *http://bls.gov/oes/current/naics3_221000.htm.*
- $28/hour, based on a Commission staff study of record retention burden cost.

[94] Number of respondents includes 88 generator owners, who may be subject to the recordkeeping and reporting burdens of FAC–003 for the first time, and 8 Regional Entities, who may have a slight increase in recordkeeping and reporting requirements due to the increase in entities covered by the vegetation management standard.

[95] Regional Entities may have a de minimis increase in burden due to the increase in the number of entities potentially subject to the revised standard; that burden has been rolled into the estimated Average Burden Hours per Response.

[96] 5 U.S.C. 601–612 (2006).

[97] 13 CFR 121.101 (2013).

[98] 13 CFR 121.201, Sector 22, Utilities & n.1.

[99] Some of the standards may also affect Regional Entities; however, they do not qualify as small entities.

registered by NERC, 49 qualify as small businesses.[100] Of these, only five entities (about ten percent of the small entities) are expected to have qualifying interconnection facilities.

69. For the number of small generator owners that do have applicable facilities, the primary cost increase is expected to be in documentation, recordkeeping, and reporting burdens as discussed above. In addition, we estimate that for each of the estimated five small generator owners there will be an additional cost for the two hours to perform the annual inspection of the lines (at $47.00 per hour,[101] or an additional $94.00 per owner annually). Therefore, the estimated cost in the first year for the increased data collection and retention for these entities is approximately $3,144.00 per entity ($3,050.00 for the one-time and recurring reporting and record retention requirements from the table above plus $94.00 for the annual inspection of the line). In subsequent years, after completion of the one-time recordkeeping or reporting requirements, the cost will be reduced. Based on the above, the Commission does not consider the costs associated with NERC's revisions to the four Reliability Standards to constitute a significant economic impact for small entities, because it should not represent a significant percentage of an affected small entity's operating budget. Accordingly, the Commission certifies that the revised requirements set forth in the four Reliability Standards will not have a significant economic impact on a substantial number of small entities, and no regulatory flexibility analysis is required.

V. Environmental Analysis

70. 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.

VI. Document Availability

71. 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.

72. 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.

73. 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.*

VII. Effective Date and Congressional Notification

74. These regulations are effective November 25, 2013. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996. The Commission will submit this Final Rule to both houses of Congress and the Government Accountability Office.

By direction of the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

Note: The Appendix will not appear in the *Code of Federal Regulations.*

Appendix

Commenters

American Public Power Association (APPA)
American Wind Energy Association (AWEA)
Bonneville Power Administration (BPA)
BP Wind Energy North America, Inc. (BP Wind Energy)
City of Alameda, California (Alameda)
California Department of Water Resources State Water Project (CDWR)
Dominion Resources Services, Inc. (Dominion)
Electric Power Supply Association and Electricity Consumers Resource Council (EPSA/ELCON)
E.ON Climate & Renewables North America, LLC (E.ON Renewables)
International Transmission Company d/b/a ITC Transmission, Michigan Electric Transmission Company, LLC, ITC Midwest LLC and ITC Great Plains LLC (ITC)
Louisville Gas and Electric Company, Kentucky Utilities Corporation, Lower Mount Bethel Energy, LLC, PPL Brunner Island, LLC, PPL Electric Utilities Corporation, PPL EnergyPlus, LLC, PPL Holtwood, LLC, PPL Ironwood, LLC, PPL Martins Creek, LLC, PPL Montana, LLC, PPL Montour, LLC, and PPL Susquehanna, LLC (PPL)
North American Electric Reliability Corporation (NERC)
Transmission Dependent Utility Systems (TDU Systems)

[FR Doc. 2013–23180 Filed 9–23–13; 8:45 am]

BILLING CODE 6717–01–P

[100] *See* NERC Compliance Registry as of July 30, 2013; U.S. Energy Information Administration Form EIA–861—Annual Electric Power Industry Report, Preliminary Data for 2012 (released August 15, 2013).

[101] This wage figure is taken from the Bureau of Labor and Statistics at *http://bls.gov/oes/current/naics3.221000.htm.*

[102] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[103] 18 CFR 380.4(a)(2)(ii).

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2013–0847]

Drawbridge Operation Regulations; Quogue Canal, Southampton, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulations governing the operation of the Quogue Bridge, mile 1.1, across Quogue Canal, at Southampton, New York. This temporary deviation authorizes the Quogue Bridge to keep one of the two movable spans in the closed position in order to facilitate rehabilitation at the bridge.

DATES: This deviation is effective from October 1, 2013 through March 28, 2014.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2013–0847 and are available online at *www.regulations.gov,* inserting USCG–2013–0847 in the ''Keyword'' and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30),

U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Ms. Judy Leung-Yee, Project Officer, First Coast Guard District, telephone (212) 668–7165, email *judy.k.leung-yee@uscg.mil.* If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Quogue Bridge, across Quogue Channel, mile 1.1, at Southampton, New York, has a vertical clearance in the closed position of 15 feet at mean high water and 16 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.799(d).

The owner of the bridge, Suffolk County Department of Public Works, requested a temporary deviation to facilitate rehabilitation at the bridge.

The waterway has commercial and seasonal recreational vessels of various sizes.

Under this temporary deviation the draw of the Quogue Bridge, mile 1.1, across Quogue Canal may keep one lift span in the closed position from October 1, 2013 through March 28, 2014.

The Coast Guard contacted all known commercial waterway users regarding this deviation and no objections were received.

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

Dated: September 13, 2013.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 2013–23113 Filed 9–23–13; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0853; FRL–9832–9]

Revisions to the California State Implementation Plan, Antelope Valley Air Quality Management District, Santa Barbara County Air Pollution Control District, South Coast Air Quality Management District and Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of revisions to the Antelope Valley Air Quality Management District (AVAQMD), Santa Barbara County Air Pollution Control District (SBCAPCD), South Coast Air Quality Management District (SCAQMD) and Ventura County Air Pollution Control District (VCAPCD) portions of the California State Implementation Plan (SIP). This action was proposed in the **Federal Register** on April 29, 2013 and concerns volatile organic compound (VOC) from motor vehicle and mobile equipment coating operations and from graphic arts operations. We are approving local rules that regulate these emission sources under the Clean Air Act (''CAA'' or ''the Act'').

DATES: These rules will be effective on October 24, 2013.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2011–0853 for this action. Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901. While all documents in the docket are listed at *http://www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps, multi-volume reports), and some may not be available in either location (e.g., confidential business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Adrianne Borgia, EPA Region IX, (415) 972–3576, *borgia.adrianne@epa.gov.*

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

Table of Contents

I. Proposed Action
II. Public Comments and EPA Responses
III. EPA Action
IV. Statutory and Executive Order Reviews

I. Proposed Action

On April 29, 2013 (78 FR 25011), EPA proposed to approve the following rules into the California SIP.

Local agency	Rule #	Rule title	Amended/ revised	Submitted
AVAQMD	1151	Motor Vehicle and Mobile Equipment Coating Operations	Amended 6/19/12	9/21/12
SBCAPCD	339	Motor Vehicle and Mobile Equipment Coating Operations	Revised 6/19/08	10/20/08
SCAQMD	1151	Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations.	Amended 12/2/05	4/6/09
VCAPCD	74.18	Motor Vehicle and Mobile Equipment Coating Operations	Revised 11/11/08	3/17/09
VCAPCD	74.19	Graphic Arts	Revised 6/14/11	9/27/11

We proposed to approve these rules because we determined that they complied with the relevant CAA requirements. Our proposed action contains more information on the rules and our evaluation.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received no comments.

III. EPA Action

No comments were submitted. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving these rules into the California SIP.

IV. Statutory and Executive Order Reviews

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

• Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

• does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);

• is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);

• does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• 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 disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 26, 2013.

Alexis Strauss,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F—California

■ 2. Section 52.220, is amended by adding paragraphs (c)(361)(i)(A)(*3*), (c)(363)(i)(E), (c)(366)(i)(B)(*4*), (c)(404)(i)(C)(*2*) and (c)(423)(i)(D)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(361) * * *

(i) * * *

(A) * * *

(*3*) Rule 339, ''Motor Vehicle and Mobile Equipment Coating Operations,'' revised on June 19, 2008.

* * * * *

(363) * * *

(i) * * *

(E) Ventura County Air Pollution Control District.

(*1*) Rule 74.18, ''Motor Vehicle and Mobile Equipment Coating Operations,'' revised on November 11, 2008.

* * * * *

(366) * * *

(i) * * *

(B) * * *

(*4*) Rule 1151, ''Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations,'' amended on December 2, 2005.

* * * * *

(404) * * *

(i) * * *

(C) * * *

(*2*) Rule 74.19, ''Graphic Arts,'' revised on June 14, 2011.

* * * * *

(423) * * *

(i) * * *

(D) * * *

(*2*) Rule 1151, ''Motor Vehicle and Mobile Equipment Coating Operations,'' amended on June 19, 2012.

* * * * *

[FR Doc. 2013–23062 Filed 9–23–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2013–0094; FRL–9833–1]

Revision of Air Quality Implementation Plan; California; Placer County Air Pollution Control District and Feather River Air Quality Management District; Stationary Source Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule and technical amendment.

SUMMARY: EPA is finalizing a limited approval and limited disapproval of two permitting rules submitted by California as a revision to the Placer County Air Pollution Control District (PCAPCD) and Feather River Air Quality Management District (FRAQMD) portion of the California State Implementation Plan (SIP). These revisions were proposed in the **Federal Register** on February 22, 2013 and concern construction and modification of stationary sources of air pollution within each District. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA). Final approval of these rules makes the rules federally enforceable and corrects program deficiencies identified in a previous EPA rulemaking (76 FR 44809, July 27, 2011). EPA is also making a technical amendment to the Code of Federal Regulations (CFR) to reflect this previous rulemaking, which removed an obsolete provision from the California SIP.

DATES: This rule is effective on October 24, 2013.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2013–0094 for this action. Generally, documents in the docket for this action are available electronically at *www.regulations.gov* or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents are listed at *www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps, multi-volume reports), and some may not be

publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Laura Yannayon, EPA Region IX, (415) 972–3534, *yannayon.laura@epa.gov*.

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

Table of Contents

I. Proposed Action
II. Public Comments and EPA Responses
III. EPA Action
IV. Statutory and Executive Order Reviews

I. Proposed Action

On February 22, 2013 (78 FR 12267), EPA proposed a limited approval and limited disapproval of the following rules that were submitted for incorporation into the California SIP.

TABLE 1—SUBMITTED RULES

Local agency	Rule #	Rule title	Amended	Submitted
PCAPCD	502	New Source Review	10/13/11	11/18/11.
FRAQMD	10.1	New Source Review	2/7/12	9/21/12.

We proposed a limited approval because we determined that these rules improve the SIP and are largely consistent with the applicable CAA requirements. We simultaneously proposed a limited disapproval because some rule provisions do not satisfy the requirements of section 110 and part D of the Act. Specifically:

- Both rules are missing a component of the definition for the term ''Regulated NSR Pollutant,'' as it relates to $PM_{2.5}$ condensable emissions.
- Placer County Rule 502 is not supported by a justification for the stated $PM_{2.5}$ interpollutant offset ratios.
- Feather River Rule 10.1 contains certain language in new Sections B.4 and B.5 that entirely exempts from regulation pollutants when EPA redesignates the area from nonattainment to attainment. As worded, the provision is too broad, in that it exempts such pollutants from all the requirements of Section E of the rule, rather than just those provisions which apply to major sources of nonattainment pollutants.

Our proposed rule and related Technical Support Document (TSD) contain more information on the basis for this rulemaking and on our evaluation of the submitted rules.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received one comment from Harold Peterson of Huntsville, Alabama. We summarize the comment and provide our response below.

Comment: The commenter opposed what he described as EPA's ''proposal to terminate sanction clocks with respect to the July 27, 2011 ruling,'' and explained that although ''it makes sense to stay the sanctions and pause the clock while the amended Rules 502 and 10.1 are being reviewed, . . . to remove all sanctions based on a limited approval/disapproval of the new rules [would be] inconsistent with the July 27 ruling to impose sanctions based on another limited approval/disapproval.'' The commenter stated that ''[a] more logical approach would be to start a new 18 month clock based on the February 22, 2013 [rulemaking].'' The commenter also stated that ''a new clock may already have been put in place in another docket'' and that, if so, he would find EPA's proposed action acceptable ''pending the inclusion of a reference to the other docket.''

EPA Response: To the extent the commenter intended to state that EPA does not have a basis for terminating all sanctions clocks associated with PCAPCD Rule 502 and FRAQMD Rule 10.1 and that EPA's current action should, instead, start a new 18-month sanctions clock based on the new rule deficiencies identified in our February 22, 2013 proposal, we agree. As explained in our February 22, 2013 proposed rule and in our simultaneous interim final determination to stay and defer sanctions based on that proposal, the amended versions of PCAPCD Rule 502 and FRAQMD Rule 10.1 that California submitted in 2011 and 2012, respectively, corrected the deficiencies identified in our July 27, 2011 disapproval action but contained new deficiencies that were the basis for a new limited disapproval and associated sanctions clock. *See* 78 FR 12267, 12269 second column (''If EPA finalizes the limited approval and limited disapproval action, as proposed, then a sanctions clock, and EPA's obligation to promulgate a Federal implementation plan, would be triggered. . . .''); *see also* 78 FR 12243 (stating that EPA was proposing a limited approval/limited disapproval because the amended rules ''correct the deficiencies identified in our July 27, 2011 disapproval action, but other revisions have created new deficiencies.''). EPA also stated that the interim final determination to stay and defer ''sanctions associated with PCAPCD Rule 502 and FRAQMD Rule 10.1 (as adopted 2010 and 2009 respectively) [was] based on our concurrent proposal to approve the State's SIP revision as *correcting the deficiencies that initiated sanctions*'' (emphasis added). 78 FR 12243, 12244.

Consistent with our proposal, we are clarifying in this final rule that the effect of this action is to terminate only those sanctions clocks that were triggered by our July 27, 2011 final limited approval and limited disapproval of PCAPCD Rule 502, as adopted in 2010, and FRAQMD Rule 10.1, as adopted in 2009 (76 FR 44809, docket number EPA–R09–OAR–2011–0461), and to start a new sanctions clock based on the new rule deficiencies identified in our February 22, 2013 proposal on the amended rules, as adopted in 2011 and 2012 (78 FR 12267, docket number EPA–R09–OAR–2013–0094). This is because, although EPA has determined that the amended rules submitted by the State in 2011 and 2012 correct the deficiencies forming the basis of EPA's July 27, 2011 limited disapproval, EPA has identified new, unrelated rule deficiencies in the amended rules that form the basis of a new limited disapproval that we are finalizing today. *See* 40 CFR 52.31(d) (sanction application sequencing). The commenter correctly notes that these two rulemakings have separate public dockets, as discussed above.

III. EPA Action

No comments were submitted that change our assessment that submitted PCAPCD Rule 502 and FRAQMD Rule 10.1 satisfy the applicable CAA requirements in part. Therefore, under CAA sections 110(k)(3) and 301(a) and for the reasons set forth in our February 22, 2013 proposed rule, we are finalizing a limited approval and limited disapproval of PCAPCD Rule 502 (as amended October 31, 2011) and FRAQMD Rule 10.1 (as amended

February 7, 2012). This action incorporates the submitted rules into the PCAPCD and FRAQMD portions of the California SIP and makes them federally enforceable.

We are also making a technical amendment to 40 CFR 52.220 to remove a previous SIP rule, PCAPCD Rule 508, from the PCAPCD portion of the California SIP, consistent with EPA's final rule at 76 FR 44809 (July 27, 2011). As explained in the proposal for this 2011 rulemaking, both EPA and the District had intended for Rule 502 to replace the preexisting NSR program in Rule 508, which EPA had approved into the SIP in 1982. *See* 76 FR 28945 (May 19, 2011).[1] In the regulatory text codifying this final action, however, EPA incorporated Rule 502 into the SIP but neglected to remove Rule 508. *See* 76 FR at 44811. We are making a technical amendment to 40 CFR 52.220 to correct this error by removing Rule 508 from the PCAPCD portion of the California SIP. This technical amendment makes no change to the substance of our July 27, 2011 final action or to today's final limited approval and limited disapproval of amended PCAPCD Rule 502 and FRAQMD Rule 10.1.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements, in part, and does not impose additional requirements beyond those imposed by State law. For that reason, this final 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 disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

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

Dated: June 28, 2013.

Alexis Strauss,

Acting Regional Administrator, Region IX.

■ Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(52)(xiii)(G), (c)(80)(i)(G), (c)(416)(i)(*C*) and (c)(423)(i)(*F*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(52) * * *

(xiii) * * *

(G) Previously approved on July 7, 1982 in paragraph (c)(52)(xiii)(C) of this section and now deleted without replacement: Rule 508.

* * * * *

(80) * * *

(i) * * *

(G) Previously approved on June 23, 1982 in paragraph (c)(80)(i)(E) of this section and now deleted without replacement: Rule 508.

* * * * *

(416) New and amended regulations were submitted on November 18, 2011, by the Governor's Designee.

(i) Incorporation by Reference.

(*C*) Placer County Air Pollution Control District.

(*1*) Rule 502, ''New Source Review,'' as amended on October 13, 2011.

* * * * *

(423) New and amended regulations were submitted on September 21, 2012, by the Governor's Designee.

(i) Incorporation by Reference.

(*F*) Feather River Air Quality Management District.

(*1*) Rule 10.1, ''New Source Review,'' as amended on February 6, 2012.

* * * * *

[FR Doc. 2013–23096 Filed 9–23–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2012–0451; FRL–9901–22Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Section 110(a)(2) Infrastructure Requirements for the 2008 Lead National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia pursuant to the Clean Air Act (CAA). Whenever new or revised

[1] EPA's Technical Support Document for this proposal stated incorrectly that Rule 508 had previously been approved into the SIP on May 18, 1981 at 46 FR 27115. *See* U.S. EPA, Region IX, Technical Support Document for EPA's Notice of Proposed Rulemaking for the California SIP, Placer County Air Pollution Control District, Rule 502 (New Source Review), May 6, 2011, at 1. The correct cite and date for this previous SIP action is 47 FR 29536 (July 7, 1982).

national ambient air quality standards (NAAQS) are promulgated, the CAA requires states to submit a plan for the implementation, maintenance, and enforcement of such NAAQS. The plan is required to address basic program elements, including, but not limited to regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the standards. These elements are referred to as infrastructure requirements. Virginia has made a submittal addressing the infrastructure requirements for the 2008 lead (Pb) NAAQS.

DATES: This final rule is effective on October 24, 2013.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2012–0451. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Ellen Schmitt, (215) 814–5787, or by email at *schmitt.ellen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of SIP Revision

On June 11, 2013 (78 FR 34970), EPA published a notice of proposed rulemaking action (NPR) for the Commonwealth of Virginia proposing approval of Virginia's March 9, 2012 submittal to satisfy several requirements of section 110(a)(2) of the CAA for the 2008 Pb NAAQS. The NPR proposed approval of the following infrastructure elements of section 110(a)(2): (A), (B), (C) (for enforcement and regulation of minor sources), (D)(i)(I), (D)(i)(II) (for the visibility protection portion), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J), (K), (L), and (M), or portions thereof necessary to implement, maintain, and enforce the 2008 Pb NAAQS. EPA is taking separate action on the portions of section 110(a)(2)(C), (D)(i)(II), and (J) as they relate to Virginia's prevention of significant deterioration (PSD) program and section 110(a)(2)(E)(ii) as it relates to section 128 (State Boards). Virginia did not submit section 110(a)(2)(I) which pertains to the nonattainment requirements of part D, Title I of the CAA, since this element is not required to be submitted by the 3-year submission deadline of section 110(a)(1), and will be addressed in a separate process.

The rationale supporting EPA's proposed action, including the scope of infrastructure SIPs in general, is explained in the NPR and the technical support document (TSD) accompanying the NPR and will not be restated here. The TSD is available online at *www.regulations.gov,* Docket ID Number EPA–R03–OAR–2012–0451. No comments were received on the NPR.

II. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts . . .'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

III. Final Action

EPA is approving the following section 110(a)(2) elements of Virginia's March 9, 2012 SIP revision: (A), (B), (C) (for enforcement and regulation of minor sources), (D)(i)(I), (D)(i)(II) (for the visibility protection portion), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J), (K), (L),

and (M), or portions thereof. EPA is taking separate action on the portions of section 110(a)(2)(C), (D)(i)(II), and (J) as they relate to Virginia's PSD program and section 110(a)(2)(E)(ii) as it relates to section 128 (State Boards). This action does not include section 110(a)(2)(I) which pertains to the nonattainment requirements of part D, Title I of the CAA, since this element is not required to be submitted by the 3-year submission deadline of section 110(a)(1), and will be addressed in a separate process.

IV. Statutory and Executive Order Reviews

A. General Requirements

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

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

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 25, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action, which satisfies certain infrastructure requirements of section 110(a)(2) for the 2008 Pb NAAQS for the Commonwealth of Virginia, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Lead, Reporting and recordkeeping requirements.

Dated: August 29, 2013,

W.C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph (e) is amended by adding the entry at the end of the table for Section 110(a)(2) Infrastructure Requirements for the 2008 Lead NAAQS. The amendment reads as follows:

§ 52.2420 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	* * *
Section 110(a)(2) Infrastructure Requirements for the 2008 Lead NAAQS.	Statewide	3/9/12	9/24/13 [*Insert Federal Register page number where the document begins and date*].	This action addresses the following CAA elements or portions thereof: 110(a)(2)(A), (B), (C) (for enforcement and regulation of minor sources), (D)(i)(I), (D)(i)(II) (for the visibility protection portion), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J), (K), (L), and (M).

[FR Doc. 2013–22974 Filed 9–23–13; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE104–1103; FRL–9900–05–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; administrative change.

SUMMARY: EPA is updating the materials that are incorporated by reference (IBR) into the Delaware State Implementation Plan (SIP). The regulations affected by this update have been previously submitted by the Delaware Department of Natural Resources and Environmental Control (DNREC) and approved by EPA. This update affects the SIP materials that are available for public inspection at the National Archives and Records Administration (NARA), the Air and Radiation Docket and Information Center located at EPA Headquarters in Washington, DC, and the EPA Regional Office.

DATES: This action is effective September 24, 2013.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue NW., Room Number 3334, EPA West Building, Washington, DC 20460; or 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/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Sharon McCauley, (215) 814–3376 or by email at *mccauley.sharon@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The SIP is a living document which a state revises as necessary to address its unique air pollution problems. Therefore, EPA, from time to time, must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference Federally-approved SIPs, as a result of consultations between EPA and the Office of the Federal Register (OFR). The description of the revised SIP document, IBR procedures and ''Identification of plan'' format are discussed in further detail in the May 22, 1997 **Federal Register** document. On December 7, 1998 (63 FR 67407), EPA published a document in the **Federal Register** beginning the new IBR procedure for Delaware. On June 21, 2004 (69 FR 34285), April 3, 2007 (72 FR 15839), April 17, 2009 (74 FR 17771), and May 2, 2011 (76 FR 24372), EPA published updates to the IBR material for Delaware.

Since the publication of the last IBR update, EPA has approved the following regulatory changes to the following Delaware regulations:

A. Added Regulations

1. 7 DNREC regulation 1141 (Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products), section 4.0 (Adhesives and Sealants).

2. 29 Del C. chapter 58 (Laws Regulating the Conduct of Officers and Employees of the State), sections 5804, 5805 (part), 5806 (part), 5812, 5813 (part), 5813A (part), and 5815 (part).

B. Revised Regulations

1. 7 DNREC regulation 1102 (Permits), appendix A.

2. 7 DNREC regulation 1124 (Control of Volatile Organic Compound Emissions), sections 2.0 (Definitions), 8.0 (Handling, Storage, and Disposal of Volatile Organic Compounds (VOCs)), 12.0 (Surface Coating of Plastic Parts), 13.0 (Automobile and Light-Duty Truck Coating Operations), 16.0 (Paper Coating), 19.0 (Coating of Metal Furniture), 20.0 (Coating of Large Appliances), 22.0 (Coating of Miscellaneous Metal Parts), 23.0 (Coating of Flat Wood Panelling), 37.0 (Graphic Arts Systems), 45.0 (Industrial Cleaning Solvents), and 47.0 (Offset Lithographic Printing and Letterpress Printing).

3. 7 DNREC regulation 1125 (Requirements for Preconstruction Review), sections 1.0 through Section 3.0.

4. 7 DNREC regulation 1142 (Specific Emission Control Requirements), section 2.0 (Control of NO_X Emissions from Industrial Boilers and Process Heaters at Petroleum Refineries).

II. EPA Action

In this action, EPA is announcing the update to the IBR material as of July 1, 2013. EPA is also correcting typographical errors and omissions found in the following table entries of paragraph 52.420(c): 7 DNREC regulation 1124, sections 8.0, 23.0, and 37.0.

EPA has determined that today's rule falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. Under section 553 of the APA, an agency may find good cause where procedures are ''impractical, unnecessary, or contrary to the public interest.'' Public comment is ''unnecessary'' and ''contrary to the public interest'' since the codification only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations and incorrect table entries.

III. Statutory and Executive Order Reviews

A. General Requirements

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely

affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

EPA has also determined that the provisions of section 307(b)(1) of the CAA pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the Delaware SIP compilations had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for this ''Identification of plan'' update action for Delaware.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 31, 2013.

W.C. Early,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart I—Delaware

■ 2. Section 52.420 is amended by:

■ a. Revising paragraph (b).

■ b. In paragraph (c), revising the entries for Regulation 1124, sections 8.0, 23.0, and 37.0.

The revisions read as follows:

§ 52.420 Identification of plan.

* * * * *

(b) *Incorporation by reference.* (1) Material listed as incorporated by reference in paragraphs (c) and (d) was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The material incorporated is as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates on or after July 1, 2013 will be incorporated by reference in the next update to the SIP compilation.

(2)(i) EPA Region III certifies that the rules/regulations provided by EPA at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State implementation plan as of July 1, 2013.

(ii) EPA Region III certifies that the source-specific requirements provided by EPA at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated source specific requirements which have been approved in the notebook ''40 CFR 52.420(d)—Source Specific Requirements'' as part of the State implementation plan as of March 1, 2011. No additional revisions were made between March 1, 2011 and July 1, 2013.

(3) Copies of the materials incorporated by reference may be inspected at the EPA Region III Office at 1650 Arch Street, Philadelphia, PA 19103. For further information, call (215) 814–2108; the EPA, Air and Radiation Docket and Information Center, Room Number 3334, EPA West Building, 1301 Constitution Avenue NW., Washington, DC 20460. For further information, call (202) 566–1742; or 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/code_of_federal_regulations/ibr_locations.html.*

(c) *EPA-approved regulations.*

EPA-APPROVED REGULATIONS AND STATUTES IN THE DELAWARE SIP

State regulation (7 DNREC 1100)	Title/subject	State effective date	EPA approval date	Additional explanation
*	*	*	*	*
1124	**Control of Volatile Organic Compound Emissions**			
*	*	*	*	*
Section 8.0	Handling, Storage, and Disposal of Volatile Organic Compounds (VOCs).	3/11/11	4/13/12, 77 FR 22224	
*	*	*	*	*
Section 23.0	Coating of Flat Wood Panelling	3/11/11	4/13/12, 77 FR 22224	
*	*	*	*	*
Section 37.0	Graphic Arts Systems	3/11/11	4/13/12 77 FR 22224	Amended to add ''flexible packaging printing'' to the regulated category.
*	*	*	*	*

* * * * *

[FR Doc. 2013–23095 Filed 9–23–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R01–OAR–2013–0020; FRL– 9901–11–Region1]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Redesignation of Connecticut Portion of the New York-New Jersey-Connecticut Nonattainment Area to Attainment of the 1997 Annual and 2006 24-Hour Standards for Fine Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the State of Connecticut's June 22, 2012 request to redesignate the Connecticut portion of the New York-N. New Jersey-Long Island, NY-NJ-CT fine particle ($PM_{2.5}$) area (i.e., New Haven and Fairfield Counties; herein called the ''Southwestern CT Area'' or ''the Area'') from nonattainment to attainment for the 1997 annual National Ambient Air Quality Standards (NAAQS or standards), as well as for the 2006 24-hour $PM_{2.5}$ NAAQS. As part of these approvals, EPA is approving: A State Implementation Plan (SIP) revision containing a 10-year maintenance plan for the Area; a 2007 base-year emissions inventory for the Area; and new motor vehicle emissions budgets (MVEBs) for the years 2017 and 2025 that are contained in the 10-year $PM_{2.5}$ maintenance plan for the Area. This action is being taken in accordance with the Clean Air Act.

DATES: This rule is effective on October 24, 2013.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2013–0020. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Copies of the documents relevant to this action are also available for public inspection during normal business hours, by appointment at the Bureau of Air Management, Department of Energy and Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630.

FOR FURTHER INFORMATION CONTACT: Alison C. Simcox, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912, telephone number (617) 918–1684, fax number (617) 918–0684, email *simcox.alison@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

I. Background and Purpose
II. Final Action
III. Statutory and Executive Order Reviews

I. Background and Purpose

On June 22, 2012, the Connecticut Department of Energy and Environmental Protection (CT DEEP) submitted a request for EPA to redesignate the Connecticut portion of the New York-N. New Jersey-Long Island, NY-NJ-CT Area (i.e., the Southwestern CT Area) from nonattainment to attainment for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, and to approve a State Implementation Plan (SIP) revision containing an emissions inventory and a maintenance plan for the area. As part of its redesignation request, CT DEEP asked EPA to withdraw the SIP-approved 2009 motor vehicle emissions budgets (MVEBs) prepared using the MOBILE6.2 emissions model and to approve the 2017 and 2025 MVEBs prepared using the MOVES2010 emissions model.

On July 19, 2013 (78 FR 43096), EPA published a Notice of Proposed Rulemaking (NPR) for the State of Connecticut proposing to approve the state's redesignation request and to approve the associated $PM_{2.5}$ maintenance plan, as well as the 2007 base-year emissions inventory and new MVEBs for the years 2017 and 2025. EPA also proposed to withdraw the SIP-approved 2009 MVEBs prepared using MOBILE6.2.

Specific details of Connecticut's redesignation request, 2007 emissions inventory, Clean Air Act (CAA) Section 175A maintenance plan, and 2017 and 2025 MVEBs, and the rationale for EPA's proposed approvals are explained in the NPR and will not be restated here. No public comments were received on the NPR.

II. Final Action

EPA is approving Connecticut's June 22, 2012 redesignation request and maintenance plan for the Southwestern CT Area because the requirements for approval have been satisfied. EPA has evaluated Connecticut's redesignation request, and determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the Clean Air Act. EPA believes that the redesignation request and monitoring data demonstrate that the area has attained the 1997 annual and 2006 24-hour $PM_{2.5}$ standards. The final approval of this redesignation request will change the designation of the Southwestern CT Area from nonattainment to attainment for the 1997 annual and 2006 24-hour $PM_{2.5}$ standards.

EPA is also approving the associated $PM_{2.5}$ maintenance plan for this area submitted on June 22, 2012 as a revision to the Connecticut SIP. EPA has determined that the $PM_{2.5}$ maintenance plan meets the requirements of section 175A of the CAA. In addition, EPA is also withdrawing the previously SIP-approved 2009 MVEBs prepared using MOBILE6.2 and is approving the 2017 and 2025 MVEBs prepared using the MOVES model. Finally, EPA is approving the 2007 comprehensive emission inventory for the Southwestern CT Area under CAA section 182(a)(1).

III. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 25, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

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

Dated: September 11, 2013.

Stephen S. Perkins,

Acting Regional Administrator, EPA New England.

Parts 52 and 81 of chapter I, title 40 of the Code of Federal Regulations are amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart H—Connecticut

■ 2. Section 52.379 is amended by adding paragraph (h) to read as follows:

§ 52.379 Control strategy: $PM_{2.5}$.

* * * * *

(h) Approval—EPA is approving a request to redesignate the Connecticut portion of the New York-N. New Jersey-Long Island, NY-NJ-CT fine particle ($PM_{2.5}$) area (i.e., New Haven and Fairfield Counties or the Southwestern CT Area) from nonattainment to attainment for the 1997 annual and 2006 24-hour $PM_{2.5}$ standards. Connecticut submitted this request on June 22, 2012. As part of the redesignation request, the State submitted a maintenance plan as required by section 175A of the Clean Air Act. Elements of the section 175A maintenance plan include a contingency plan and an obligation to submit a subsequent maintenance plan revision as required by the Clean Air Act. The $PM_{2.5}$ maintenance plan also establishes 2017 and 2025 Motor Vehicle Emission Budgets (MVEBs) for the Area. Connecticut is establishing 2017 MVEBs of 575.8 tons per year (tpy) for direct $PM_{2.5}$ and 12,791.8 tpy for NO_X, and 2025 MVEBs of 516 tpy for direct $PM_{2.5}$ and 9,728.1 tpy for NO_X, for the Southwestern CT Area for maintenance of the 1997 annual and 2006 24-hour $PM_{2.5}$ standards. The 2017 and 2025 MVEBs were prepared with the MOVES model. Previously SIP-approved 2009 MVEBs prepared with MOBILE6.2 are being withdrawn. Finally, EPA is also approving a comprehensive 2007 emission inventory for this Area.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

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

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

Subpart C—Section 107 Attainment Status Designations

■ 4. Section 81.307 is amended by revising the entries for the New York-N. New Jersey-Long Island, NY-NJ-CT area in the Connecticut–$PM_{2.5}$ (Annual NAAQS) table and in the Connecticut—$PM_{2.5}$ [24-hour NAAQS] table to read as follows:

§ 81.307 Connecticut.

* * * * *

CONNECTICUT—$PM_{2.5}$

[Annual NAAQS]

Designated area	Designation [a]	
	Date [1]	Type
New York-N. New Jersey-Long Island, NY-NJ-CT:		
Fairfield County	10–24–13	Attainment.
New Haven County	10–24–13	Attainment.
* * * * * * *		

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.

CONNECTICUT—$PM_{2.5}$

[24-Hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
New York-N. New Jersey-Long Island, NY-NJ-CT:				
Fairfield County		Unclassifiable/Attainment	10–24–13	Attainment.
New Haven County		Unclassifiable/Attainment	10–24–13	Attainment.
* * * * * * *				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

* * * * *

[FR Doc. 2013–23098 Filed 9–23–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 13–182; RM–11701; DA 13–1882]

Television Broadcasting Services; Cedar Rapids, Iowa

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants a petition for rulemaking filed by KGAN Licensee, LLC (''KGAN Licensee''), the licensee of KGAN (TV), channel 51, Cedar Rapids, Iowa. KGAN Licensee requests the substitution of channel 29 for channel 51 at Cedar Rapids, explaining that the channel substitution will serve the public interest by removing any potential interference with a wireless licensee in the Lower 700 MHz A Block located adjacent to channel 51 at Cedar Rapids. The substitution of channel 29 for channel 51 at Cedar Rapids, Iowa is found to serve the public interest.

DATES: This rule is effective October 24, 2013.

FOR FURTHER INFORMATION CONTACT: Joyce L. Bernstein, *Joyce.Bernstein@fcc.gov,* Media Bureau, (202) 418–1647.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 13–182, adopted September 11, 2013, and released September 12, 2013. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street SW., Washington, DC 20554. This document will also be available via ECFS (*http://fjallfoss.fcc.gov/ecfs/*). This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via the company's Web site, *http://www.bcpiweb.com.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

Final Rule

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Iowa is amended by removing channel 51 and adding channel 29 at Cedar Rapids.

[FR Doc. 2013–23253 Filed 9–23–13; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 325, 350, 355, 365, 369, 370, 372, 375, 376, 380, 381, 382, 383, 384, 385, 386, 387, 389, 390, 391, 393, 395, 396, and 397, and Appendix G to Subchapter B of Chapter III

[Docket No. FMCSA–2013–0292]

RIN 2126–AB64

General Technical, Organizational, and Conforming Amendments to the Federal Motor Carrier Safety Regulations

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: This final rule makes technical corrections throughout FMCSA's regulations. The Agency is making minor editorial changes to correct errors and omissions, ensure conformity with Office of the Federal Register style, and improve clarity. This rule does not make any substantive changes to the affected parts of the Federal Motor Carrier Safety Regulations (FMCSRs).

DATES: This final rule is effective September 24, 2013.

FOR FURTHER INFORMATION CONTACT: Ms. Elaine Walls, Federal Motor Carrier Safety Administration, Office of the Chief Counsel, Regulatory Affairs Division, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, by telephone at (202) 366–1394 or via email at *elaine.walls@dot.gov.* Office hours are from 9 a.m. to 5 p.m. e.t., Monday through Friday, except Federal holidays.

If you have questions on viewing the docket, please call Ms. Barbara Hairston, Docket Operations, telephone 202–366–3024.

SUPPLEMENTARY INFORMATION:

Legal Basis for the Rulemaking

Congress delegated certain powers to regulate interstate commerce to the United States Department of Transportation (DOT or Department) in numerous pieces of legislation, most notably in section 6 of the Department of Transportation Act (DOT Act) (Pub. L. 85–670, 80 Stat. 931 (1966)). Section 55 of the DOT Act transferred to the Department the authority of the former Interstate Commerce Commission (ICC) to regulate the qualifications and maximum hours of service of employees, the safety of operations, and the equipment of motor carriers in interstate commerce. See 49 U.S.C. 104. This authority, first granted to the ICC in the Motor Carrier Act of 1935 (Pub. L. 74–255, 49 Stat. 543, Aug. 9, 1935), now appears in chapter 315 of title 49 of the U.S. Code. The regulations issued under this authority became known as the Federal Motor Carrier Safety Regulations, appearing generally at 49 CFR parts 350–399. The administrative powers to enforce chapter 315 were also transferred from the ICC to the DOT in 1966 and appear in chapter 5 of title 49 of the U.S. Code. The Secretary of the U.S. Department of Transportation (Secretary) delegated oversight of these provisions to the Federal Highway Administration (FHWA), a predecessor agency of the FMCSA. The FMCSA Administrator has been delegated

authority under 49 CFR 1.87 to carry out the motor carrier functions vested in the Secretary.

Between 1984 and 1999, a number of statutes added to FHWA's authority. Various statutes authorize the enforcement of the FMCSRs, the Hazardous Materials Regulations (HMRs), and the Commercial Regulations, and provide both civil and criminal penalties for violations of these requirements. These statutes include the Motor Carrier Safety Act of 1984 (Pub. L. 98–554, 98 Stat. 2832, Oct. 30, 1984), codified at 49 U.S.C. chapter 311, subchapter III; the Commercial Motor Vehicle Safety Act of 1986 (Pub. L. 99–570, 100 Stat. 3207–170, Oct. 27, 1986), codified at 49 U.S.C. chapter 313; the Hazardous Materials Transportation Uniform Safety Act of 1990, as amended (Pub. L. 101–615, 104 Stat. 3244, Nov. 16, 1990), codified at 49 U.S.C. chapter 51; and the ICC Termination Act of 1995 (Pub. L. 104–88, 109 Stat. 803, Dec. 29, 1995), codified at 49 U.S.C. chapters 131–149.

The Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 106–159, 113 Stat. 1748, Dec. 9, 1999) established FMCSA as a new operating administration within the DOT, effective January 1, 2000. The motor carrier safety responsibilities previously assigned to both the ICC and the FHWA are now assigned to FMCSA. Congress expanded, modified, and amended FMCSA's authority in the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 (Pub. L. 107–56, 115 Stat. 272, Oct. 26, 2001), the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, 119 Stat. 1144, Aug. 10, 2005), the SAFETEA–LU Technical Corrections Act of 2008 (Pub. L. 110–244, 122 Stat. 1572, June 6, 2008), and the Moving Ahead for Progress in the 21st Century Act (MAP–21) (Pub. L. 112–141, 126 Stat. 405, July 6, 2012).

Most of the provisions of the FMCSRs amended by this rule are based on the statutes detailed above. The legal authority for each of those provisions was explained when the requirement was originally adopted and is summarized at the beginning of each part in title 49 of the CFR. Title 49 CFR subtitle B, chapter III, contains all of the FMCSRs.

The Administrative Procedure Act (APA) (5 U.S.C. 553) specifically provides exceptions to its notice and public comment rulemaking procedures where the Agency finds there is good cause (and incorporates the finding and a brief statement of reasons therefore in the rules issued) to dispense with them. Generally, good cause exists where the Agency determines that notice and public comment procedures are impractical, unnecessary, or contrary to the public interest (5 U.S.C. 553(b)). The amendments made in this final rule merely correct inadvertent errors and omissions, remove obsolete references, and make minor editorial changes to improve clarity and consistency. The technical amendments do not impose any new requirements, nor do they make any substantive changes to the CFR. For these reasons, the FMCSA finds good cause that notice and public comment on this final rule are unnecessary. For these same reasons, this rule will be effective on the date of publication in the **Federal Register**.

Background

This document makes editorial changes to correct inaccurate references and citations, improve clarity, and fix errors. The reasons for each of these minor editorial changes are set out below, in a section-by-section description of the changes. These amendments do not impose any new requirements, nor do they make substantive changes to the CFR.

Section-by-Section Analysis

This section-by-section analysis describes the technical amendment provisions in numerical order.

Part 325

Section 325.1. The second sentence of paragraph (c)(6) is revised by removing the comma between the words ''asphalt'' and ''spreaders,'' to correct a typographical error.

Section 325.13. In paragraph (d)(1), ''Federal Highway Administration'' is revised to read ''Federal Motor Carrier Safety Administration,'' which complies with the intent of the technical changes rule published in the **Federal Register** (FR) on October 1, 2001 (66 FR 49867). The last sentence of paragraph (d)(1) is revised by capitalizing the word ''carrier'' in the phrase ''Federal Motor carrier Safety Administration'' and removing the space between the word ''Administration'' and the comma. These changes are made to correct typographical errors.

Part 350

Section 350.205. In paragraph (b), the phrase ''Division Administrator/'' is inserted in front of ''State Director.'' The head of each FMCSA State office is the Division Administrator. The Agency, however, has one remaining State Director, in the Puerto Rico Division.

Section 350.341. In paragraph (h)(2), the word ''affect'' is changed ''effect'' to correct an erroneous word choice.

Part 355

Appendix A to part 355. Under the section for ''State Determinations,'' paragraph 2.b is revised by capitalizing the first word ''do,'' to be consistent with paragraphs 2.a and 2.c.

Part 365

Appendix A to Subpart E of Part 365. In Appendix A to subpart E of part 365, FMCSA corrects several cross references. These errors reflect proofreading mistakes that were part of the original publication of the appendix on March 19, 2002 (67 FR 12715). In Section I titled, ''General,'' paragraph (c)(6), the reference to ''§ 385.103(d)'' is replaced by a reference to ''§ 385.103(c),'' which is the paragraph that discusses requirements for a decal. In Section III titled, ''Overall Determinations of the Carrier's Basic Safety Management Controls,'' paragraph (b), the reference to sections ''II (a)(1) through (5)'' is replaced by a reference to sections ''III (a)(1) through (5)'' and the reference to ''part III'' is replaced by a reference to ''part IV.'' In Section IV titled, ''Evaluation of Regulatory Compliance,'' paragraph (k)(2), the reference to section ''III (k)(1)(i)'' is replaced by a reference to section ''IV (k)(1)(i).'' Also in Section IV, paragraph (k)(3), the reference to ''paragraph III (k)(1)(vi)'' is replaced by a reference to ''paragraph IV (k)(1)(vi).'' In Section IV, the introductory text of paragraph (l), the reference to ''part II (a)(1)'' is replaced by a reference to ''part III (a)(1),'' and the reference to ''part III'' is replaced by a reference to ''part IV.''

In Section II, paragraph (b)(2), the word ''Section'' is revised by making the capital ''S'' a lower case ''s.'' This correction is made to conform to Government Printing Office style.[1]

Part 369

Sections 369.2 and 369.3. The phrase ''Producers Price Index'' in notes to these sections is changed to read ''Producer Price Index'' to correct typographical errors.

Part 370

Section 370.9. In paragraph (b), the reference to ''§ 375.1(b)(1)'' is changed to ''§ 375.103.'' The definition for the term ''household goods motor carrier'' is located in § 375.103.

[1] Government Printing Office, ''Style Manual,'' 2000, chapter 4. The ''Style Manual'' is available at: *http://www.gpo.gov/fdsys/pkg/GPO-STYLEMANUAL-2008/content-detail.html.*

Part 372

Section 372.109. Paragraph (a) is amended by replacing the phrase ''federation of cooperation association'' with the phrase ''federation of cooperative associations'' in the first sentence to correct a typographical error.

Section 372.117. Paragraph (a) is amended by replacing the reference to ''section (c) herein,'' with a reference to ''paragraph (c) of this section,'' to conform to Office of the Federal Register style.[2]

Section 372.211. Paragraph (e) is amended by inserting the word ''or'' between the phrase ''by the municipality of Pittsburgh'' and the phrase ''by any other municipality…'' to correct a typographical error.

Sections 372.227, 372.229, and 372.231. In these three sections, the word ''paragraph'' is added before the paragraph references in a number of places. The addition of the word ''paragraph(s)'' in these instances provides added clarity and conforms to Office of the Federal Register style.[3]

Sections 372.213 and 372.233. In these two sections, FMCSA adds a reference to the specific municipality affected by the sections. This is to clarify which municipalities are included within the scope of the section and to make the language of these sections consistent with other sections in part 372. Section 372.213(e) is amended by adding the phrase ''of Pueblo or by any other municipality''; § 372.233(e) is amended by adding the words ''of Chicago or any other municipality.''

Part 375

Section 375.105. In paragraph (b), the word ''Section'' that precedes each section number is removed and instead two section symbols (§§) are added at the beginning of the list, before the reference to § 375.205. This conforms to Government Printing Office style[4] and eliminates needless repetition.

Part 376

Section 376.11. In the last sentence of paragraph (d)(1), the phrase ''the balance f documentation'' is corrected to read ''the balance of documentation.''

Part 380

Sections 380.502 and 380.513. In both § 380.502(b) and § 380.513(e), the words ''whistle blower'' are replaced by the word ''whistleblower,'' to correct a spelling error.

Appendix to Part 380. Section 3 titled, ''Safe Operating Practices,'' ''Unit 3.5—Security issues,'' is amended by removing the words ''Research and Special Programs Administration'' and adding, in their place, the words ''Pipeline and Hazardous Materials Safety Administration.'' In November 2004, an act of Congress abolished the Research and Special Programs Administration (RSPA) and certain of its duties were transferred to the Pipeline and Hazardous Materials Safety Administration (PHMSA). This change is required to reflect the current name of the agency with the statutory authority to regulate the transportation of hazardous materials.

Part 381

Sections 381.310 and 381.410. In § 381.310(c)(5) and § 381.410(c)(8), the words ''achieve a level a safety'' are replaced by the words ''achieve a level of safety,'' to correct typographical errors.

Part 382

Section 382.401. To conform to the structure of paragraph (b), paragraph (b)(2) is changed to a full sentence by appending to the end of the paragraph the phrase ''shall be maintained for a minimum of 2 years.'' In addition, two cross references, which were incorrect in the original publication of the rule (66 FR 43103, August 17, 2001), are corrected here. The reference to ''§ 40.213(a)'' in paragraph (c)(5)(iv) is corrected to read ''§ 40.213(g),'' which discusses documentation of training for breath alcohol technicians. Finally, the reference to ''§ 390.31'' in paragraph (d) is corrected to read ''§ 390.29,'' which discusses locations of records.

Section 382.403. In paragraph (e), the term ''Consortia/Third party administrator'' is changed to ''Consortium/Third party administrator,'' as it is defined in § 382.107.

Section 382.601. In paragraph (b)(11), the phrase ''. . . program and or referral to management'' is replaced by the phrase ''. . . program and/or referral to management,'' to correct a typographical error.

Part 383

Section 383.3. In paragraph (f), the words ''(except in the instances specified in § 383.21)'' are removed because the exceptions previously referenced under § 383.21 were removed in a September 2, 1999, rulemaking (64 FR 48110).

Section 383.5. Under the definition for ''Conviction,'' the closed quotation mark following the word ''probated'' is removed to correct a typographical error.

Section 383.51. In Table 2 to § 383.51, footnote 1 is changed to add a reference to the commercial learner's permit (CLP), so that the footnote agrees with the regulatory text in § 383.51(c)(7).

Section 383.53. In paragraph (b)(2), the reference to ''§ 383.37(c)'' is changed to read ''§ 383.37(d).'' Also, in paragraph (c), the reference to ''§ 383.37(d)'' is changed to read ''§ 383.37(e).'' When 49 CFR 383.37 was revised on May 9, 2011 (76 FR 26979), old paragraphs (c) and (d) became paragraphs (d) and (e), respectively, but the corresponding changes in § 383.53 were not made.

Sections 383.71, 383.73, and 383.153. In these three sections, FMCSA corrects the date ''July 8, 2014'' to read ''July 8, 2015.'' This compliance date, which appears in § 384.301(f), was changed on March 25, 2013 (78 FR 17882). FMCSA, however, failed to change references to the compliance date in §§ 383.71(a)(1) and (2), 383.73(a)(1) and (2), and 383.153(g) and (h).

On October 1, 2012, § 383.71(b)(1)(i) was removed because it was obsolete, and paragraph (b)(1)(ii) of that section was redesignated as paragraph (b)(1) (77 FR 59825). The Agency, however, failed to change numerous affected cross references throughout §§ 383.71 and 383.73. It is correcting that oversight in this rulemaking.

Part 384

Section 384.206. As previously described, § 383.71(b)(1)(ii) was redesignated as § 383.71(b)(1) on October 1, 2012 (77 FR 59825). Therefore, the references to ''§§ 383.71(b)(1)(ii)(A)'' and ''383.71(b)(1)(ii),'' in § 384.206(a)(1)(ii) and (a)(2)(iii), respectively, are corrected. In paragraph (a)(2)(iii), the reference to ''§ 383.73(j)(4)'' is corrected to read ''§ 383.73(o)(4).'' This reference changed when § 383.73 was revised on May 9, 2011 (76 FR 26883), but the Agency inadvertently did not change this cross reference.

Section 384.216. Paragraph (b) is amended by correcting the cross reference to ''§ 383.51(a)(5)'' to read ''§ 383.51(a)(6).'' When § 383.51(a) was revised on May 9, 2011 (76 FR 26879), this change was not made.

Sections 384.222 and 384.223. When § 383.37 was revised on May 9, 2011 (76 FR 26879), the Agency did not make the necessary changes to the cross

[2] The Office of the Federal Register publishes the ''Document Drafting Handbook,'' which provides Federal Agencies with guidance and examples for complying with the OFR's format and editorial requirements for **Federal Register** documents. It is available at: *http://www.archives.gov/federal-register/write/handbook/ddh.pdf.* See page 2–45.

[3] ''Document Drafting Handbook,'' page 2–45.

[4] ''Style Manual,'' 10.6.

references in §§ 384.222 and 384.223. The reference to ''§ 383.37(c)'' in § 384.222 is removed and replaced by a reference to ''§ 383.37(d),'' which discusses out-of-service orders. In § 384.223, the reference to ''§ 383.37(d)'' is changed to reference ''§ 383.37(e),'' which discusses railroad-highway grade crossings.

Section 384.225. Paragraph (a)(2)(i) is changed by replacing the reference to ''§ 383.71(b)(1)(ii)'' with a reference to ''§ 383.71(b)(1).'' Section 383.71(b)(1)(ii) was redesignated as § 383.71(b)(1) on October 1, 2012 (77 FR 59825).

Section 384.229. In paragraph (a), the last sentence is removed because the cross- referenced exception in § 383.75(a)(7) was eliminated in a March 25, 2013 final rule (78 FR 17881).

Section 384.305. In paragraph (a), the phrase ''Division Administrator/'' is inserted in front of the words ''State Director.'' As previously noted, generally, the head of each FMCSA State office is the Division Administrator. However, the Agency has one remaining State Director, in the Puerto Rico Division.

Section 384.309. Paragraph (a)(2) incorrectly references § 384.307(c). The correct reference is to § 384.307(d), which addresses final FMCSA determinations. When § 384.307 was revised on July 31, 2002 (67 FR 49763), this change was not made.

Section 384.403. Paragraph (a) references § 384.401(a)(1) or (b)(1). However, since July 5, 2007 (72 FR 36788), paragraphs (a) and (b) in § 384.401 no longer have subparagraphs. The references in § 384.403(a) are corrected to read ''§ 384.401(a) or (b).''

Part 385

Sections 385.3, 385.407, and 385.421. As previously mentioned, an Act of Congress abolished RSPA and certain of its duties were transferred to PHMSA. In several sections, FMCSA changes a reference to RSPA to a reference to PHMSA to reflect the current name of the agency with the statutory authority to regulate the transportation of hazardous materials. Section 385.3 is changed by removing ''RSPA means the Research and Special Programs Administration'' and adding, in alphabetical order, ''PHMSA means the Pipeline and Hazardous Materials Safety Administration.'' Sections 385.407(c) and 385.421(a)(9) are both changed to remove terms related to the obsolete Research and Special Programs Administration and add, in their place, the term ''Pipeline and Hazardous Materials Safety Administration'' or the acronym ''PHMSA.''

Section 385.4. In this section, FMCSA removes the name ''Mr. Thomas Kelly'' and adds the title ''Chief, Compliance Division'' in its place. This change makes clear that any questions should be addressed to the current Chief of the Compliance Division. Paragraph (b) is changed to correct a typographical error in the address.

Part 386

Sections 386.2, 386.7, and 386.8. As part of a reorganization in DOT, the Docket Management Facility was renamed Docket Operations. FMCSA corrects §§ 386.2, 386.7, and 386.8 to be consistent with the official title used by the facility. In the definition of ''Dockets'' in § 386.2, the run-in, italic heading is changed to read ''Docket Operations.'' The address in § 386.7 is changed from ''Department of Transportation Docket Management Facility'' to ''Department of Transportation Docket Operations.'' In § 386.8(c)(2), the name of the facility is changed from ''Dockets'' to ''Docket Operations.''

Section 386.11. The Agency updates the title of the office in paragraph (a) to read ''Director, Office of Carrier, Driver, and Vehicle Safety Standards (MC–PS)'' to reflect current usage and makes editorial changes to paragraph (b) for consistency.

Section 386.13. Paragraph (a)(5) is changed to clarify that the information in the paragraph refers to a petition and not a reply. In addition, the cross reference is changed from ''§ 386.31'' to ''§ 386.6(c)'' because on May 18, 2005, former § 386.31 was superseded by § 386.6 (70 FR 28480).

Section 386.22. In paragraphs (d) and (e), the comma following ''reject it'' is removed to correct a typographical error and to be consistent with § 386.22(c).

Section 386.48. The Agency updates the title of the office to read ''Director, Office of Carrier, Driver, and Vehicle Safety Standards (MC–PS)'' to reflect current usage.

Section 386.51. In paragraph (a), the word ''anytime'' is changed to read ''any time'' to correct a typographical error and to be consistent with § 386.51(b).

Section 386.72. In paragraph (b)(3), the Agency adds a reference to ''employee'' to the definition of ''imminent hazard'' to reflect the wording of the statute at 49 U.S.C. 521(b)(5)(B).

Section 386.73. Paragraph (g)(8)(iii) is amended by replacing the reference to ''(g)(5)'' with ''(g)(7),'' the correct reference to the 30-day period for review of a petition. This cross reference was incorrect when the section was added April 26, 2012 (77 FR 24870).

Section 386.83. Section 386.83 contains a reference to 49 CFR part 386 Appendix A (h) that was not updated after that paragraph was re-numbered. This rule corrects that so that it properly references 49 CFR part 386 Appendix A (i).

Part 387

Sections 387.5 and 387.29. The word ''means'' is inserted between the term being defined and the definition for several terms defined in these sections. This change provides added clarity and readability, and conforms to other sections throughout the CFR.

Sections 387.307, 387.315, and 387.409. Each instance of the terms ''state'' and ''federal'' are capitalized in these sections, to be consistent with the Government Printing Office style.[5] In § 387.307, paragraph (d)(1), the term ''subsection (a)'' after the phrase ''. . . full security limits under. . .'' is replaced by the phrase ''paragraph (a) of this section,'' to conform to Office of the Federal Register style.[6]

Part 389

Section 389.25. Section 389.25 is revised to correct typographical and grammatical errors. The phrase ''or example'' is replaced by the phrase ''For example''. Also, the word ''to'' is inserted between the words ''. . . minutes are kept, or'' and ''participate in any other proceeding. . . .''

Part 390

Section 390.3. In paragraph (f)(1), the list of exceptions is amended to include § 391.15(e), Disqualification for violation of prohibition of texting while driving a commercial motor vehicle, and § 391.15(f), Disqualification for violation of a restriction on using a hand-held mobile telephone while driving a commercial motor vehicle. The first citation (§ 391.15(e)) was originally included in the September 25, 2010, texting final rule (75 FR 59118). When the paragraph was revised by the cell phone rule to add that exception in § 391.15(f) on December 2, 2011 (76 FR 75470), § 391.15(e)—the texting rule disqualification—was inadvertently omitted from the list of exceptions. Also, paragraph (f)(6) is amended to include an additional exception (§ 391.15(e)) for the texting provisions. This citation was included in the 2010 texting final rule, but inadvertently removed by the 2011 cell phone rule.

Section 390.5. In the definition of ''Bus,'' the phrase ''and or used'' is

[5] ''Style Manual,'' 2000, chapter 4.

[6] ''Document Drafting Handbook,'' page 2–45.

changed to ''and/or used'' to correct a typographical error.

Section 390.19. The section heading is changed to correspond to the entities listed in paragraph § 390.19(a)(2) required to submit Form MCS–150B to the Agency. The new heading reads ''§ 390.19 Motor carrier, hazardous material safety permit applicant/holder, and intermodal equipment provider identification reports.''

Section 390.21. In paragraph (e)(2)(iv), the word ''part'' is inserted between the words ''CFR'' and ''376,'' to conform to Office of the Federal Register style.[7] Also, in paragraph (g)(4)(iii), the acronyms ''SCAC'' and ''VIN'' are used, but they not defined until § 390.21(g)(4)(v)(A). For clarity, the acronyms SCAC and VIN are spelled out in § 390.21(g)(4)(iii) as follows: ''Standard Carrier Alpha Code (SCAC)'' and ''Vehicle Identification Number (VIN)'' the first time they are used, but the acronyms alone are used in paragraph (g)(4)(v)(A).

Section 390.40. In paragraph (f), the reference to ''§ 396.12'' is replaced with a reference to ''§ 396.3(b)(3),'' which is the correct citation for records of inspection, repair and maintenance. Also, paragraph (j) included a reference to § 386.72(b)(1), which is incorrect because the definition of ''imminent hazard'' is no longer contained in that paragraph. Thus, in paragraph (j) of § 390.40, the reference to ''§ 396.72(b)(1)'' is removed and replaced with a reference to ''§ 396.72(b)(3).

Section 390.107. In the introductory text of § 390.107, the comma is removed between the word ''* * * in'' and the phrase ''accordance with the minimum specifications * * *'' to correct a typographical error.

Part 391

Section 391.2. In paragraphs (a), (b), and (c) of § 391.2, the references to ''§ 391.15(e) and (g)'' are removed and replaced with references to ''§ 391.15(e) and (f),'' to correct a typographical error. Section 391.2 was revised and § 391.15(f) was added on December 2, 2011 (76 FR 75487), with this incorrect cross reference. There has never been a § 391.15(g).

Section 391.15. In paragraph (c)(1)(ii), the reference to ''§ 395.2(a)'' is removed and replaced with a reference to ''§ 395.2,'' to correct a typographical error. Because it is a definitions section, § 395.2 is arranged alphabetically, rather than by paragraphs. Also, in paragraph (c)(1)(ii), the semicolon is removed following the phrase ''* * * or foreign commerce'' and replaced with a period, to correct a typographical error and to be consistent with other instances in this section.

Section 391.47. In paragraphs (c), (d)(1) and (d)(2), and (f), the phrase ''Director of Bus and Truck Operations (MC–PSDPSD)'' is changed to correctly refer to the position title and mail routing symbol, respectively, as ''Director, Office of Carrier, Driver and Vehicle Safety Standards (MC–PS).''

Section 391.49. In paragraphs (g), (h), (j)(1), (j)(2), and (k), the phrase ''Division Administrator/'' is added before the words ''State Director'' in each instance the term is used. As noted previously, except for the Puerto Rico Division, the head of each FMCSA State office is the Division Administrator.

Section 391.65. In paragraphs (a) introductory text, (a)(1), (a)(2), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), and the certification statement in (a)(2)(vii), the words ''regularly employed'' or variations of that phrase are replaced by the words ''single-employer driver'' or variations of that phrase. The reference in paragraph (a)(2)(iii) to the definition of a regularly employed driver in § 390.5 is no longer correct. The definition of ''regularly employed driver'' has been replaced by the definition of ''single-employer driver'' (see 63 FR 33276, June 18, 1998).

Part 393

Section 393.3. The negative implications in § 393.3—that additional equipment or accessories that reduce operation safety are prohibited—is re-phrased as an affirmative prohibition.

Section 393.11. In Footnote 12, the reference to ''§ 392–22(a)'' is replaced by a reference to ''§ 392.22(a).'' In Footnote 15(l), the reference to ''Section 393.11'' is replaced by a reference to ''§ 393.11.'' These changes correct a typographical error and conform the footnotes to Office of the Federal Register style.[8]

Section 393.49. In paragraph (a), the word ''busses'' is replaced with the word ''buses,'' to correct a typographical error.

Subpart E of Part 393. FMCSA removes the outdated authority citation for subpart E—Fuel Systems, which follows the subpart heading. The authority citation for part 393 adequately covers subpart E.

Section 393.67. In paragraphs (a)(2) and (a)(3), the reference to ''paragraph (c)(7)(iii)'' is replaced with a reference to ''paragraph (c)(7)(ii),'' which is the correct citation for diesel fuel tanks. In paragraph (c)(9), the word ''systems test'' is replaced with the words ''system test'' to correct a typographical error.

Section 393.71. In paragraph (h)(7), the words ''Tow-bars of such design on in our condition as to permit . . .'' are replaced with the words ''Tow-bars of such design or in such condition as to permit . . .'' to correct typographical errors. FMCSA removes the authority citation at the end of § 393.71 because it is outdated and because the authority citation for part 393 accurately describes the authority for the section.

Section 393.77. Paragraph ''(b)(15)(i) *Exception''* is redesignated as ''(c) *Exception''* to maintain alphabetical continuity with paragraph ''(b) *Heater,''* the preceding paragraph.

Section 393.95. In paragraph (j), the words ''See § 393.7(c)'' are replaced with the words ''See § 393.7'' to correct the reference to matters or material incorporated by reference.

Section 393.102. In paragraph (b), the reference to ''Sec.'' in ''Sec. 393.106(b)'' is replaced with the section symbol (§), to read ''§ 393.106(b).'' In paragraph (c), the quotation mark (") following the words ''if the cargo is'' is replaced with a colon (:) to correct a typographical error.

Section 393.118. In paragraph (d)(3)(iv)(B)(2)(i), the word ''about'' between the words ''6 feet'' and ''the deck'' is replaced with the word ''above'' to correct a typographical error. Also, paragraph (d)(5) is redesignated as paragraph (e), since the content in paragraph (d)(5) is not included within the scope of ''securement of bundles transported using more than one tier.''

Section 393.120. In the italic, run-in headings of paragraphs (b), (c), and (d), the words ''in an'' are added after the words ''. . . in a sided vehicle or'' and before the words ''intermodal container.'' In paragraph (b)(1)(iv), the words ''must be used'' are removed. In the introductory text of paragraph (b)(2), the word ''the'' is removed after the words ''longitudinal row,'' and, in its place, is added the word ''then.'' In paragraph (d)(1)(v), the comma is removed between the words ''Either blocking'' and ''or friction mats.'' In the last sentence of paragraph (d)(3)(iv), the extraneous phrase ''he forward direction.'' is deleted to correct a typographical error.

Section 393.124. The paragraph that follows § 393.124(d)(5)(vi) is redesignated from paragraph ''(a)'' to paragraph ''(e).'' Currently, the paragraph is mislabeled as paragraph (a). In newly redesignated paragraph (e)(2)(ii)(B), the period at the end of the paragraph is replaced with a semicolon. In paragraph (f)(2)(i), the period at the

[7] ''Document Drafting Handbook,'' page 2–45.

[8] ''Document Drafting Handbook,'' page 2–44, et seq.

end of the paragraph is removed and replaced with a semicolon.

Section 393.136. In paragraph (b)(2), the words ''hard wood'' are replaced with the word ''hardwood'' to correct a typographical error.

Section 393.203. In paragraph (a), the word ''exist'' is replaced with the word ''exit'' to correct a typographical error.

Part 395

Section 395.1. On August 25, 2005, the Agency modified substantially the sleeper berth regulations in § 395.1(g) (70 FR 50071). Among other things, the 2005 sleeper berth provisions referred to the 11- and 14-hour limits, which do not apply in Alaska. Inadvertently, FMCSA did not include alternative Alaska limits in that rulemaking. As a result, the current sleeper berth rules say that drivers can drive only 11 hours in a 14-hour window, while Alaska drivers can drive 15 hours in a non-consecutive 20-hour window. This rulemaking corrects that oversight by adding the alternative limits for Alaska drivers to § 395.1(g).

The title of paragraph (m) in § 395.1, ''Construction materials and equipment,'' is italicized to stylistically conform to the titles of the other paragraphs in that section.

Section 395.3. Paragraph (d), dealing with the once-a-week limit on restarting the 60- and 70-hour rules, is amended to include references to a weekly limit on restarting the special 70- and 80-hour rules effective in Alaska.

Section 395.8. In the note to paragraph (c), the word ''nerest'' is replaced by the word ''nearest,'' and in paragraph (f)(11) ''ff duty'' is replaced by ''off duty'' to correct typographical errors.

Part 396

Section 396.9. In paragraph (c)(1), the phrase ''out-of-Service Vehicle sticker'' is replaced by the phrase ''Out-of-Service Vehicle sticker,'' to correct a typographical error.

Section 396.11. Section 396.11 is amended to correct grammatical errors. In paragraph (a)(1)(xi), the semicolon at the end of the paragraph is replaced by a period. In paragraph (b)(1)(ix), a period is added at the end of the paragraph. In paragraph (b)(2)(ix), the semicolon at the end of the paragraph is replaced by a period. In paragraph (b)(2)(iv)(B), a period is added at the end of the paragraph.

Section 396.15. In paragraphs (b) and (c), the word ''towbar'' is replaced by the word ''tow-bar'' to correct a typographical error.

Part 397

Section 397.65. Under the definition of ''Indian tribe,'' the symbol (§) that precedes the section number of the statute is replaced by the term ''section,'' to conform to Government Printing Office style.[9] The definition of ''Radioactive material'' is updated to reflect changes to the definition of the ''radioactive material'' as defined in 49 CFR 173.403. This definition was revised on January 26, 2004 (69 FR 3670).

Sections 397.67, 397.69, and 397.71. These three paragraphs are amended to correct certain grammatical errors. In the introductory text of § 397.67(b), the phrase ''a NRHM routing designations,'' is replaced by the phrase ''NRHM routing designations.'' In § 397.67 (d), the word ''or'' is added after the words ''Division 1.1, 1.2''. The Agency corrects § 397.69(b) and § 397.71(b)(6), (b)(9)(i), and (b)(9)(iv) by replacing the words ''a NRHM'' with the words ''an NRHM'' wherever they appear. In addition, in § 397.71(b)(2)(ii), the word ''their'' following ''. . . the public will be afforded the opportunity to present'' is replaced by the word ''its.''

Section 397.73. In paragraph (a), the reference to ''Section 2B–43'' is replaced by a reference to ''Section 2B–62,'' to reflect revisions in the updated ''Manual on Uniform Traffic Control Devices.''[10] In paragraph (b), the phrase ''their jurisdictions'' following ''. . . shall provide information identifying all NRHM routing designations which exist within'' is replaced by the phrase ''its jurisdiction'' to correct a grammatical error.

Section 397.101. In paragraph (d), the words ''shall prepared'' are replaced by the words ''shall prepare'' to correct a typographical error. The introductory text to paragraph (g) is clarified to correctly refer the reader to 49 CFR 173.403 instead of 49 CFR 173.401(l) for the definition of a ''Highway route controlled quantity'' of a radioactive material. This corrects a misprint.

Section 397.201. In paragraph (c), under the definition of ''Administrator,'' the phrase ''Federal Highway Administrator'' is replaced by ''Federal Motor Carrier Safety Administrator'' to comply with the intent of the technical changes rule published in the **Federal Register** on October 1, 2001 (66 FR 49867).

Section 397.213. In paragraph (b)(4), the phrase ''subdivision thereof, our Indian tribe'' is replaced by the phrase ''subdivision thereof or Indian tribe'' to correct a typographical error.

Appendix G to Subchapter B of Chapter III

FMCSA changes Appendix G to Subchapter B of Chapter III in multiple places to conform to Office of the Federal Register style.[11] Under ''5. Lighting Devices,'' the term ''Section'' in the reference to ''Section 393'' is replaced with ''part.'' In subparagraph a(9), under ''10. Tires,'' the reference to ''393.75(e)'' is replaced with a reference to ''§ 393.75(e).'' Under ''12. Windshield Glazing,'' the reference to ''393.60'' is replaced with ''§ 393.60.'' In addition, under the heading, ''Differences Between the Out-of-Service Criteria & FMCSA's Annual Inspection,'' the Agency makes all the following changes. Under the heading ''3. Exhaust System,'' in both instances in which the term ''Section'' is used to reference ''Section 393.83,'' that term is replaced with the section symbol (§). Under ''5. Lighting Devices,'' the term ''Section'' in the reference to ''Section 393'' is replaced with ''part.'' Under ''9. Frame,'' the reference to ''393.201'' is replaced with ''§ 393.201.'' The reference to ''393.75'' under ''10. Tires,'' is replaced with ''§ 393.75.'' Under ''11. Wheel and Rims,'' the reference to ''393.205'' is replaced with ''§ 393.205.'' Finally, under ''12. Windshield Glazing,'' the reference to ''393.60'' is replaced with ''§ 393.60.''

Rulemaking Analyses

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

FMCSA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866, as supplemented by Executive Order 13563 (76 FR 3821, January 18, 2011), or within the meaning of the DOT regulatory policies and procedures (44 FR 1103, February 26, 1979). Thus, the Office of Management and Budget (OMB) did not review this document. We expect the final rule will have minimal, if any, costs; therefore, a full regulatory evaluation is unnecessary.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612), FMCSA has evaluated the effects of this rule on small entities. Because the rule only makes minor editorial corrections and places no new

[9] ''Style Manual,'' 9.39.

[10] The ''Manual on Uniform Traffic Control Devices,'' published by the Federal Highway Administration, is available from: *http://mutcd.fhwa.dot.gov/pdfs/2009r1r2/pdf_index.htm.*

[11] ''Document Drafting Handbook,'' pages 2–44 and 2–45.

requirements on the regulated industry, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance; please consult the FMCSA point of contact, Elaine Walls, listed in the **FOR FURTHER INFORMATION CONTACT** section of this rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's 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 FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

Unfunded Mandates Reform Act

The final rule will not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532, *et seq.*), that will result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $143.1 million (which is the value equivalent of $100,000,000 in 1995, adjusted for inflation to 2010 levels) or more in any 1 year.

E.O. 13132 (Federalism)

A rule has implications for Federalism under section 1(a) of Executive Order 13132 if it has ''substantial direct effects on the States, on the relationship between national government and the States, or on the distribution of power and responsibilities among various levels of government.'' FMCSA has determined that this rule will not have substantial direct effects on States, nor will it limit the policymaking discretion of States. Nothing in this document preempts or modifies any provision of State law or regulation, imposes substantial direct unreimbursed compliance costs on any State, or diminishes the power of any State to enforce its own laws. Accordingly, this rulemaking does not have Federalism implications warranting the application of E.O. 13132.

E.O. 12372 (Intergovernmental Review)

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rule.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175 titled, ''Consultation and Coordination With Indian Tribal Governments,'' because it would 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.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. FMCSA determined that no new information collection requirements are associated with this final rule.

National Environmental Policy Act and Clean Air Act

FMCSA analyzed this final rule for the purpose of ascertaining the applicability of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined under our Environmental Procedures Order 5610.1, issued March 1, 2004 (69 FR 9680), that this action would not have any effect on the quality of the environment. In addition, this final rule is categorically excluded from further analysis and documentation under the Categorical Exclusion (CE) in paragraph 6(b) of Appendix 2 of FMCSA Order 5610.1. This CE addresses minor editorial corrections such as those addressed in this rulemaking; therefore preparation of an environmental assessment or environmental impact statement is not necessary.

The FMCSA also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 42 U.S.C. 7506(c)), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it does not affect direct or indirect emissions of criteria pollutants.

E.O. 12898 (Environmental Justice)

This technical amendment final rule is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994). Executive Order 12898 establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. FMCSA determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not change the substance of any of the FMCSRs.

E.O. 13211 (Energy Effects)

FMCSA has analyzed this rule under Executive Order 13211 titled, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.'' The Agency has determined that it is not a ''significant energy action'' under that Executive Order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, no Statement of Energy Effects is required.

E.O. 13045 (Protection of Children)

Executive Order 13045 titled, ''Protection of Children From Environmental Health Risks and Safety Risks'' (62 FR 19885, Apr. 23, 1997), requires agencies issuing ''economically significant'' rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation's environmental health and safety effects on children. As discussed previously, this rule is not economically significant. Therefore, no analysis of the impacts on children is required.

E.O. 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988 titled, ''Civil Justice Reform,'' to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630 titled, ''Governmental Actions and Interference With Constitutionally Protected Property Rights.''

National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) requires Federal agencies proposing to adopt technical standards to consider whether voluntary consensus standards are available. If the Agency chooses to adopt its own standards in place of existing voluntary consensus standards, it must explain its decision in a separate statement to OMB. Because FMCSA does not intend to adopt technical standards, there is no need to submit a separate statement to OMB on this matter.

Privacy Impact Assessment

Section 522(a)(5) of the Transportation, Treasury, Independent Agencies, and General Government Appropriations Act, 2005 (Pub. L. 108–447, Division H, Title I, 118 Stat. 2809 at 3268, Dec. 8, 2004) requires DOT and certain other Federal agencies to conduct a privacy impact assessment of each rule that will affect the privacy of individuals. Because this final rule will not affect the privacy of individuals, FMCSA did not conduct a separate privacy impact assessment.

List of Subjects

49 CFR Part 325

Motor carriers, Noise control.

49 CFR Part 350

Grant programs—transportation, Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 355

Highway safety, Intergovernmental relations, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 365

Administrative practice and procedure, Brokers, Buses, Freight forwarders, Maritime carriers, Mexico, Motor carriers, Moving of household goods.

49 CFR Part 369

Reporting and recordkeeping requirements.

49 CFR Part 370

Freight forwarders, Investigations, Motor carriers.

49 CFR Part 372

Agricultural commodities, Buses, Cooperatives, Freight forwarders, Motor carriers, Moving of household goods, Seafood.

49 CFR Part 375

Advertising, Consumer protection, Freight, Highways and roads, Insurance, Motor carriers, Moving of household goods, Reporting and recordkeeping requirements.

49 CFR Part 376

Motor carriers, Reporting and recordkeeping requirements.

49 CFR Part 380

Administrative practice and procedure, Highway safety, Motor carriers, Reporting and recordkeeping requirements.

49 CFR Part 381

Motor carriers.

49 CFR Part 382

Administrative practice and procedure, Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers, Penalties, Safety, Transportation.

49 CFR Part 383

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety and motor carriers.

49 CFR Part 384

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

49 CFR Part 385

Administrative practice and procedure, Highway safety, Incorporation by reference, Mexico, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 386

Administrative practice and procedure, Brokers, Freight forwarders, Hazardous materials transportation, Highway safety, Motor carriers, Motor vehicle safety, Penalties.

49 CFR Part 387

Buses, Freight, Freight forwarders, Hazardous materials transportation, Highway safety, Insurance, Intergovernmental relations, Motor carriers, Motor vehicle safety, Moving of household goods, Penalties, Reporting and recordkeeping requirements, Surety bonds.

49 CFR Part 389

Administrative practice and procedure, Highway safety, Motor carriers, Motor vehicle safety.

49 CFR Part 390

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 391

Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers, Reporting and recordkeeping requirements, Safety, Transportation.

49 CFR Part 393

Highway safety, Motor carriers, Motor vehicle safety.

49 CFR Part 395

Highway safety, Motor carriers, Reporting and recordkeeping requirements.

49 CFR Part 396

Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 397

Administrative practice and procedure, Highway safety, Intergovernmental relations, Motor carriers, Parking, Radioactive materials, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, FMCSA is amending 49 CFR chapter III, parts 325, 350, 355, 365, 369, 370, 372, 375, 376, 380, 381, 382, 383, 384, 385, 386, 387, 389, 390, 391, 393, 395, 396, and 397, and appendix G to subchapter B, as set forth below:

PART 325—COMPLIANCE WITH INTERSTATE MOTOR CARRIER NOISE EMISSION STANDARDS

■ 1. The authority citation for part 325 is revised to read as follows:

Authority: 42 U.S.C. 4917; 49 U.S.C. 301; and 49 CFR 1.87.

§ 325.1 [Amended]

■ 2. Amend § 325.1(c)(6) by removing the comma between the words ''asphalt'' and ''spreaders''.

§ 325.13 [Amended]

■ 3. In § 325.13, amend paragraph (d)(1) as follows:

■ a. Remove the words ''Federal Highway Administration'' and add in their place the words ''Federal Motor Carrier Safety Administration''.

■ b. Remove the words ''Federal Motor carrier Safety Administration'' and add in their place the words ''Federal Motor Carrier Safety Administration'' in the last sentence of the paragraph,

■ c. Remove the extra space following the word ''Administration'' and before the comma in the last sentence of the paragraph.

PART 350—COMMERCIAL MOTOR CARRIER SAFETY ASSISTANCE PROGRAM

■ 4. The authority citation for part 350 continues to read as follows:

Authority: 49 U.S.C. 13902, 31101–31104, 31108, 31136, 31140–31141, 31161, 31310–31311, 31502; and 49 CFR 1.87.

§ 350.205 [Amended]

■ 5. Amend § 350.205(b) by removing the words ''State Director'' and adding the words ''Division Administrator/State Director'' in their place.

§ 350.341 [Amended]

■ 6. Amend § 350.341(h)(2) by removing the word ''affect'' and adding in its place the word ''effect''.

PART 355—COMPATIBILITY OF STATE LAWS AND REGULATIONS AFFECTING INTERSTATE MOTOR CARRIER OPERATIONS

■ 7. The authority citation for part 355 is revised to read as follows:

Authority: 49 U.S.C. 504 and 31101 *et seq.;* and 49 CFR 1.87.

Appendix A to Part 355 [Amended]

■ 8. Amend Appendix A to part 355, in paragraph 2.b under the center heading ''State Determinations,'' by capitalizing the first word of the paragraph.

PART 365—RULES GOVERNING APPLICATIONS FOR OPERATING AUTHORITY

■ 9. The authority citation for part 365 is revised to read as follows:

Authority: 5 U.S.C. 553 and 559; 49 U.S.C. 13101, 13301, 13901–13906, 14708, 31138, and 31144; and 49 CFR 1.87.

Appendix A to Subpart E of Part 365 [Amended]

■ 10. In the table below, for each section of Appendix A to subpart E of part 365 indicated in the left column, remove the words indicated in the middle column and add the words indicated in the right column in their place.

Section	Remove	Add
Section I, paragraph (c)(6)	§ 385.103(d)	§ 385.103(c).
Section II, paragraph (b)(2)	Section	section.
Section III, paragraph (b)	II (a)(1) through (5)	III (a)(1) through (5).
Section III, paragraph (b)	part III	part IV.
Section IV, paragraph (k)(2)	III (k)(1)(i)	IV (k)(1)(i).
Section IV, paragraph (k)(3)	III (k)(1)(vi)	IV (k)(1)(vi).
Section IV, paragraph (l), introductory text	part II (a)(1)	part III (a)(1).
Section IV, paragraph (l), introductory text	part III	part IV.

PART 369—REPORTS OF MOTOR CARRIERS

■ 11. The authority citation for part 369 continues to read as follows:

Authority: 49 U.S.C. 14123; and 49 CFR 1.87.

§ 369.2 [Amended]

■ 12. Amend § 369.2, NOTE A, by redesignating it as ''Note to § 369.2'' and by removing the words ''Producers Price Index'' and adding the words ''Producer Price Index'' in their place.

§ 369.3 [Amended]

■ 13. Amend the NOTE following § 369.3 by redesignating it as ''Note to § 369.3'' and by removing the words ''Producers Price Index'' and adding the words ''Producer Price Index'' in their place.

PART 370—PRINCIPLES AND PRACTICES FOR THE INVESTIGATION AND VOLUNTARY DISPOSITION OF LOSS AND DAMAGE CLAIMS AND PROCESSING SALVAGE

■ 14. The authority citation for part 370 continues to read as follows:

Authority: 49 U.S.C. 13301 and 14706; and 49 CFR 1.87.

§ 370.9 [Amended]

■ 15. Amend § 370.9(b) by removing the reference to ''§ 375.1(b)(1)'' and adding in its place a reference to ''§ 375.103''.

PART 372—EXEMPTIONS, COMMERCIAL ZONES, AND TERMINAL AREAS

■ 16. The authority citation for part 372 continues to read as follows:

Authority: 49 U.S.C. 13504 and 13506; and 49 CFR 1.87.

§ 372.109 [Amended]

■ 17. Amend § 372.109(a) by removing the words ''federation of cooperation association'' and adding in their place the words ''federation of cooperative associations''.

§ 372.117 [Amended]

■ 18. Amend § 372.117(a) by removing the reference to ''section (c) herein'' and adding in its place a reference to ''paragraph (c) of this section''.

§ 372.211 [Amended]

■ 19. Amend § 372.211(e) by adding the word ''or'' between the word ''Pittsburgh'' and the words ''by any other municipality''.

§ 372.213 [Amended]

■ 20. Amend § 372.213(e) by adding the words ''of Pueblo or by any other municipality'' following the words ''by the municipality''.

§ 372.227 [Amended]

■ 21. Amend § 372.227 as follows:

■ a. In paragraph (d), add the word ''paragraphs'' between the words ''defined in'' and the words ''(b) and (c) of this section''.

■ b. In paragraph (e), add the word ''paragraph'' between the words ''the terms of'' and the words ''(d) of this section''.

§ 372.229 [Amended]

■ 22. Amend § 372.229 as follows:

■ a. In paragraph (d), add the word ''paragraphs'' between the words ''areas in'' and the words ''(b) and (c) of this section''.

■ b. In paragraph (e), add the word ''paragraph'' between the words ''the terms of'' and the words ''(d) of this section''.

§ 372.231 [Amended]

■ 23. Amend § 372.231 as follows:

■ a. In paragraph (d), add the word ''paragraphs'' between the words ''defined in'' and the words ''(b) and (c) of this section''.

■ b. In paragraph (e), add the word ''paragraph'' between the words ''the terms of'' and the words ''(d) of this section''.

§ 372.233 [Amended]

■ 24. Amend § 372.233(e) by adding the words ''of Chicago or any other municipality'' following the words ''by the municipality''.

PART 375—TRANSPORTATION OF HOUSEHOLD GOODS IN INTERSTATE COMMERCE; CONSUMER PROTECTION REGULATIONS

■ 25. The authority citation for part 375 continues to read as follows:

Authority: 49 U.S.C. 13102, 13301, 13501, 13704, 13707, 13902, 14104, 14706, 14708; subtitle B, title IV of Pub. L. 109–59; and 49 CFR 1.87.

■ 26. In § 375.105, revise paragraph (b) to read as follows:

§ 375.105 What are the information collection requirements of this part?

* * * * *

(b) The information collection requirements are found in the following sections: §§ 375.205, 375.207, 375.209, 375.211, 375.213, 375.215, 375.217, 375.303, 375.401, 375.403, 375.405, 375.409, 375.501, 375.503, 375.505, 375.507, 375.515, 375.519, 375.521, 375.605, 375.607, 375.609, 375.803, 375.805, and 375.807.

PART 376—LEASE AND INTERCHANGE OF VEHICLES

■ 27. The authority citation for part 376 continues to read as follows:

Authority: 49 U.S.C. 13301 and 14102; and 49 CFR 1.87.

§ 376.11 [Amended]

■ 28. Amend § 376.11(d)(1) by removing the words ''the balance f documentation'' and adding in their place the words ''the balance of documentation''.

PART 380—SPECIAL TRAINING REQUIREMENTS

■ 29. The authority citation for part 380 continues to read as follows:

Authority: 49 U.S.C. 31133, 31136, 31307, and 31502; sec. 4007(a) and (b) of Pub. L. 102–240 (105 Stat. 2151–2152); and 49 CFR 1.87.

§ 380.502 [Amended]

■ 30. Amend § 380.502(b) by removing the words ''whistle blower'' and adding in their place the word ''whistleblower''.

§ 380.513 [Amended]

■ 31. Amend § 380.513(e) by removing the words ''whistle blower'' and adding in their place the word ''whistleblower''.

Appendix to Part 380 [Amended]

■ 32. Amend the Appendix to Part 380, Section 3—Safe Operating Practices, Unit 3.5—Security issues, by removing the words ''Research and Special Programs Administration'' and adding, in their place, the words ''Pipeline and Hazardous Materials Safety Administration''.

PART 381— WAIVERS, EXEMPTIONS, AND PILOT PROGRAMS

■ 33. The authority citation for part 381 continues to read as follows:

Authority: 49 U.S.C. 31136(e) and 31315; and 49 CFR 1.87.

§ 381.310 [Amended]

■ 34. Amend § 381.310(c)(5) by removing the words ''achieve a level a safety'' and adding in their place the words ''achieve a level of safety''.

§ 381.410 [Amended]

■ 35. Amend § 381.410(c)(8) by removing the words ''achieve a level a safety'' and adding in their place the words ''achieve a level of safety''.

PART 382—CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

■ 36. The authority citation for part 382 continues to read as follows:

Authority: 49 U.S.C. 31133, 31136, 31301 *et seq.,* 31502; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; and 49 CFR 1.87.

§ 382.401 [Amended]

■ 37. In the table below, for each paragraph of § 382.401 indicated in the left column, remove the words indicated in the middle column and add the words indicated in the right column in their place.

Paragraph	Remove	Add
(b)(2)	(except calibration of evidential breath testing devices).	(except calibration of evidential breath testing devices) shall be maintained for a minimum of 2 years.
(c)(5)(iv)	§ 40.213(a)	§ 40.213(g)''.
(d)	§ 390.31	§ 390.29.

§ 382.403 [Amended]

■ 38. Amend § 382.403(e) by removing the words ''*Consortia/Third party administrator*'' and adding in their place the words ''*Consortium/Third party administrator*''.

§ 382.601 [Amended]

■ 39. Amend § 382.601(b)(11) by removing the words ''and or'' between the words ''program'' and ''referral,'' and adding in their place the words ''and/or''.

PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

■ 40. The authority citation for part 383 continues to read as follows:

Authority: 49 U.S.C. 521, 31136, 31301 *et seq.,* and 31502; secs. 214 and 215 of Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 1012(b) of Pub. L. 107–56, 115 Stat. 272, 297, sec. 4140 of Pub. L. 109–59, 119 Stat. 1144, 1746; and 49 CFR 1.87.

■ 41. Amend § 383.3 by revising paragraph (f)(3)(i)(A) to read as follows:

§ 383.3 Applicability.

* * * * *

(f) * * *

(3) * * *

(i) * * *

(A) Has not had more than one license;

* * * * *

§ 383.5 [Amended]

■ 42. Amend § 383.5 by removing the quotation mark following the word ''probated'' in the definition of ''Conviction.''

§ 383.51 [Amended]

■ 43. In Table 2 to § 383.51, amend footnote 1 by removing the words ''valid

CDL'' and adding the words ''valid CLP or CDL'' in their place.

§ 383.53 [Amended]

■ 44. In the table below, for each paragraph of § 383.53 indicated in the left column, remove the reference indicated in the middle column and add the reference indicated in the right column in its place.

Paragraph	Remove	Add
(b)(2)	§ 383.37(c)	§ 383.37(d).
(c)	§ 383.37(d)	§ 383.37(e).

§ 383.71 [Amended]

■ 45. In the table below, for each paragraph of § 383.71 indicated in the left column, remove the words indicated in the middle column, wherever they appear, and add the words indicated in the right column in their place.

Paragraph	Remove	Add
(a)(1) introductory text	July 8, 2014	July 8, 2015.
(a)(2) introductory text	July 8, 2014	July 8, 2015.
(b)(1) introductory text	paragraph (b)(1)(ii)(A), (B), (C), or (D)	paragraph (b)(1)(i), (ii), (iii), or (iv).
(g)	§ 383.71(b)(1)(ii)	§ 383.71(b)(1).
(h)	§ 383.71(b)(1)(ii)(A)	§ 383.71(b)(1)(i).

§ 383.73 [Amended]

■ 46. In the table below, for each paragraph of § 383.73 indicated in the left column, remove the words indicated in the middle column, wherever they appear, and add the words indicated in the right column in their place.

Paragraph	Remove	Add
(a)(1)	July 8, 2014	July 8, 2015.
(a)(2) introductory text	July 8, 2014	July 8, 2015.
(a)(2)(vii)	§ 383.71(b)(1)(ii)(A)	§ 383.71(b)(1)(i).
(b)(3)(v)	§ 383.71(b)(1)(ii)(A)	§ 383.71(b)(1)(i).
(b)(5)	§ 383.71(b)(1)(ii)(A)	§ 383.71(b)(1)(i).
(c)(8)	§ 383.71(b)(1)(ii)(A)	§ 383.71(b)(1)(i).
(d)(8)	§ 383.71(b)(1)(ii)(A)	§ 383.71(b)(1)(i).
(e)(6)	§ 383.71(b)(1)(ii)(A)	§ 383.71(b)(1)(i).
(o)(1)(i)	§ 383.71(b)(1)(ii)	§ 383.71(b)(1).
(o)(4)(ii)	§ 383.71(b)(1)(ii)	§ 383.71(b)(1).
(o)(4)(ii)	§ 383.71(b)(1)(ii)(A)	§ 383.71(b)(1)(i).

§ 383.153 [Amended]

■ 47. Amend § 383.153(g) and (h) by removing the words ''July 8, 2014'' and adding in their place the words ''July 8, 2015'' wherever they appear.

PART 384—STATE COMPLIANCE WITH COMMERCIAL DRIVER'S LICENSE PROGRAM

■ 48. The authority citation for part 384 continues to read as follows:

Authority: 49 U.S.C. 31136, 31301, *et seq.,* and 31502; secs. 103 and 215 of Pub. L. 106–59, 113 Stat. 1753, 1767; and 49 CFR 1.87.

§ 384.206 [Amended]

■ 49. In the table below, for each paragraph of § 383.206 indicated in the left column, remove the reference indicated in the middle column and add the reference indicated in the right column in its place.

Paragraph	Remove	Add
(a)(1)(ii)	§ 383.71(b)(1)(ii)(A)	§ 383.71(b)(1)(i).
(a)(2)(iii)	§ 383.71(b)(1)(ii)	§ 383.71(b)(1).
(a)(2)(iii)	§ 383.73(j)(4)	§ 383.73(o)(4).

§ 384.216 [Amended]

■ 50. Amend § 384.216(b) by removing the reference to ''§ 383.51(a)(5)'' and adding in its place a reference to ''§ 383.51(a)(6)''.

§ 384.222 [Amended]

■ 51. Amend § 384.222 by removing the reference to ''§ 383.37(c)'' and adding in its place a reference to ''§ 383.37(d)''.

§ 384.223 [Amended]

■ 52. Amend § 384.223 by removing the reference to ''§ 383.37(d)'' and adding in its place a reference to ''§ 383.37(e)''.

§ 384.225 [Amended]

■ 53. Amend § 384.225(a)(2)(i) by removing the reference to ''§ 383.71(b)(1)(ii)'' and adding in its place a reference to ''§ 383.71(b)(1)''.

■ 54. Amend § 384.229 by revising paragraph (a) to read as follows:

§ 384.229 Skills test examiner auditing and monitoring.

* * * * *

(a) At least once every 2 years, conduct unannounced, on-site inspections of third party testers' and examiners' records, including comparison of the CDL skills test results of applicants who are issued CDLs with the CDL scoring sheets that are maintained in the third party testers' files;

* * * * *

§ 384.305 [Amended]

■ 55. Amend § 384.305(a) by adding the words ''Division Administrator/'' before the words ''State Director''.

§ 384.309 [Amended]

■ 56. Amend § 384.309(a)(2) by removing the reference to ''§ 384.307(c)'' and adding in its place a reference to ''§ 384.307(d)''.

§ 384.403 [Amended]

■ 57. Amend § 384.403(a) by removing the reference to ''§ 384.401(a)(1) or (b)(1)'' and adding in its place a reference to ''§ 384.401(a) or (b)''.

PART 385—SAFETY FITNESS PROCEDURES

■ 58. The authority citation for part 385 continues to read as follows:

Authority: 49 U.S.C. 113, 504, 521(b), 5105(e), 5109, 13901–13905, 31133, 31135, 31136, 31137(a), 31144, 31148, and 31502; Sec. 113(a), Pub. L. 103–311; Sec. 408, Pub. L. 104–88; Sec. 350 of Pub. L. 107–87; and 49 CFR 1.87.

■ 59. Amend § 385.3 by removing the definition of ''RSPA'' and adding in alphabetical order the definition of ''PHMSA'' to read as follows:

§ 385.3 Definitions and acronyms.

* * * * *

PHMSA means Pipeline and Hazardous Materials Safety Administration

■ 60. Amend § 385.4 as follows:

■ a. In paragraph (a), remove the reference to ''Mr. Thomas Kelly'' and add in its place the words ''Chief, Compliance Division.''

■ b. Revise paragraph (b) introductory text.

The revision reads as follows:

§ 385.4 Matter incorporated by reference.

* * * * *

(b) Commercial Vehicle Safety Alliance, 6303 Ivy Lane, Suite 310, Greenbelt, Maryland 20770–6319. Phone number (301) 830–6143.

* * * * *

■ 61. Amend § 385.407 by revising paragraph (c) to read as follows:

§ 385.407 What conditions must a motor carrier satisfy for FMCSA to issue a safety permit?

* * * * *

(c) *Registration with the Pipeline and Hazardous Materials Safety Administration (PHMSA).* The motor carrier must be registered with the PHMSA in accordance with part 107, subpart G of this title.

§ 385.421 [Amended]

■ 62. Amend § 385.421(a)(9) by removing the words ''Research and Special Programs Administration'' and adding, in their place, the words ''Pipeline and Hazardous Materials Safety Administration''.

PART 386—RULES OF PRACTICE FOR MOTOR CARRIER, INTERMODAL EQUIPMENT PROVIDER, BROKER, FREIGHT FORWARDER, AND HAZARDOUS MATERIALS PROCEEDINGS

■ 63. The authority citation for part 386 continues to read as follows:

Authority: 49 U.S.C. 113, chapters 5, 51, 59, 131–141, 145–149, 311, 313, and 315; Sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); Sec. 217, Pub. L. 105–159, 113 Stat. 1748, 1767; Sec. 206, Pub. L. 106–159, 113 Stat. 1763; subtitle B, title IV of Pub. L. 109–59; and 49 CFR 1.81 and 1.87.

§ 386.2 [Amended]

■ 64. Amend § 386.2, the definition for ''Dockets,'' by removing the run-in heading ''Dockets'' and adding in its place the heading ''Docket Operations''.

§ 386.7 [Amended]

■ 65. Amend § 386.7 by removing the words ''Management Facility'' and adding in their place the word ''Operations''.

§ 386.8 [Amended]

■ 66. Amend § 386.8(c)(2) by removing the word ''Dockets'' and adding in its place the words ''Docket Operations''.

§ 386.11 [Amended]

■ 67. In the table below, for each paragraph of § 386.11 indicated in the left column, remove the words indicated in the middle column and add the words indicated in the right column in their place, wherever they appear.

Paragraph	Remove	Add
(a) introductory text	Director, Office of Truck and Bus Standards and Operations.	Director, Office of Carrier, Driver, and Vehicle Safety Standards (MC–PS).
(b) introductory text	notice of violation	Notice of Violation.
(b)(3)	notice of violation	Notice of Violation.

■ 68. Amend § 386.13 by revising paragraph (a)(5) to read as follows:

§ 386.13 Petitions to review and request for hearing: Driver qualification proceedings.

(a) * * *

(5) Certification that the petition has been filed in accordance with § 386.6(c); and

* * * * *

§ 386.22 [Amended]

■ 69. Amend § 386.22(d) and (e) by removing the comma following the words ''reject it'' in each paragraph.

§ 386.48 [Amended]

■ 70. Amend § 386.48 by removing the words ''Director, Office of Truck and Bus Standards and Operations'' and adding in their place the words ''Director, Office of Carrier, Driver, and Vehicle Safety Standards (MC–PS)''.

§ 386.51 [Amended]

■ 71. Amend § 386.51(a) by removing the word ''anytime'' and adding in its place the words ''any time''.

§ 386.72 [Amended]

■ 72. Amend § 386.72(b)(3) by adding the word ''employee,'' after the word ''equipment,''.

§ 386.73 [Amended]

■ 73. Amend § 386.73(g)(8)(iii) by removing the reference to ''paragraph (g)(5)'' and adding in its place a reference to ''paragraph (g)(7)''.

■ 74. Amend § 386.83 by revising paragraph (c) to read as follows:

§ 386.83 Sanction for failure to pay civil penalties or abide by payment plan; operation in interstate commerce prohibited.

* * * * *

(c) A CMV owner or operator, or intermodal equipment provider that continues to operate in interstate commerce in violation of this section may be subject to additional sanctions under paragraph IV of (i) appendix A to part 386.

* * * * *

PART 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

■ 75. The authority citation for part 387 continues to read as follows:

Authority: 49 U.S.C. 13101, 13301, 13906, 14701, 31138, 31139, and 31144; and 49 CFR 1.87.

§ 387.5 [Amended]

■ 76. Amend § 387.5 as follows:

■ a. Remove the 1 em dash and add the word ''means'' after the italic heading of the term being defined and before the body of the definition for each of the following definitions: ''In bulk'', ''In bulk (Division 1.1, 1.2, and 1.3 explosives)'', ''In bulk (Division 2.3, Hazard Zone A or Division 6.1, Packing Group I, Hazard Zone A materials)'', and ''Insured and principal''.

■ b. Add the word ''means'' after the italic heading of the term being defined and before the body of the definition for each of the following definitions: ''Cancellation of insurance'', ''Endorsement'', ''Environmental restoration'', ''Evidence of security'', ''Financial responsibility'', ''Insurance premium'', and ''Public liability''.

§ 387.29 [Amended]

■ 77. Amend § 387.29 by adding the word ''means'' after the italic heading of the term being defined and before the body of the definition for each of the following definitions: ''Endorsement'', ''Financial responsibility'', ''Insured and principal'', ''Insurance premium'', ''Public liability'', and ''Seating capacity''.

§ 387.307 [Amended]

■ 78. Amend § 387.307 as follows:

■ a. In paragraph (c)(8), remove the words ''state'' and ''federal'' and add in their place the words ''State'' and ''Federal'' respectively.

■ b. In paragraph (d)(1), remove the reference to ''subsection (a)'' and add in its place a reference to ''paragraph (a) of this section''.

§ 387.315 [Amended]

■ 79. Amend § 387.315 (a) through (c) by removing the word ''state'' wherever it appears and adding in its place the word ''State''.

§ 387.409 [Amended]

■ 80. Amend § 387.409(a) through (c), by removing the word ''state'' wherever it appears and adding in its place the word ''State''.

PART 389—RULEMAKING PROCEDURES—FEDERAL MOTOR CARRIER SAFETY REGULATIONS

■ 81. The authority citation for part 389 continues to read as follow:

Authority: 49 U.S.C. 113, 501 *et seq.,* subchapters I and III of chapter 311, chapter 313, and 31502; 42 U.S.C. 4917; and 49 CFR 1.87.

■ 82. Revise § 389.25 to read as follows:

§ 389.25 Additional rulemaking proceedings.

The Administrator may initiate any further rulemaking proceedings that he/she finds necessary or desirable. For example, interested persons may be invited to make oral arguments, to participate in conferences between the Administrator or his/her representative at which minutes of the conference are kept, to appear at informal hearings presided over by officials designated by the Administrator at which a transcript or minutes are kept, or to participate in any other proceeding to assure informed administrative action and to protect the public interest.

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

■ 83. The authority citation for part 390 continues to read as follows:

Authority: 49 U.S.C. 504, 508, 31132, 31133, 31136, 31144, 31151, 31502; sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677–1678; sec. 212, 217, 229, Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 229, Pub. L. 106–159 (as transferred by sec. 4114 and amended by secs. 4130–4132, Pub. L. 109–59, 119 Stat. 1144, 1726, 1743–1744); sec. 4136, Pub. L. 109–59, 119 Stat. 114, 1745; sections 32101(d) and 32934, Pub. L. 112–141, 126 Stat. 405, 778, 830; and 49 CFR 1.87.

§ 390.3 [Amended]

■ 84. In the table below, for each paragraph of § 390.3 indicated in the left column, remove the reference indicated in the middle column and add the reference indicated in the right column in its place.

Paragraph	Remove	Add
(f)(1)	§§ 391.15(f)	§§ 391.15(e) and (f)
(f)(6)	§ 391.15(f)	§§ 391.15(e) and (f).

§ 390.5 [Amended]

■ 85. Amend the definition of ''Bus'' by changing the phrase ''and or'' to ''and/or''.

■ 86. Amend § 390.19 by revising the section heading to read as follows:

§ 390.19 Motor carrier, hazardous material safety permit applicant/holder; and intermodal equipment provider identification reports.

* * * * *

§ 390.21 [Amended]

■ 87. In the table below, for each paragraph of § 390.21 indicated in the left column, remove the words indicated in the middle column and add the words indicated in the right column in their place, wherever they appear.

Paragraph	Remove	Add
(e)(2)(iv)	49 CFR 376	49 CFR part 376.
(g)(4)(iii)	VIN	Vehicle Identification Number (VIN).
(g)(4)(iii)	SCAC code	Standard Carrier Alpha Code (SCAC).
(g)(4)(v)(A)(*i*)	Standard Carrier Alpha Code (SCAC)	SCAC.
(g)(4)(v)(A)(*iii*)	Vehicle Identification Number (VIN)	VIN.

§ 390.40 [Amended]

■ 88. In the table below, for each paragraph of § 390.40 indicated in the left column, remove the reference indicated in the middle column and add the reference indicated in the right column in its place.

Paragraph	Remove	Add
(f)	§ 396.12	§ 396.3(b)(3).
(j)	§ 396.72(b)(1)	§ 396.72(b)(3).

§ 390.107 [Amended]

■ 89. Amend the introductory text of § 390.107 by removing the comma after the word ''in''.

PART 391—QUALIFICATIONS OF DRIVERS AND LONGER COMBINATION VEHICLE (LCV) DRIVER INSTRUCTORS

■ 90. The authority citation for part 391 continues to read as follows:

Authority: 49 U.S.C. 504, 508, 31133, 31136, and 31502; sec. 4007(b) of Pub. L. 102–240, 105 Stat. 1914, 2152; sec. 114 of Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 215 of Pub. L. 106–159, 113 Stat. 1748, 1767; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; and 49 CFR 1.87.

§ 391.2 [Amended]

■ 91. In the table below, for each paragraph of § 391.2 indicated in the left column, remove the reference indicated in the middle column and add the reference indicated in the right column in its place.

Paragraph	Remove	Add
(a) introductory text	§ 391.15(e) and (g)	§ 391.15(e) and (f)
(b)	§ 391.15(e) and (g)	§ 391.15(e) and (f)
(c)	§ 391.15(e) and (g)	§ 391.15(e) and (f)

§ 391.15 [Amended]

■ 92. Amend § 391.15 as follows:

■ a. In paragraph (c)(1)(i), remove the reference to ''§ 395.2(a) of this subchapter'' and add in its place a reference to ''§ 395.2 of this part''.

■ b. In paragraph (c)(1)(ii), remove the semicolon and add in its place a period.

§ 391.47 [Amended]

■ 93. In the table below, for each paragraph of § 391.47 indicated in the left column, remove the words indicated in the middle column and add the words indicated in the right column in their place, wherever they appear.

Paragraph	Remove	Add
(c)	Director, Office of Bus and Truck Standards and Operations (MC–PSDPSD).	Director, Office of Carrier, Driver and Vehicle Safety Standards (MC–PS).
(d)(1)	Director, Office of Bus and Truck Standards and Operations (MC–PSDPSD).	Director, Office of Carrier, Driver and Vehicle Safety Standards (MC–PS).
(d)(2)	Director, Office of Bus and Truck Standards and Operations (MC–PSDPSD).	Director, Office of Carrier, Driver and Vehicle Safety Standards (MC–PS).
(f)	Director, Office of Bus and Truck Standards and Operations (MC–PSDPSD).	Director, Office of Carrier, Driver and Vehicle Safety Standards (MC–PS).

§ 391.49 [Amended]

■ 94. In the table below, for each paragraph of § 391.49 indicated in the left column, remove the words indicated in the middle column and add the words indicated in the right column in their place, wherever they appear.

Paragraph	Remove	Add
(g)	State Director	Division Administrator/State Director.
(h)	State Director	Division Administrator/State Director.
(j)(1)	State Director	Division Administrator/State Director.
(j)(2)	State Director	Division Administrator/State Director.
(k)	State Director	Division Administrator/State Director.

■ 95. Amend § 391.65 by revising paragraphs (a) introductory text, (a)(1), (a)(2) introductory text, (a)(2)(i), (a)(2)(iii), and (a)(2)(vii) to read as follows:

§ 391.65 Drivers furnished by other motor carriers.

(a) A motor carrier may employ a driver who is not a single-employer driver, as defined in § 390.5, of that motor carrier without complying with the generally applicable driver qualification file requirements in this part, if—

(1) The driver is a single-employer driver for another motor carrier; and

(2) That other motor carrier certifies that the driver is fully qualified to drive a commercial motor vehicle in a written statement which—

(i) Is signed and dated by an officer or authorized employee of the motor carrier that employs the single-employer driver;

* * * * *

(iii) Certifies that the driver has been employed as a single-employer driver.

* * * * *

(vii) Is substantially in accordance with the following form:

_____(Name of driver)
_____(SS No.)
_____(Signature of driver)

I certify that the above named driver, as defined in § 390.5, is a single-employer driver driving a commercial motor vehicle operated by the below named carrier and is fully qualified under part 391, Federal Motor Carrier Safety Regulations. His/her current medical examiner's certificate expires on _____(Date).

This certificate expires:
(Date not later than expiration date of medical certificate)
Issued on_____(date)
Issued by_____
(Name of carrier)
(Address)
(Signature)
(Title)

* * * * *

PART 393—PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

■ 96. The authority citation for part 393 continues to read as follows:

Authority: 49 U.S.C. 31136, 31151, and 31502; sec. 1041(b) of Pub. L. 102–240, 105 Stat. 1914, 1993 (1991); and 49 CFR 1.87.

■ 97. Revise § 393.3 to read as follows:

§ 393.3 Additional equipment and accessories.

The use of additional equipment or accessories in a manner that decreases the safety of operation of a commercial motor vehicle in interstate commerce is prohibited. Nothing contained in this subchapter shall be construed to prohibit the use of additional equipment and accessories, not inconsistent with or prohibited by this subchapter, provided such equipment and accessories do not decrease the safety of operation of the motor vehicles on which they are used.

§ 393.11 [Amended]

■ 98. Amend Table 1 of § 393.11 as follows:

■ a. In Footnote—12, remove the reference to ''§ 392–22(a)'' and add, in its place, a reference to ''§ 392.22(a)''.

■ b. In Footnote—15(1), remove the reference to ''Section 393.11'' and add in its place a reference to ''§ 393.11''.

§ 393.49 [Amended]

■ 99. Amend § 393.49(a) by removing the word ''busses'' and adding in its place the word ''buses''.

Subpart E—Fuel Systems [Amended]

■ 100. Remove the authority citation for subpart E of part 393.

§ 393.67 [Amended]

■ 101. Amend § 393.67 as follows:

■ a. In paragraphs (a)(2) and (3), remove the reference to paragraph ''(c)(7)(iii)'' and add in its place a reference to paragraph ''(c)(7)(ii)''.

■ b. In paragraph (c)(9), remove the word ''systems'' and add in its place the word ''system''.

§ 393.71 [Amended]

■ 102. Amend § 393.71(h)(7) as follows:

■ a. Remove the words ''Tow-bars of such design on in our condition'' and add in their place the words ''Tow-bars of such design or in such condition''.

■ b. Remove the authority citation at the end of the section.

§ 393.77 [Amended]

■ 103. Amend § 393.77 by redesignating paragraph (b)(15)(i) as paragraph (c).

§ 393.95 [Amended]

■ 104. Amend § 393.95(j) by removing the words ''See § 393.7(c)'' and adding in their place the words ''See § 393.7''.

§ 393.102 [Amended]

■ 105. Amend § 393.102 as follows:

■ a. In paragraph (b), remove the reference to ''Sec. 393.106(b)'' and add in its place a reference to ''§ 393.106(b)''.

■ b. In paragraph (c), remove the quotation mark following the words ''if the cargo is'' and add in its place a colon.

§ 393.118 [Amended]

■ 106. Amend § 393.118 as follows:

■ a. In paragraph (d)(3)(iv)(B)(*2*)(*i*), remove the word ''about'' between the words ''6 feet'' and ''the deck'', and add, in its place, the word ''above''.

■ b. Redesignate paragraph (d)(5) as paragraph (e).

§ 393.120 [Amended]

■ 107. Amend § 393.120 as follows:

■ a. In the subject headings for paragraphs (b), (c), and (d), add the words ''in an'' after the words ''sided vehicle or'' and before the words ''intermodal container''.

■ b. In paragraph (b)(1)(iv), remove the words ''must be used''.

■ c. In the introductory text of paragraph (b)(2), remove the word ''the'' after the words ''longitudinal row,'' and add in its place the word ''then''.

■ d. In paragraph (d)(1)(v), remove the comma between the words ''Either blocking'' and the words ''or friction mats''.

■ e. In the last sentence of paragraph (d)(3)(iv), remove the phrase ''he forward direction.''.

§ 393.124 [Amended]

■ 108. Amend § 393.124 as follows:

■ a. Redesignate the paragraph that follows § 393.124(d)(5)(vi), which is currently designated as paragraph (a), as paragraph (e).

■ b. In newly redesignated paragraph (e)(2)(ii)(B), remove the period at the end of the paragraph and add in its place a semicolon.

■ c. In paragraph (f)(2)(i), remove the period at the end of the paragraph and add in its place a semicolon.

§ 393.136 [Amended]

■ 109. Amend § 393.136(b)(2), by removing the words ''hard wood'' and adding in their place the word ''hardwood''.

§ 393.203 [Amended]

■ 110. Amend § 393.203(a) by removing the word ''exist'' and adding in its place the word ''exit''.

PART 395—HOURS OF SERVICE OF DRIVERS

■ 111. The authority citation for part 395 continues to read as follows:

Authority: 49 U.S.C. 504, 31133, 31136, 31137, and 31502; sec. 113, Pub. L. 103–311, 108 Stat. 1673, 1676; sec. 229, Pub. L. 106–159 (as transferred by sec. 4115 and amended by secs. 4130–4132, Pub. L. 109–59, 119 Stat. 1144, 1726, 1743, 1744); sec. 4133, Pub. L. 109–59, 119 Stat. 1144, 1744; sec. 108, Pub. L. 110–432, 122 Stat. 4860–4866; sec. 32934, Pub. L. 112–141, 126 Stat. 405, 830; and 49 CFR 1.87.

■ 112. Amend § 395.1 as follows:

■ a. Revise paragraphs (g)(1)(i)(B) and (C) and (g)(1)(ii)(C).

■ b. Italicize the paragraph (m) subject heading *Construction materials and equipment.*

The revisions read as follows:

§ 395.1 Scope of rules in this part.

* * * * *

(g) * * *

(1) * * *

(i) * * *

(B) May not drive more than the driving limit specified in § 395.3(a)(3)(i), or, in the case of drivers in Alaska, the driving limit specified in § 395.1(h)(1)(i)–(ii), following one of the 10-hour off-duty periods specified in

paragraph (g)(1)(i)(A)(*1*) through (*4*) of this section. However, driving is permitted only if 8 hours or fewer have passed since the end of the driver's last off-duty break or sleeper-berth period of at least 30 minutes; and

(C) May not drive for more than the period specified in § 395.3(a)(2), or in the case of drivers in Alaska, the period specified in § 395.1(h)(1)(ii), after coming on duty following one of the 10-hour off-duty periods specified in paragraph (g)(1)(i)(A)(*1*)–(*4*) of this section; and

* * * * *

(ii) * * *

(C) Calculation of the 14-hour period in § 395.3(a)(2) includes all time—or, for calculation of the 20-hour period in § 395.1(h)(1)(ii) for drivers in Alaska, all on-duty time—except any sleeper-berth period of at least 8 but less than 10 consecutive hours and up to 2 hours riding in the passenger seat of a property-carrying vehicle moving on the highway immediately before or after a period of at least 8 but less than 10 consecutive hours in the sleeper berth; compliance must be recalculated from the end of the first of the two periods used to comply with the requirements of paragraph (g)(1)(ii)(A) of this section.

* * * * *

■ 113. Amend § 395.3 by revising paragraph (d) to read as follows:

§ 395.3 Maximum driving time for property-carrying vehicles.

* * * * *

(d) A driver may not take an off-duty period allowed by paragraph (c) of this section to restart the calculation of 60 hours in 7 consecutive days or 70 hours in 8 consecutive days—or, in the case of drivers in Alaska, 70 hours in 7 consecutive days or 80 hours in 8 consecutive days—until 168 or more consecutive hours have passed since the beginning of the last such off-duty period. When a driver takes more than one off-duty period of 34 or more consecutive hours within a period of 168 consecutive hours, he or she must indicate in the Remarks section of the record of duty status which such off-duty period is being used to restart the calculation of 60 hours in 7 consecutive days or 70 hours in 8 consecutive days—or, in the case of drivers in Alaska, 70 hours in 7 consecutive days or 80 hours in 8 consecutive days.

§ 395.8 [Amended]

■ 114. Amend § 395.8 as follows:

■ a. In the note to paragraph (c), remove the word ''nerest'' and add in its place the word ''nearest''.

■ b. In paragraph (f)(11), remove the words ''ff duty'' and add in their place the words ''off duty''.

PART 396—INSPECTION, REPAIR, AND MAINTENANCE

■ 115. The authority citation for part 396 continues to read as follows:

Authority: 49 U.S.C. 504, 31133, 31136, 31151, and 31502; sec. 32934, Pub. L. 112–141, 126 Stat. 405, 830; and 49 CFR 1.87.

§ 396.9 [Amended]

■ 116. Amend § 396.9(c)(1) by removing the term '' 'out-of-Service Vehicle' sticker'' and adding in its place the term '' 'Out-of-Service Vehicle' sticker''.

§ 396.11 [Amended]

■ 117. Amend § 396.11 as follows:

■ a. In paragraph (a)(1)(xi), remove the semicolon at the end of the paragraph and add in its place a period.

■ b. In paragraph (b)(1)(ix), remove the semicolon at the end of the paragraph and add in its place a period.

■ c. In paragraph (b)(2)(ix), remove the semicolon at the end of the paragraph and add in its place a period.

■ d. In paragraph (b)(2)(iv)(B), add a period at the end of the paragraph.

§ 396.15 [Amended]

■ 118. Amend § 396.15 as follows:

■ a. In paragraph (b)(1) remove the word ''towbar'' and add in its place the word ''tow-bar''.

■ b. In paragraph (c), remove the word ''towbars'' and add in its place the word ''tow-bars''.

PART 397—TRANSPORTATION OF HAZARDOUS MATERIALS; DRIVING AND PARKING RULES

■ 119. The authority citation for part 397 continues to read as follows:

Authority: 49 U.S.C. 322; and 49 CFR 1.87. Subpart A also issued under 49 U.S.C. 5103, 31136, 31502, and 49 CFR 1.97. Subparts C, D, and E also issued under 49 U.S.C. 5112, 5125.

■ 120. Amend § 397.65 by revising the definitions for ''Indian tribe'' and ''radioactive material'' to read as follows:

§ 397.65 Definitions.

* * * * *

Indian tribe. Has the same meaning as contained in section 4 of the Indian Self-Determination and Education Act, 25 U.S.C. 450b.

* * * * *

Radioactive material. As defined in 49 CFR 173.403, radioactive material means any material containing radionuclides where both the activity concentration and the total activity in the consignment exceed the values of the table in 49 CFR 173.436 or values derived according to the instructions in 49 CFR 173.433.

* * * * *

§ 397.67 [Amended]

■ 121. Amend § 397.67 as follows:

■ a. In paragraph (b) introductory text, remove the word ''a'' before words ''NRHM routing designations''.

■ b. In paragraph (d), add the word ''or'' after the words ''Divisions 1.1, 1.2,''.

§ 397.69 [Amended]

■ 122. Amend § 397.69(b) by removing the words ''a NRHM'' and adding in their place the words ''an NRHM''.

§ 397.71 [Amended]

■ 123. In the table below, for each paragraph of § 397.71 indicated in the left column, remove the words indicated in the middle column and add the words indicated in the right column in their place.

Paragraph	Remove	Add
(b)(2)(ii)	their	its
(b)(6)	a NRHM	an NRHM
(b)(9)(i)	a NRHM	an NRHM
(b)(9)(iv)	a NRHM	an NRHM

§ 397.73 [Amended]

■ 124. Amend § 397.73 as follows:

■ a. In paragraph (a), remove the reference to ''Section 2B–43'' and add in its place a reference to ''Section 2B–62''.

■ b. In paragraph (b), remove the words ''their jurisdictions'' and add in their place the words ''its jurisdiction''.

■ 125. Amend § 397.101 as follows:

■ a. In paragraph (d), remove the words ''shall prepared'' and add in their place the words ''shall prepare''; and

■ b. Revise paragraph (g) introductory text.

The revision reads as follows:

§ 397.101 Requirements for motor carriers and drivers.

* * * * *

(g) Except for packages shipped in compliance with the physical security requirements of the U.S. Nuclear Regulatory Commission in 10 CFR part 73, each carrier that accepts for transportation a highway route controlled quantity of Class 7 (radioactive) material (see the definition of Highway route controlled quantity in 49 CFR 173.403), must file, within 90 days following the acceptance of the package, the following information concerning the transportation of each such package with the Federal Motor Carrier Safety Administration, Office of

Enforcement and Compliance (MC–EC), 1200 New Jersey Ave. SE., Washington, DC 20590–0001:

* * * * *

§ 397.201 [Amended]

■ 126. Amend the definition of ''Administrator'' in § 397.201(c) by removing the words ''Federal Highway Administrator'' and adding in their place the words ''Federal Motor Carrier Safety Administrator''.

§ 397.213 [Amended]

■ 127. Amend § 397.213(b)(4) by removing the word ''our'' and adding in its place the word ''or''.

Appendix G to Subchapter B of Chapter III [Amended]

■ 128. In the table below, under each heading of Appendix G to Subchapter B indicated in the left column, remove the words indicated in the middle column and add the words indicated in the right column in their place.

Heading	Remove	Add
5. Lighting Devices	Section 393	part 393
10. Tires a. (9)	393.75(e)	§ 393.75(e)
12. Windshield Glazing	393.60	§ 393.60
Differences Between the Out-of-Service Criteria & FMCSA's Annual Inspection, 3. Exhaust System	Section 393.83	§ 393.83
Differences Between the Out-of-Service Criteria & FMCSA's Annual Inspection, 5. Lighting Devices,	Section 393	part 393
Differences Between the Out-of-Service Criteria & FMCSA's Annual Inspection, 9. Frame	393.201	§ 393.201
Differences Between the Out-of-Service Criteria & FMCSA's Annual Inspection, 10. Tires	393.75	§ 393.75
Differences Between the Out-of-Service Criteria & FMCSA's Annual Inspection, 11. Wheel and Rims	393.205	§ 393.205
Differences Between the Out-of-Service Criteria & FMCSA's Annual Inspection, 12. Windshield Glazing.	393.60	§ 393.60

Issued under authority delegated under 49 CFR 1.87 on: August 30, 2013.

Anne S. Ferro,

Administrator.

[FR Doc. 2013–22484 Filed 9–23–13; 8:45 am]

BILLING CODE 4910–EX–P

Proposed Rules

Federal Register

Vol. 78, No. 185

Tuesday, September 24, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0792; Directorate Identifier 2013–NM–118–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, and Model 777 airplanes. This proposed AD was prompted by testing reports on certain Honeywell phase 3 display units (DUs). These DUs exhibited susceptibility to radio frequency emissions in WiFi frequency bands at radiated power levels below the levels that the displays are required to tolerate for certification of WiFi system installations. The phase 3 DUs provide primary flight information including airspeed, altitude, pitch and roll attitude, heading, and navigation information to the flightcrew. This proposed AD would require replacing the existing phase 3 DUs with new phase 3A DUs and installing new DU database software. We are proposing this AD to prevent loss of flight-critical information displayed to the flightcrew during a critical phase of flight, such as an approach or takeoff, which could result in loss of airplane control at an altitude insufficient for recovery, or controlled flight into terrain or obstacles.

DATES: We must receive comments on this proposed AD by November 8, 2013.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Gregg Nesemeier, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, Seattle Aircraft Certification Office, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6479; fax: 425–917–6590; email: *gregg.nesemeier@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0792; Directorate Identifier 2013–NM–118–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

This proposed AD resulted from instrumented testing on Model 737 series airplanes that were equipped with certain Honeywell DUs. This testing determined that certain Honeywell phase 3 DUs exhibited flickering and blanking when subjected to radio frequency emissions in WiFi frequency bands at radiated power levels below those that the displays are required to tolerate for certification of a WiFi installation. Display blanking durations of as long as 6 minutes were observed during testing. The phase 3 DUs provide primary flight information including airspeed, altitude, pitch and roll attitude, heading, and navigation information to the flightcrew. These Honeywell phase 3 DUs are installed on certain Model 737 and Model 777 airplanes. This condition, if not corrected, could result in loss of flight-critical information displayed to the flightcrew during a critical phase of flight, such as an approach or takeoff, which could result in loss of airplane control at an altitude insufficient for recovery, or controlled flight into terrain or obstacles.

Relevant Service Information

We reviewed Boeing Special Attention Service Bulletin 737–31–1471, dated November 29, 2012; and Boeing Special Attention Service Bulletin 777–31–0187, dated November 29, 2012. For information on the procedures, see this service information at *http://www.regulations.gov* by searching for Docket No. FAA–2013–0792.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or

develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information identified previously.

Costs of Compliance

We estimate that this proposed AD affects 157 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replacement (139 Model 737 airplanes)	2 work-hours × $85 per hour = $170	$10,200	$10,370	$1,441,430
Replacement (18 Model 777 airplanes)	3 work-hours × $85 per hour = $255	10,200	10,455	188,190

Authority for this Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2013–0792; Directorate Identifier 2013–NM–118–AD.

(a) Comments Due Date

We must receive comments by November 8, 2013.

(b) Affected ADs

None.

(c) Applicability

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

(1) Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes.

(2) Model 777–200, 777–200LR, 777–300, 777–300ER, and 777F series airplanes.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 31, Instruments.

(e) Unsafe Condition

This AD was prompted by testing reports on certain Honeywell phase 3 display units (DUs). These DUs exhibited susceptibility to radio frequency emissions in WiFi frequency bands at radiated power levels below the levels that the displays are required to tolerate for certification of WiFi system installations. The phase 3 DUs provide primary flight information, including airspeed, altitude, pitch and roll attitude, heading, and navigation information, to the flightcrew. We are issuing this AD to prevent loss of flight-critical information displayed to the flightcrew during a critical phase of flight, such as an approach or takeoff, which could result in loss of airplane control at an altitude insufficient for recovery, or controlled flight into terrain or obstacles.

(f) Compliance

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

(g) Software and DU Installation

Within 60 months after the effective date of this AD: Do the applicable actions required by paragraphs (g)(1) and (g)(2) of this AD.

(1) For Model 737 airplanes: Install new database software into the display electronics units, and replace the existing phase 3 common display system (CDS) DUs with new phase 3A CDS DUs, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–31–1471, dated November 29, 2012.

(2) For Model 777 airplanes: Install the DU database software into the left and right airplane information management system core processor module/graphics generator, and replace the existing phase 3 DUs with new phase 3A DUs, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–31–0187, dated November 29, 2012.

(h) Alternative Methods of Compliance (AMOCs)

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

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair

required by this AD if it is approved by the Boeing Commercial Airplanes ODA that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(i) Related Information

(1) For more information about this AD, contact Gregg Nesemeier, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, Seattle Aircraft Certification Office, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6479; fax: 425–917–6590; email: *gregg.nesemeier@faa.gov.*

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

Issued in Renton, Washington, on September 13, 2013.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–23076 Filed 9–23–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0682; Airspace Docket No. 13–ASO–17]

Proposed Amendment of Class E Airspace; McMinnville, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E Airspace at McMinnville, TN, as the Warri Non-Directional Beacon (NDB) has been decommissioned and new Standard Instrument Approach Procedures have been developed at Warren County Memorial Airport. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before November 8, 2013.

ADDRESSES: Send comments on this rule to: U. S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2013–0682; Airspace Docket No. 13–ASO–17, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

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:

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2013–0682; Airspace Docket No. 13–ASO–17) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2013–0682; Airspace Docket No. 13–ASO–17.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

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

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to amend Class E airspace within a 7.2-mile radius, extending upward from 700 feet above the surface to support new Standard Instrument Approach Procedures developed at Warren County Memorial Airport, McMinnville, TN. Airspace reconfiguration is necessary due to the decommissioning of the Warri NDB and cancellation of the NDB approach, and for continued safety and management of IFR operations at the airport.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9X, dated August 7, 2013, and effective September 15, 2013, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

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

would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013, effective September 15, 2013, is amended as follows:

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

* * * * *

ASO TN E5 McMinnville, TN [Amended]

Warren County Memorial Airport, TN
(Lat. 35°41′55″ N., long. 85°50′38″ W.)
Columbia River Park Hospital, Point In Space Coordinates
(Lat. 35°42′06″ N., long. 85°43′45″ W.)

That airspace extending upward from 700 feet above the surface within a 7.2-mile radius of Warren County Memorial Airport, and within a 6-mile radius of the point in space (Lat. 35°42′06″ N., long. 85°43′45″ W.) serving Columbia River Park Hospital.

Issued in College Park, Georgia, on September 18, 2013.

Kip B. Johns,

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

[FR Doc. 2013–23219 Filed 9–23–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0786; Airspace Docket No. 12–AAL–13]

Proposed Establishment of Class E Airspace; Donlin Creek, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Donlin Creek Airport, Donlin Creek, AK. Controlled airspace is necessary to accommodate aircraft using the new Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at the airport. The FAA is proposing this action to enhance the safety and management of aircraft operations at the airport.

DATES: Comments must be received on or before November 8, 2013.

ADDRESSES: Send comments on this proposal 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; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2013–0786; Airspace Docket No. 12–AAL–13, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Richard Roberts, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4517.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2013–0786 and Airspace Docket No. 12–AAL–13) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2013–0786 and Airspace Docket No. 12–AAL–13''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center,

Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E airspace at Donlin Creek, AK, providing the controlled airspace required to support the new RNAV (GPS) standard instrument approaches and departures at the Donlin Creek Airport. Controlled airspace extending upward from 700 feet above the surface is required for IFR operations within a 2 mile radius of the airport with an extension from the 2-mile radius to 8.5 miles northwest of the airport. This action would enhance the safety and management of aircraft operations at the airport.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9X, dated August 7, 2013, and effective September 15, 2013, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

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

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013, and effective September 15, 2013 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Donlin Creek, AK [New]

Donlin Creek Airport, AK
(Lat. 62°01′57″ N., long. 158°14′11″ W.)

That airspace extending upward from 700 feet above the surface within a 2-mile radius of Donlin Creek Airport, and within 2-miles each side of the 312° bearing extending from the 2-mile radius to 8.5-miles northwest of the airport.

Issued in Seattle, Washington, on September 16, 2013.

Clark Desing,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2013–23218 Filed 9–23–13; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1240

[CPSC Docket No. CPSC–2012–0050]

Magnet Sets; Notice of Opportunity for Oral Presentation of Comments

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of opportunity for oral presentation of comments.

SUMMARY: The Consumer Product Safety Commission (CPSC, Commission) announces that there will be an opportunity for interested persons to present oral comments on the notice of proposed rulemaking (NPR) the Commission issued proposing a standard to reduce the risk of injury associated with children ingesting magnets that are part of a magnet set. Any oral comments will be part of the rulemaking record.

DATES: The meeting will begin at 10 a.m., October 22, 2013, in the Hearing Room, 4th Floor of the Bethesda Towers Building, 4330 East West Highway, Bethesda, MD 20814. Requests to make oral presentations and the written text of any oral presentations must be received by the Office of the Secretary not later than 5 p.m. Eastern Standard Time (EST) on October 15, 2013.

ADDRESSES: The meeting will be in the Hearing Room, 4th Floor of the Bethesda Towers Building, 4330 East West Highway, Bethesda, MD 20814. Requests to make oral presentations, and texts of oral presentations, should be captioned: ''Magnet Sets NPR; Oral Presentation'' and submitted by email to *cpsc-os@cpsc.gov,* or mailed or delivered to the Office of the Secretary, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814, not later than 5 p.m. EST on October 15, 2013.

FOR FURTHER INFORMATION CONTACT: For information about the purpose or subject matter of this meeting, contact Jonathan D. Midgett, Ph.D., Project Manager, Office of Hazard Identification and Reduction, Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone (301) 987–2561; *jmidgett@cpsc.gov.* For information about the procedure to make an oral presentation, contact Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

SUPPLEMENTARY INFORMATION:

A. Background

On September 4, 2012, the Commission issued an NPR to address the risk of injury posed by magnet sets. 77 FR 53781. The NPR defined ''magnet set'' as ''any aggregation of separable, permanent, magnetic objects that is a consumer product intended or marketed by the manufacturer primarily as a manipulative or construction desk toy for general entertainment, such as puzzle working, sculpture building, mental stimulation, or stress relief.'' As explained in the NPR, magnet sets can cause serious, life-threatening injuries. The NPR and staff's briefing package are available on the Commission's Web site at: *http://www.cpsc.gov/PageFiles/128934/magnetstd.pdf*. Under the proposed rule, if a magnet that is part of a magnet set fits within the CPSC's small parts cylinder, the magnet would be required to have a flux index of 50 or less, or the magnet set would violate the standard. The flux index would be determined by the method described in ASTM F963–11, Standard Consumer Safety Specification for Toy Safety. These requirements would be issued under the Consumer Product Safety Act (CPSA).

B. The Public Meeting

The CPSA requires that the Commission provide an opportunity for the ''oral presentation of data, views, or arguments,'' in addition to written comments, when the Commission develops a consumer product safety standard. 15 U.S.C. 2058(d)(2). Thus, the Commission is providing this forum for oral presentations concerning the proposed magnet set standard. See the information under the headings **DATES** and **ADDRESSES** at the beginning of this notice for information on making requests to give oral presentations at the meeting.

Participants should limit their presentations to approximately 10 minutes, exclusive of any periods of questioning by the Commissioners or CPSC staff. To prevent duplicative presentations, groups will be directed to designate a spokesperson. The Commission reserves the right to limit the time further for any presentation and impose restrictions to avoid excessive duplication of presentations.

Dated: September 19, 2013.

Todd A. Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2013–23138 Filed 9–23–13; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM13–16–000]

Generator Verification Reliability Standards

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: Pursuant to section 215 of the Federal Power Act, the Federal Energy Regulatory Commission (Commission) proposes to approve the following Reliability Standards that were submitted to the Commission for approval by the North American Electric Reliability Corporation, the Commission-certified Electric Reliability Organization: MOD–025–2 (Verification and Data Reporting of Generator Real and Reactive Power Capability and Synchronous Condenser Reactive Power Capability), MOD–026–1 (Verification of Models and Data for Generator Excitation Control System or Plant Volt/Var Control Functions), MOD–027–1 (Verification of Models and Data for Turbine/Governor and Load Control or Active Power/Frequency Control Functions), PRC–019–1 (Coordination of Generating Unit or Plant Capabilities, Voltage Regulating Controls, and Protection), and PRC–024–1 (Generator Frequency and Voltage Protective Relay Settings). The proposed generator verification Reliability Standards help ensure that verified data is available for power system planning and operational studies by requiring the verification of generator equipment needed to support Bulk-Power System reliability and enhance coordination of important protection system settings.

The Commission proposes to approve, with modifications, the associated implementation plans, violation risk factors and violation severity levels. The Commission also proposes to approve the retirement of existing Reliability Standards MOD–024–1 (Verification of Generator Gross and Net Real Power Capability) and MOD–025–1 (Verification of Generator Gross and Net Reactive Power Capability) prior to the effective date of MOD–025–2.

DATES: Comments are due November 25, 2013.

ADDRESSES: You may submit comments, identified by docket number by any of the following methods:

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

FOR FURTHER INFORMATION CONTACT:

Mark Bennett (Legal Information), Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8524, *mark.bennett@ferc.gov.*

Syed Ahmad (Technical Information), Office of Electric Reliability, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8718, *syed.ahmad@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Notice of Proposed Rulemaking

(Issued September 19, 2013)

1. Under section 215 of the Federal Power Act (FPA) [1] the Commission proposes to approve five Reliability Standards that were submitted to the Commission for approval by the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO): MOD–025–2 (Verification and Data Reporting of Generator Real and Reactive Power Capability and Synchronous Condenser Reactive Power Capability), MOD–026–1 (Verification of Models and Data for Generator Excitation Control System or Plant Volt/Var Control Functions), MOD–027–1 (Verification of Models and Data for Turbine/Governor and Load Control or Active Power/Frequency Control Functions), PRC–019–1 (Coordination of Generating Unit or Plant Capabilities, Voltage Regulating Controls, and Protection), and PRC–024–1 (Generator Frequency and Voltage Protective Relay Settings). The Commission proposes to approve, with modifications, the associated implementation plans, violation risk factors and violation severity levels. The Commission also proposes to approve the retirement of existing Reliability Standards MOD–024–1 and MOD–025–1 immediately prior to the effective date of MOD–025–2.

2. The purpose of the proposed Reliability Standards is to ensure that generators remain in operation during specified voltage and frequency excursions; properly coordinate protective relays and generator voltage regulator controls; and ensure that

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

generator models accurately reflect the generator's capabilities and equipment performance. Proposed Reliability Standards MOD–026–1, MOD–027–1, PRC–019–1 and PRC–024–1 are new whereas proposed Reliability Standard MOD–025–2 consolidates two existing standards, MOD–024–1 (Verification of Generator Gross and Net Real Power Capability) and MOD–025–1 (Verification of Generator Gross and Net Reactive Power Capability) into one new Reliability Standard. Portions of proposed Reliability Standards MOD–025–2 and PRC–024–1 respond to Commission directives issued in Order No. 693.[2]

3. Collectively, the proposed Reliability Standards improve the accuracy of model verifications needed to support reliability and enhance the coordination of generator protection systems and voltage regulating system controls. Such improvements should help reduce the risk of generator trips and provide more accurate models for transmission planners and planning coordinators to develop system models and simulations.

4. In contrast to the greater than 20 MVA applicability threshold for the three other proposed Reliability Standards in NERC's petition, proposed standards MOD–026–1 and MOD–027–1 would exclude units rated below 100 MVA (Eastern and Quebec Interconnections), 75 MVA (Western Interconnection) and 50 MVA (ERCOT Interconnection). This difference in applicability thresholds could exclude approximately 20 percent of registered generator owners/operators from compliance. The Commission seeks comment on whether the higher applicability thresholds limit the overall effectiveness of the proposed Reliability Standards, especially in areas with a high concentration of generators falling below the thresholds.

5. Further, proposed Reliability Standard MOD–026–1 contains a provision allowing transmission planners to compel certain generator owners to comply with the proposed standard's Requirements if the generator owners are deemed to have ''technically justified'' units, even if the generators fall below the stated applicability threshold. The Commission seeks comment on this proposed process, and also seeks comment regarding whether this provision should be included in proposed Reliability Standard MOD–027–1.

I. Background

Section 215 of the FPA and Order No. 693 Directives

6. Section 215 of the FPA requires a Commission-certified ERO to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval. Specifically, the Commission may approve, by rule or order, a proposed Reliability Standard or modification to a Reliability Standard if it determines that the Reliability Standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest.[3] Once approved, the Reliability Standards may be enforced by the ERO, subject to Commission oversight, or by the Commission independently.[4]

7. Pursuant to section 215 of the FPA, the Commission established a process to select and certify an ERO,[5] and subsequently certified NERC.[6] On March 16, 2007, the Commission issued Order No. 693, approving 83 of the 107 Reliability Standards filed by NERC. Because MOD–024–1 and MOD–025–1, which NERC had included in its filing, involved regional procedures that had not been submitted, the Commission postponed either approving or remanding these standards until NERC submitted additional information. However, the Commission issued directives in Order No. 693 with respect to MOD–024–1 and MOD–025–1 that NERC states are addressed in proposed Reliability Standard MOD–025–2.

8. Reliability Standards MOD–024–1 and MOD–025–1 were ''fill-in-the-blank'' Reliability Standards that required regional reliability organizations to develop procedures to verify generator real and reactive power capability, respectively. Regarding MOD–024–1, the Commission directed NERC to clearly define the test conditions and methodologies contained in the Reliability Standard, and also to clarify the time period within which regional reliability organizations must provide generator real power capability verification.[7] For MOD–025–1, the Commission directed NERC to clarify that MVAR capability verifications should be made at multiple points over a generator unit's operating range, and also directed NERC to clarify the time period within which reactive power capability verifications are to be provided.[8]

9. Two directives contained in Order No. 693 pertain to proposed Reliability Standard PRC–024–1. When discussing NERC's proposed TPL Reliability Standards, the Commission stated that NERC should use the Nuclear Regulatory Commission's (NRC) voltage ride through requirements when implementing Reliability Standards to ''assure that there is consistency between the Reliability Standards and the NRC requirement that the system is accurately modeled.'' [9] The Commission further directed NERC to explicitly require generators to be ''capable of riding through the same set of Category B and C contingencies, as required by wind generators in Order No. 661, or that those generators that cannot ride through be simulated as tripping.'' [10]

II. NERC Petition and Proposed Reliability Standards

A. NERC Petition

10. On May 30, 2013, NERC filed a petition seeking approval of proposed Reliability Standards MOD–025–2, MOD–026–1, MOD–027–1, PRC–019–1 and PRC–024–1. Four of the five Reliability Standards are new, while existing Reliability Standards MOD–024–1 and MOD–025–1 were merged into proposed Reliability Standard MOD–025–2. NERC also seeks approval of the associated implementation plans, violation risk factors and violation severity levels, and retirement of current Reliability Standards MOD–024–1 and MOD–025–1 at midnight of the day immediately prior to the effective date of MOD–025–2. NERC proposes to phase in effective dates in stages over periods ranging from five years (for MOD–025–2, PRC–019–1 and PRC–024–1) to ten years (for MOD–026–1 and MOD–027–1).[11] NERC states that ''these five proposed Reliability Standards address generator verifications needed to support Bulk-Power System reliability and will ensure that accurate data is verified and made available for planning simulations.'' [12]

11. NERC explains that Bulk-Power System reliability benefits from ''good quality simulation models of power system equipment,'' and that ''model validation ensures the proper

[2] *See 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).

[3] 16 U.S.C. 824o(d)(2).

[4] *Id.* 824o(e)(3).

[5] *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).

[6] *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).

[7] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at PP 1310–1311.

[8] *Id.* PP 1321–1323.

[9] *Id.* P 1787.

[10] *Id.*

[11] NERC Petition, Exhibit B.

[12] NERC Petition at 2.

performance of the control systems and validates the computer models used for stability analysis.'' [13] NERC further states that the proposed Reliability Standards will enhance reliability because the tests performed to obtain model data may reveal latent defects that could cause ''inappropriate unit response during system disturbances.'' [14] NERC also states that simulating the response of synchronous machines and related control systems in sufficient detail is essential for effective power system planning and operational studies.[15] For accurate simulations reflecting actual equipment performance covering a range of disturbances, NERC states that models must not only contain adequate information, they must also correspond to actual field values.[16]

B. Proposed Reliability Standards

1. Reliability Standard MOD–025–2

12. Proposed Reliability Standard MOD–025–2 merges two existing Reliability Standards, MOD–024–1 and MOD–25–1, and has the stated purpose of ensuring the accuracy of generator information related to gross and net real and reactive power capability and synchronous condenser reactive power capability that is available for planning models and bulk electric system reliability assessments.[17] The proposed Reliability Standard applies to generator owners and transmission owners that own synchronous condensers, and has three requirements and two Attachments. Attachment 1, incorporated into Requirements R1.1, R2.1 and R3.1, specifies the periodicity for performing real and reactive power capability verification and the verification specifications for applicable facilities. Attachment 2, which generator owners and transmission owners will use to report to their transmission planners the information described in Attachment 1, is incorporated into Requirements R1.2, R2.2 and R3.2.

13. NERC states that proposed Reliability Standard MOD–025–2 addresses the directives the Commission issued in Order No. 693. Specifically, NERC states:

(1) Requirement R1, Part 1.2 specifies that a generator owner must submit Attachment 2 or another form containing the same information to its transmission planner within 90 calendar days of either the date the data is recorded for a staged test or the date the data is selected for verification using historical operational data; (2) Requirement R1, Part 1.1 requires a generator owner to verify the real power capability of its generating units as set forth in Attachment 1, including the consideration of ambient conditions during the verification period; and (3) Attachment 1, Sections 2.1 through 2.4, requires reactive power capability verification at multiple points across a unit's operating range.[18]

2. Reliability Standard MOD–026–1

14. Proposed Reliability Standard MOD–026–1, which is applicable to generator owners and transmission planners, is a new Reliability Standard that has six requirements and an Attachment describing the periodicity for excitation control system or plan volt/var function model verification. NERC explains that the purpose of proposed Reliability Standard MOD–026–1 is to ensure that detailed modeling of generator excitation systems, essential for valid simulations in power system stability studies, will be conducted, and that those models accurately represent generator excitation control system or plant volt/var control function behavior for bulk electric system reliability assessments.[19] Requirement R1 requires transmission planners to provide generator owners with specified information within 90 days of a written request, including instructions on how to obtain models, block diagrams and/or data sheets and model data for any of the generator owner's existing applicable unit specific excitation control system or plant volt/var control function contained in the transmission planner's dynamic database from the current (in-use) models. NERC explains that Requirement R1 ensures that the transmission planner provides necessary information to the generator owners so that they can provide a useable model in an acceptable format. This further ensures that generator owners can comply with Requirement R2 by providing relevant information to transmission planners.[20]

15. Requirement R2 requires each generator owner to provide its transmission planner with a verified generator excitation control system or plant volt/var control function model that includes the data and documentation specified in Requirement R2, Part 2.1. The periodicity for this requirement is set forth in Attachment 1. The purpose of Requirement R2 is to verify that the generator excitation control system or plant volt/var control function model and the model parameters used in dynamic simulations performed by the transmission planner accurately represent the generator excitation control system or plant volt/var control function behavior when assessing bulk electric system reliability.[21] Requirement R3 requires generator owners to provide written responses to transmission planner requests within 90 days regarding unusable models, technical concerns and transmission planner determinations that simulated excitation control system or plant volt/var control function model responses do not match a recorded response to a transmission system event. NERC explains that Requirement R3 of proposed Reliability Standard MOD–026–1 ''provides response requirements for a Generator Owner when it receives certain requests from the Transmission Planner. This communication ensures that Generator Owners have an obligation to respond in a timely fashion when there are demonstrated problems with a model that was provided by the Generator Owner in accordance with Requirement R2.'' [22] Under Requirement R4, generator owners are required to determine whether changes to applicable units affect models provided pursuant to Requirement R2, and to provide the transmission planner with revised model data or plans to perform model verification.

16. Requirement R5 requires a generator owner to respond within 90 days to a ''technically justified unit request'' from its transmission planner to perform a model review of a unit or plant, including details for model verification or corrected model data. A footnote to Requirement R5 states that ''Technical justification is achieved by the Transmission Planner demonstrating that the simulated unit or plant response does not match the measured unit or plant response.'' Also, Applicability section 4.2.4 in MOD–026–1 states that facilities to which the standard applies include ''For all Interconnections: A technically justified unit that meets NERC registry criteria but is not otherwise included in the above Applicability sections 4.2.1, 4.2.2, or 4.2.3 and is requested by the Transmission Planner.''

17. NERC explains that Requirement R5 allows transmission planners to request that generator owners who otherwise are not covered by the

[13] *Id.*

[14] *Id.* at 2–3.

[15] *Id.* at 3.

[16] *Id.*

[17] Reliability Standard MOD–025–2, Section A.3 (Purpose).

[18] NERC Petition at 10–12.

[19] *Id.* at 14–16.

[20] *Id.* at 15.

[21] *Id.* at 16.

[22] *Id.* at 17.

Applicability section (i.e., whose MVA ratings are lower than the applicability thresholds specified in Section 4 of proposed Reliability Standard MOD–026–1 but meet or exceed the Registry Criteria) to provide model verifications or to correct model data.[23] Requirement R6 requires transmission planners to provide written responses to generator owners within 90 days of receiving a verified excitation control system or plant volt/var control function model information whether the model is usable or not in accordance with Requirement R2. If it determines the model to be unusable, the transmission planner must explain the technical basis for that decision.

3. Reliability Standard MOD–027–1

18. The stated purpose of proposed Reliability Standard MOD–027–1, which is new and contains five Requirements and an Attachment, is to verify that the turbine/governor and load control or active power/frequency control model and the model parameters, used in dynamic simulations that assess bulk electric system reliability, accurately represent generator unit real power response to system frequency variations.[24] Requirement R1 requires transmission planners to provide generator owners with guidance that will enable generator owners to provide the information required in Requirements R2 and R4 within 90 days of a written request. Requirement R2 requires generator owners to provide transmission planners with a verified turbine/governor and load control or active power/frequency control model for each applicable unit, including documentation and data in accordance with the periodicity specified in MOD–027–1 Attachment 1. Attachment 1 (Turbine/Governor and Load Control or Active Power/Frequency Control Model Periodicity) also contains a table listing verification conditions and related actions required of generator owners.[25]

19. Requirement R3 establishes communication requirements to ensure that generator owners respond to transmission planner determinations that a generator owner's model is not ''usable,'' or where there is a difference between the model and three or more actual transmission system events.[26] Requirement R4 requires generator owners to provide transmission planners with updates when changes occur to the turbine/governor and load control or active power/frequency control system that alter equipment response characteristics.[27] Requirement R5 requires transmission planners to inform generator owners within 90 days of receiving model information (in accordance with Requirement R2) whether the model is usable or not. If a model is unusable, the transmission planner shall provide the generator owner with an explanation of the technical basis for that decision. Also, Requirement R3 requires generator owners to provide a written response within 90 days.[28]

4. Proposed Reliability Standard PRC–019–1

20. Proposed Reliability Standard PRC–019–1 is new and contains two requirements intended to ensure that both generator owners and transmission owners verify coordination of generating unit facility or synchronous condenser voltage regulating controls, limit functions, equipment capabilities and protection system settings.[29] Requirement R1 requires generator owners and transmission owners to coordinate the voltage regulating system controls with the equipment capabilities and settings of the applicable protection system devices and functions.[30] Requirement R2 requires generator owners and transmission owners to perform the coordination described in Requirement R1 to address equipment or setting changes.[31] The coordination required in proposed Reliability Standard PRC–019–1 must be performed at least every five years.

5. Proposed Reliability Standard PRC–024–1

21. Proposed Reliability Standard PRC–024–1 is new and consists of four Requirements and two Attachments. The stated purpose of PRC–024–1 is to ensure that generator owners set their generator protective relays such that generating units remain connected during defined frequency and voltage excursions.[32] Requirement R1 requires generator owners having generator frequency protective relaying activated to trip their generating units to set their protective relaying to prevent their generating units from tripping within the ''no trip zone'' of PRC–024–1 Attachment 1 (unless one of three specified exceptions applies). NERC explains that Attachment 1 contains tables with curve data points for each Interconnection indicating the amount of time a generator needs to remain connected at specific defined frequency excursions.[33] Requirement R2 addresses voltage excursions, requiring, subject to four exceptions, generator owners to ensure that their voltage protective relaying settings prevent their generating units from tripping within the ''no trip zone'' described in PRC–024–1, Attachment 2.

22. NERC states that the standard drafting team believes the voltage profile contained in Attachment 2 includes excursions that would be expected under Category B and C contingencies. Therefore, NERC asserts that by ensuring that generator units remain connected to the grid during voltage excursions, Requirement R2 and Attachment 2 satisfy the Commission directive issued in Order No. 693 to ''explicitly require either that all generators are capable of riding through the same set of Category B and C contingencies, as required by wind generators in Order No. 661, or that those generators that cannot ride through be simulated as tripping.'' [34]

23. Requirement R3 of proposed Reliability Standard PRC–024–1 requires generator owners to document regulatory or equipment limitations that would prevent them from satisfying the relay setting criteria in Requirements R1 and R2. Generator owners must inform their planning coordinator and transmission planner of such limitations within 30 calendar days. According to NERC, the standard drafting team believes that ''regulatory limitations'' include NRC requirements and, therefore, Requirement R3 satisfies the Commission's guidance that ''NRC requirements should be used when implementing the Reliability Standards.'' [35]

24. Requirement R4 requires generator owners to provide their planning coordinator or transmission planner with generator protection trip settings associated with Requirements R1 and R2 within 60 days of either a written request or a change to previously requested trip settings.[36]

III. Discussion

25. Pursuant to section 215(d) of the FPA, the Commission proposes to approve proposed Reliability Standards

[23] *Id.* at 18.

[24] Reliability Standard MOD–27–1, Section A.3 (Purpose).

[25] NERC Petition at 20.

[26] *Id.* at 21.

[27] *Id.* at 22.

[28] *Id.*

[29] Reliability Standard PRC–019–1, Section A.3 (Purpose).

[30] NERC Petition at 23.

[31] *Id.* at 24.

[32] Reliability Standard PRC–024–1, Section A.3 (Purpose).

[33] NERC Petition at 25.

[34] *Id.* at 29 (citing Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1787).

[35] *Id.* at 27–28 (citing Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1787).

[36] *Id.* at 31.

MOD–025–2, MOD–026–1, MOD–027–1, PRC–019–1 and PRC–024–1, including the associated implementation plan and proposed violation risk factors and violations severity levels, as just, reasonable, not unduly discriminatory or preferential, and in the public interest. The proposed Reliability Standards help ensure that verified data is available for power system planning and operational studies by requiring the verification of generator equipment needed to support Bulk-Power System reliability and enhance coordination of important protection system settings. Also, proposed Reliability Standards MOD–025–2 and PRC–024–1 satisfy relevant outstanding directives set forth in Order No. 693. We also propose to approve the retirement of the currently-effective standards MOD–024–1 and MOD–025–1 prior to the effective date of MOD–025–2.

26. While we propose to approve the proposed Reliability Standards, we seek comment on certain aspects of proposed Reliability Standards MOD–026–1 and MOD–027–1. Specifically, we discuss the following issues below: (A) The higher Megavolt Amperes (MVA) applicability threshold for proposed Reliability Standards MOD–026–1 and MOD–027–1; (B) the process for determining when it is ''technically justified'' for a transmission planner to require a generator owner to provide model reviews under MOD–026–1; (C) why the ''technically justified'' provision is not also included in MOD–027–1; and (D) assignment of violation of severity levels.

A. Higher MVA Applicability Threshold in MOD–026–1 and MOD–027–1

27. The applicability thresholds in proposed Reliability Standards MOD–026–1 and MOD–027–1 are higher than for the other three proposed Reliability Standards, and could exclude approximately 20 percent of generators from compliance.[37] In contrast to the greater than 20 MVA applicability thresholds set forth in the other three proposed Reliability Standards in NERC's petition,[38] MOD–026–1 and MOD–027–1 would exclude units rated below 100 MVA (Eastern and Quebec Interconnection), 75 MVA (Western Interconnection) and 50 MVA (ERCOT Interconnection).[39]

28. During the standard development process, several industry stakeholders commented that the standard drafting team should ensure that the applicability thresholds of MOD–026–1 and MOD–027–1 be aligned with the other three proposed Reliability Standards. In response, the standard drafting team stated that ''verification of excitation system is expensive both from a monetary and human resource viewpoint. Therefore, the [standard drafting team] believes that these applicability thresholds will result in substantial accuracy improvements to the excitation models and associated Reliability Standards, while not unduly mandating costly and time-consuming verification efforts.'' [40] We seek comment as to whether excluding approximately 20 percent of generators from the applicability of MOD–026–1 and MOD–027–1, especially in areas with a high concentration of generators falling below the thresholds, would (a) limit the effectiveness of proposed Reliability Standards MOD–026–1 and MOD–027–1 or (b) adversely impact transmission planners' ability to reduce risk to Bulk Power System reliability.

B. Process for Identifying ''Technically Justified'' Generating Units in MOD–026–1

29. Proposed Reliability Standard MOD–026–1 applies to generating units that are connected to the bulk electric system when ''technically justified.'' Specifically, Applicability Section 4.2.4 allows a transmission planner to compel a generator owner to provide model reviews and related information in accordance with Requirement R5 if the transmission planner's unit simulations do not match the generator owner's measured unit data. Under such circumstances, generator owners with ''technically justified'' units must comply with proposed Reliability Standard MOD–026–1, even though the unit MVA rating is below the stated MVA threshold for applicability.

30. While we agree with the intent of this section, the means by which transmission planners would become aware of discrepancies between simulated units and measured units, which forms the basis for ''technically justified'' determinations, is unclear. The technical justification, or discrepancies between simulated units and measured units, suggests that there should be some benchmark available in the process by which transmission planners identify generator owners for compliance with MOD–026–1. The Final Report on the August 2003 blackout stated that ''the regional councils are to establish and begin implementing criteria and procedures for validating data used in power flow models and dynamic simulations by benchmarking model data with actual system performance.'' [41] The Commission seeks comment from NERC and other interested parties as to whether the means or process for transmission planners to determine whether a generator owner's unit is ''technically justified'' is sufficiently clear and workable. We further seek comment as to whether additional details regarding how the process will be implemented should be included in an attachment to the proposed Reliability Standard.

C. Should Proposed Reliability Standard MOD–027–1 Include the ''Technically Justified'' Provision

31. Proposed Reliability Standard MOD–027–1 does not contain a provision analogous to section 4.2.4 of MOD–026–1, whereby a transmission planner may determine whether to subject a generator owner with units falling below the stated applicability threshold to the Requirements in proposed Reliability Standard MOD–026–1. We seek comment as to whether the technical justification provision should also be included in proposed Reliability Standard MOD–027–1 to provide an opportunity for transmission planners to address discrepancies between unit simulations and generator owners' measured unit data.

D. Violation Severity Levels

1. VSL for MOD–026–1, Requirement R6 and MOD–027–1, Requirement R5

32. For Requirement R6 of MOD–026–1 and Requirement R5 of MOD–027–1, NERC proposes a ''severe'' violation severity level when a transmission planner's written response that a Generation Owner's verified model is useable ''omitted confirmation for all

[37] *See* NERC Petition, Exhibit E (Summary of the Reliability Standard Development Proceeding and Complete Record of Development of Proposed Reliability Standard) section entitled ''Consideration of Comments on Draft Standard'' at 91 indicating that the threshold in the proposed standard would limit applicability of the standard to 80 percent of installed MVA on an Interconnection basis.

[38] Reliability Standard MOD–025–2, Section 4.2 (Facilities); Reliability Standard PRC–019–1, Section 4.2 (Facilities); and Reliability Standard PRC–024–1, Section 4 (Applicability).

[39] Reliability Standard MOD–026–1, Section 4.2 (Facilities); Reliability Standard MOD–027–1, Section 4.2 (Facilities).

[40] NERC Petition, Exhibit E (Summary of the Reliability Standard Development Proceeding and Complete Record of Development of Proposed Reliability Standard) section entitled ''Consideration of Comments on Draft Standard'' at 91.

[41] U.S.-Canada Power System Outage Task Force (Task Force), Final Report on the August 14, 2003 Blackout in the United States and Canada: Causes and Recommendations (April 2004) (Final Blackout Report), Recommendation 24. The Final Blackout Report is available on the Internet at *http://www.ferc.gov/industries/electric/indus-act/blackout.asp.*

specified model criteria'' in the requirement. NERC does not propose any violation severity level for a violation of the last sentence of these requirements: ''If the model is not useable, the [transmission planner] shall provide a technical description of why the model is not useable.'' Compliance with this sentence is equally important as compliance with the other obligations of these Requirements. Lack of a violation severity level for this type of violation is inconsistent with our VSL Guideline 3 because the proposed violation severity levels do not address all obligations in these Requirements. We propose to direct that NERC submit a violation severity level that addresses a violation of the last sentence of Requirement R6 of MOD–026–1 and Requirement R5 of MOD–027–1.

2. VSL for PRC–024–1, Requirements R1 and R2

33. NERC proposes to assign a ''severe'' violation severity level for a violation of Requirements R1 and R2 of PRC–024–1 when a generator owner fails to set its generator frequency or voltage protective relays so that they do not trip within the criteria listed within Requirements R1 and R2 unless there is a documented and communicated regulatory or equipment limitation per Requirement R3. We observe that Requirements R1 and R2 of PRC–024–1 include three and four bulleted exceptions, respectively, to the requirement that the generator frequency or voltage protective relays not trip applicable generating unit(s) within the ''no-trip zone'' of Attachment 1 or 2 to that standard. For Requirements R1 and R2, only the third and fourth exception, respectively, relate to a regulatory or equipment limitation in accordance with Requirement R3. As a result, the wording of the violation severity level for Requirements R1 and R2 could be read to mean that a generator owner that set generator frequency or voltage protective relaying to trip within the ''no-trip zone'' based on either the first or second exception in Requirement R1 and either the first, second or third exception in R2, violated that Requirement with a severe violation severity level. To avoid that interpretation, NERC should confirm in its comments that a generator owner will not violate Requirement R1 or R2 if it sets generator frequency or voltage protective relaying to trip within the ''no-trip zone'' based upon the exceptions for Requirements R1 and R2.

IV. Information Collection Statement

34. The following collection of information contained in the Proposed Rule is subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995 (PRA).[42] OMB's regulations require that OMB approve certain reporting and recordkeeping requirements (collections of information) imposed by an agency.[43] Upon approval of a collection of information, OMB will assign an OMB control number and expiration date. Respondents subject to the filing or recordkeeping 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.

35. The Commission will submit these reporting and recordkeeping requirements to OMB for its review and approval under section 3507(d) of the PRA. Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimate, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing the respondents' burden, including the use of automated information techniques.

36. This Notice of Proposed Rulemaking proposes to approve five proposed Reliability Standards: MOD–025–2, MOD–026–1, MOD–027–1, PRC–019–1 and PRC–024–1. Proposed Reliability Standard MOD–025–2 would replace currently effective Reliability Standards MOD–024–1 and MOD–025–1. In Order No. 693, the Commission did not approve or remand MOD–024–1 and MOD–025–1, as they were identified as ''fill-in-the-blank'' Reliability Standards for which NERC had not submitted regional procedures.

37. *Public Reporting Burden:* The burden and cost estimates below are based on the increase in the reporting and recordkeeping burden imposed by the proposed Reliability Standards. Our estimate of the number of respondents affected is based on the NERC Compliance Registry as of July 30, 2013.[44] According to the Compliance Registry, NERC has registered 901 generator owners within the United States. Currently, synchronous condensers are not included in the NERC Compliance Registry, and the standard drafting team stated that the number of transmission owners who own synchronous condensers is extremely low. We seek NERC and industry comment regarding the number of synchronous condensers currently in use (including confidential data, if necessary).

38. The burden estimates reflect the standards and the number of affected entities (e.g., the generator owner's one-time burden to develop testing procedures, verification process, and process for collection of data). Estimates for the additional burden imposed by the NOPR, if approved as a final rule in RM13–16, follow.

FERC–725G	Number of respondents[45] (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)x(2)x(3)	Total annual cost[46]
PRC–019–1 (Coordination of Generating Unit or Plant Capabilities, Voltage Regulating Controls, and Protection)					
Develop coordination and relay settings procedures	738 GO	1	8	5,904	$307,008 one-time ($52/hr).

[42] 44 U.S.C. 3507(d) (2006).

[43] 5 CFR 1320.11 (2013).

[44] NERC Compliance Registry (July 30, 2013), *available at http://www.nerc.com/pa/comp/Registration%20and%20Certification%20DL/NERC_Compliance_Registry_Matrix_Summary20130730.pdf.*

[45] GO = Generator Owner, TP = Transmission Planner.

Assuming 10 generators per generator owner, using EIA–860 2012 generator data *(http://www.eia.gov/electricity/data/eia860/)* total number of units > 20 MW are 7,379, which results in 738 generator owners.

[46] The estimates for cost per hour are derived as follows:

$52/hour, the average of the salary plus benefits for an engineer, from Bureau of Labor and Statistics at *http://bls.gov/oes/current/naics3_221000.htm.*

$70/hour, the average of the salary plus benefits for a manager and an engineer, from Bureau of Labor and Statistics at *http://bls.gov/oes/current/naics3_221000.htm.*

$28/hour, based on a Commission staff study of record retention burden cost.

FERC–725G	Number of respondents [45] (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)x(2)x(3)	Total annual cost [46]
Relay Settings	738 GO	1	8	5,904	413,280 (70/hr).
Evidence Retention [46]	738 GO	1	1	738	20,664 (28/hr).
TOTAL				12,546	740,952
PRC–024–1 (Generator Frequency and Voltage Protective Relay Settings)					
Develop coordination and relay settings procedures	738 GO	1	8	5,904	307,008 one-time (52/hr).
Relay Settings	738 GO	1	8	5,904	413,280 (70/hr).
Evidence Retention [46]	738 GO	1	1	738	20,664 (28/hr).
TOTAL				12,546	740,952

FERC–725L	Number of respondents [45] (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)x(2)x(3)	Total annual cost [46]
MOD–025–2 (Verification and Data Reporting of Generator Real and Reactive Power Capability and Synchronous Condenser Reactive Power Capability)					
Develop testing procedures, verification process, and process for collection of data	738 GO	1	8	5,904 (one-time)	$307,008 one-time ($52/hr).
Attachment 2	738 GO	1	6	4,428	309,960 (70/hr).
Evidence Retention [46]	738 GO	1	1	738	20,664 (28/hr).
TOTAL				11,070	637,632
Develop testing procedures, verification process, and process for collection of data	356 GO	1	8	2,848 (one-time)	148,096 one-time (52/hr).
Instructions for obtaining excitation control system or plant voltage/variance control function model	187 TP	1	8	1,496	104,720 (70/hr).
Documentation on generator verification	356 GO	1	8	2,848	199,360 (70/hr).
Evidence Retention [46]	543 GO and TP	1	1	543	15,204 (28/hr).
TOTAL				7,735	467,380
MOD–027–1 (Verification of Models and Data for Turbine/Governor and Load Control or Active Power/Frequency Control Functions)					
Develop testing procedures, verification process, and process for collection of data	356 GO	1	8	2,848 (one-time)	$148,096 one-time (52/hr).
Instructions for obtaining turbine/governor and load control or active power/frequency control model	187 TP	1	8	1,496	104,720 (70/hr).
Documentation on generator verification	356 GO	1	8	2,848	199,360 (70/hr).
Evidence Retention [46]	543 GO and TP	1	1	543	15,204 (28/hr).

FERC–725L	Number of respondents [45] (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)x(2)x(3)	Total annual cost [46]
TOTAL				7,735	467,380
TOTAL for RM13–16					$3,054,296 (1,837,080 without one-time costs).

Title: Mandatory Reliability Standards for the Bulk-Power System

Action: Proposed revisions to FERC–725A.

OMB Control No: 1902–0244

Respondents: Businesses or other for-profit institutions; not-for-profit institutions.

Frequency of Responses: One-time, every five years, and every ten years.

Necessity of the Information: The proposed approval of the five Reliability Standards noted above implements the Congressional mandate of the Energy Policy Act of 2005 to develop mandatory and enforceable Reliability Standards to better ensure the reliability of the nation's Bulk-Power System.

Internal Review: The Commission has reviewed the proposed approval to the Reliability Standards 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 estimate associated with the information requirements.

39. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director, email: *DataClearance@ferc.gov,* phone: (202) 502–8663, fax: (202) 273–0873].

40. For submitting comments concerning the collection of information and the associated burden estimates, please send your comments to the Commission, and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–4638, fax: (202) 395–7285]. For security reasons, comments to OMB should be submitted by email to: oira_submission@omb.eop.gov. Comments submitted to OMB should include Docket Number RM13–16–000 and OMB Control Number 1902–0252 and 1902–0261.

V. Regulatory Flexibility Act Certification

41. The Regulatory Flexibility Act of 1980 (RFA) [47] 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 (SBA's) Office of Size Standards develops the numerical definition of a small business.[48] The SBA 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 sale and its total electric output for the preceding twelve months did not exceed four million megawatt hours.[49]

42. Proposed Reliability Standards MOD–025–2, MOD–026–1, MOD–027–1, PRC–019–1 and PRC–024–1, MOD–025–2 help ensure that generators remain in operation during specified voltage and frequency excursions, properly coordinate protective relays and generator voltage regulator controls, and ensure that generator models accurately reflect the generator's capabilities and equipment performance. Comparison of the NERC Compliance Registry with data submitted to the Energy Information Administration on Form EIA–861 indicates that, of the 901 generator owners in the United States registered by NERC, 49 qualify as small entities (5.4 percent) and of the 184 of the transmission planners in the United States registered by NERC, 42 qualify as small entities (22 percent). The Commission estimates that the small entities to whom the proposed Reliability Standards PRC–019–1, PRC–024–1 and MOD–025–1 applies will incur compliance [50] and record keeping costs [51] of $655,228 ($13,372 per generator owner). For the proposed Reliability Standards MOD–026–1 and MOD–027–1, the Commission estimates that the small generator owner entities (22) will incur compliance and record keeping costs of $83,072 ($3,776 per generator owner). This will result in a total compliance and record-keeping cost for generator owners of $686,870 ($14,018 per entity). Additionally, small transmission planner entities (42) will incur compliance and record keeping costs [52] of $47,040 ($1,120 per transmission planner).

43. The Commission does not consider the estimated costs per small entity to have a significant economic impact for a substantial number of small entities. Accordingly, the Commission certifies that this proposed rulemaking will not have a significant economic impact on a substantial number of small entities. The Commission seeks comment on this certification.

VI. Environmental Analysis

44. 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.[53] 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.[54] The actions proposed here fall within this categorical exclusion in the Commission's regulations.

[47] 5 U.S.C. 601–612 (2006).

[48] 13 CFR 121.101 (2013).

[49] 13 CFR 121.201, Sector 22, Utilities & n.1.

[50] Assuming 50 hours per generator owner for relay settings/testing based on $70/hour.

[51] This cost came from the above PRC–019–1, PRC–024–1, and MOD–025–2 tables.

[52] This cost came from the above MOD–026–1 and MOD–027–1 tables.

[53] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[54] 18 CFR 380.4(a)(2)(ii).

VII. Comment Procedures

45. 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 November 25, 2013. Comments must refer to Docket No. RM13–16–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

46. 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.

47. Commenters that are not able to file comments electronically must send original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

48. 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

49. 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.

50. 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.

51. 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 the direction of the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–23169 Filed 9–23–13; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[EPA–HQ–OW–2010–0606; FRL–9901–25–OW]

Water Quality Standards Regulatory Clarifications Proposed Rule; Public Meeting and Public Webinars

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of public meeting and public webinars.

SUMMARY: The Environmental Protection Agency (EPA) is announcing one public meeting and two public webinars to be held for the proposed rule ''Water Quality Standards Regulatory Clarifications,'' which was published separately in the **Federal Register** (September 4, 2013).

DATES: The public meeting will be held in Washington, DC on October 23, 2013 from 10:00 a.m. to 3:00 p.m. Eastern. The two public webinars will be held on September 24, 2013 from 1:00 p.m. to 3:00 p.m. Eastern and November 14, 2013 from 1:00 p.m. to 3:00 p.m. Eastern. The comment period for the proposed rulemaking will end on December 3, 2013. To register for the public meeting or either public webinar, please visit: *http://www.tetratech-ffx.com/wqsregs/public/* or contact the person listed under **FOR FURTHER INFORMATION CONTACT.** Information regarding the time of the public meeting and public webinars is also listed below in **SUPPLEMENTARY INFORMATION**.

ADDRESSES: To register for the public meeting or either public webinar, please visit: *http://www.tetratech-ffx.com/wqsregs/public/.* You will receive an email confirmation after your registration has been submitted. Information about the public meeting and webinars can also be found at the EPA Web site for the rulemaking at, *http://water.epa.gov/lawsregs/lawsguidance/wqs_index.cfm,* under the ''Current Outreach'' section.

The public meeting will be held at the Smithsonian National Zoological Park in the Visitor Center Auditorium. The Zoo address is 3001 Connecticut Avenue NW. in Washington, DC. The Visitor Center Auditorium is located at the Connecticut Avenue entrance to the zoo. More information about travel to the Zoo is available at *http://nationalzoo.si.edu/Visit/gettingtozoo.cfm.*

The public webinars will be held using Adobe® Connect. Following registration and within one week of the scheduled webinars, you will receive an email with information for accessing the webinar on the day of the event.

The proposed rule was published separately in the **Federal Register** and a complete set of documents related to the proposal are available for public inspection at the EPA Docket Center, located at 1301 Constitution Avenue NW., Room 3334, Washington, DC between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying. Documents are also available through the electronic docket system at *http://www.regulations.gov* under Docket ID No. EPA–HQ–OW–2010–0606. The EPA Web site for the rulemaking can be found at: *http://water.epa.gov/lawsregs/lawsguidance/wqs_index.cfm.*

FOR FURTHER INFORMATION CONTACT: Janita Aguirre, EPA Headquarters, Office of Water, Office of Science and Technology, at 202–566–1860 or email address: *WQSRegulatoryClarifications@epa.gov.*

SUPPLEMENTARY INFORMATION: The proposal for which EPA is holding the public meeting and public webinars has been published separately in the **Federal Register** (78 FR 54517; September 4, 2013). In the proposed rulemaking, EPA is proposing changes to the federal water quality standards (WQS) regulation at 40 CFR Part 131 which helps implement the Clean Water Act in order to improve effectiveness in restoring and maintaining the chemical, physical, and biological integrity of the nation's waters. The proposed rule addresses the following key program areas: Administrator's determinations that new or revised WQS are necessary, designated uses, triennial reviews, antidegradation, variances to WQS, and compliance schedule authorizing provisions. Once final, the proposed rule will lead to improved water quality standard development, implementation and compliance as well as improving the ability of water systems to adapt and respond to the impacts of climate change.

EPA will discuss the contents of the proposed rule during the webinars and meeting and will provide the opportunity for interested parties to ask clarifying questions prior to the close of the comment period. These clarifying questions or any public views expressed during the webinars and meeting will not be considered formal comments and will not be recorded for inclusion in the official administrative record. If anyone wishes their comments to be considered formal comment and want a formal response from EPA, they must submit their comments on the proposed rule to the associated docket (Docket ID No. EPA–HQ–OW–2010–0606) by one of the following methods: Electronically, by mail, by facsimile, or through hand delivery/courier. Please refer to the notice of proposed rulemaking for the addresses and detailed instructions for submitting written comments. Written comments must be received by the December 3, 2013.

Public Meeting: The public meeting will be open to all stakeholders interested in the rule. The meeting will be held on Wednesday, October 23, 2013 from 10:00 a.m. until 3:00 p.m. Eastern. The meeting will be held at the Smithsonian National Zoological Park's Visitor Center Auditorium, 3001 Connecticut Avenue NW., Washington, DC. If you are interested in attending the public meeting, EPA prefers that you pre-register at *http://www.tetratech-ffx.com/wqsregs/public/* by October 21, 2013. EPA will prepare a pre-registration list to streamline the check-in process on the day of the public meeting. If you choose not to pre-register, you will be asked to provide the following information on a sign-in sheet at the public meeting: Name, affiliation, address, email address and telephone number.

Public Webinars: The public webinars will be open to all stakeholders interested in the rule. The public webinars will be held on Tuesday, September 24, 2013 from 1:00 p.m. to 3:00 p.m. Eastern and Thursday, November 14, 2013 from 1:00 p.m. to 3:00 p.m. Eastern using Adobe® Connect. However, there is a limitation of 500 participants for each webinar. In order to ensure access to the webinar of choice, interested individuals should register in advance following instructions on the Internet at *http://www.tetratech-ffx.com/wqsregs/public/*. Although you may register at any time prior to the session of your choice, EPA prefers that you register at least three days in advance. You will receive an email confirmation after your registration has been submitted. Following registration and within one week of the scheduled webinars, you will receive an email with information for accessing the webinar on the day of the event. The agenda and resource material will be identical for the two public webinars. You do not need to attend both sessions. If you do not have Internet access, please contact the person named in the **FOR FURTHER INFORMATION CONTACT** section above.

Other EPA Outreach: Throughout the comment period, EPA expects to conduct outreach with additional stakeholders as well as state and tribal governments. This outreach includes discussions and consultation with federally-recognized Indian tribes, consistent with Executive Order 13175 (Tribal Consultation) and outreach with state water quality program officials as co-regulators.

Comment Period: The comment period will remain open until December 3, 2013.

How can I get copies of this document and other related information?

The EPA has established a docket for this action under Docket ID No. EPA–HQ–OW–2010–0606. The EPA has also developed a Web site for the proposed rulemaking at: *http://water.epa.gov/lawsregs/lawsguidance/wqs_index.cfm*. Please refer to the notice of proposed rulemaking for detailed information on accessing information related to the proposal.

Dated: September 16, 2013.

Elizabeth Southerland,

Director, Office of Science and Technology.

[FR Doc. 2013–23103 Filed 9–23–13; 8:45 am]

BILLING CODE 6550–50–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 107 and 109

[Docket No. PHMSA–2012–0258 (HM–258A)]

RIN 2137–AE97

Hazardous Materials: Failure To Pay Civil Penalties

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: PHMSA proposes to amend the hazardous materials procedural found under our regulations. Specifically, this proposed action would prohibit a person who fails to pay a civil penalty as ordered, or fails to abide by a payment agreement, from performing activities regulated by the Hazardous Materials Regulations until payment is made.

DATES: Comments must be received by November 25, 2013.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System; 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:* 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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: Include the agency name and docket number PHMSA–2012–0258 (HM–258A) or the Regulatory Identification Number (RIN) 2137–AE97 for this notice of proposed rulemaking at the beginning of your comment. Please note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, 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 (65 FR 19477) or you may visit *http://www.regulations.gov.*

Docket: For access to the dockets to read background documents or comments received, go to *http://www.regulations.gov* or DOT's Docket Operations Office (see **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Tyler Patterson, Office of Chief Counsel, telephone (202) 366–0505, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Overview of Penalty Procedures
A. Pipeline and Hazardous Materials Safety Administration
B. Federal Aviation Administration

C. Federal Motor Carrier Safety Administration
D. Federal Railroad Administration
II. Overview of Mandated Changes to the Penalty Procedures
III. Discussion of Rulemaking Proposals
IV. Regulatory Analyses and Notices
A. Statutory/Legal Authority for This Rulemaking
B. Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures
C. Executive Order 13132
D. Executive Order 13175
E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies
F. Paperwork Reduction Act
G. Regulatory Identifier Number (RIN)
H. Unfunded Mandates Reform Act
I. Executive Order 13609 and International Trade Analysis
J. Environmental Assessment
K. Privacy Act

I. Overview of Penalty Procedures

Under authority delegated by the Secretary, four agencies within the Department of Transportation (DOT) enforce the Hazardous Materials Regulations (HMR), 49 CFR Parts 171–180, and other regulations, approvals, special permits, and orders issued under Federal Hazardous Material Transportation Law (Hazmat Law), 49 U.S.C. 5101 et seq.; the Federal Aviation Administration (FAA), 49 CFR 1.83(d); the Federal Motor Carrier Safety Administration (FMCSA), 49 CFR 1.87(d); the Federal Railroad Administration (FRA), 49 CFR 1.89(j); and the Pipeline and Hazardous Materials Safety Administration (PHMSA), 49 CFR 1.97(b).

Although the United States Coast Guard (USCG) also is authorized to enforce the HMR in connection with certain transportation or shipment of hazardous materials by water, nothing in this proposed rule affects USCG's enforcement authority with respect to transportation of hazardous materials by water. The authority originated with the Secretary and was first delegated to USCG prior to 2003, when USCG was made part of the Department of Homeland Security. Enforcement authority over ''bulk transportation of hazardous materials that are loaded or carried on board a vessel without benefit of containers or labels, and received and handled by the vessel without mark or count, and regulations and exemptions governing ship's stores and supplies'' was also transferred in 2003 to the USCG. DHS Delegation No. 0170, Sec. 2(99) & 2(100); see also 6 U.S.C. §§ 457 and 551(d)(2). DOT will continue to coordinate its inspections, investigations, and enforcement actions with the USCG, through a Memorandum of Understanding (MOU) or otherwise, to avoid duplicative or conflicting efforts.

The rules of practice for hazardous materials penalty proceedings are governed by each agency's delegated regulatory authority. Each agency affected by this proposed rule will have the authority to apply these proposed provisions as an augmentation of its current enforcement and debt collection practices after an enforcement action has been fully adjudicated and the entity ordered to pay a penalty has failed to do so.

A. Pipeline and Hazardous Materials Safety Administration

PHMSA's enforcement procedures related to violation(s) of the HMR are described in 49 CFR Part 107, Subpart D. Violations that do not substantially impact safety are handled through the ticket process under 49 CFR § 107.310 and would be exempt from this proposed rule. For other hazardous materials violations, PHMSA begins the process of assessing civil penalties by serving a notice of probable violation (NOPV) on a person alleging the violation of hazardous materials operations.

As directed in 49 CFR § 107.311, the NOPV must include the following information: (1) A citation of the provision(s) of the HMR, order, or special permit which PHMSA believes the respondent has violated, (2) a statement of the factual allegations upon which the demand for remedial action or civil penalty is based, (3) a statement of the respondent's right to present written or oral explanations, information, and arguments in answer to the allegations and in mitigation of the sanction sought in the notice of probable violation, (4) a statement of the respondent's right to request a hearing and the procedures for requesting a hearing, and (5) the proposed civil penalty and payment information. Once the matter is fully adjudicated or a settlement is reached, PHMSA issues an order. Orders outline the terms and outcome of the enforcement action, including the final penalty amount due, and they describe any payment arrangements made between the agency and the respondent. This proposed rule would affect only those respondents who violate the payment terms of an order.

B. Federal Aviation Administration

FAA's enforcement procedures related to the violation(s) of the HMR are described in 14 CFR Part 13. FAA begins the process of assessing civil penalties by issuing a notice of proposed civil penalty as described in 14 CFR § 13.16(f). Once the matter is fully adjudicated or a settlement is reached, the FAA issues an order assessing a civil penalty and establishing payment terms. This proposed rule would affect only those persons who violate the payment terms of an order (for violations of the HMR) issued under 14 CFR § 13.16(c).

C. Federal Motor Carrier Safety Administration

FMCSA's enforcement procedures related to violation(s) of the HMR or the Federal Motor Carrier Safety Regulations (FMCSR; 49 CFR Part 397) are described in 49 CFR Part 386. FMCSA begins the process of assessing civil penalties by issuing a notice of claim (NOC), as described in 49 CFR § 386.11(c). Each NOC sets forth the facts alleged, states the provisions of the regulations allegedly violated by the respondent, proposes a civil penalty, and indicates the time, form, and manner whereby the respondent may pay, contest, or otherwise seek resolution of the claim. Once the matter is fully adjudicated or a settlement is reached, FMCSA issues a final agency order. The order sets the payment terms and final penalty amount. This proposed rule would affect only those respondents who violate the payment terms of an order (for violations of the HMR) issued under 49 CFR Part 386.

D. Federal Railroad Administration

The FRA's enforcement procedures related to violations of the HMR are described in 49 CFR Part 209, Subpart B. FRA begins the process of assessing civil penalties by issuing an NOPV. The NOPV includes a statement of the provisions that the respondent is believed to have violated, a statement of the factual allegations, notice of the amount of the civil penalty proposed to be assessed, and a description of the response options available to the respondent. Once the matter is fully adjudicated or a settlement is reached, FRA issues an order setting the payment terms of the assessed penalty, if applicable. This proposed rule would affect only those respondents who violate the payment terms of an order (for violations of the HMR) issued under 49 CFR Part 209, Subpart B.

II. Overview of Mandated Changes to the Penalty Procedures

Section 33010 of the Moving Ahead for Progress in the 21st Century Act (MAP–21) (Pub. L. 112–141, 126 Stat. 405, at 837) amended 49 U.S.C. § 5123 to prohibit a person from engaging in business operations involving the

transportation of hazardous materials (i.e., hazardous materials operations) if that person has failed to either pay a civil penalty assessed under Chapter 51 of title 49, or failed to arrange and abide by a payment plan, beginning on the 91st day after the payment due date specified by the order or payment plan, unless the person has filed a formal administrative or judicial appeal of the penalty.

Section 33010 of MAP–21 provides an exception to the prohibition on hazardous materials operations after nonpayment of penalties for debtors in Chapter 11 bankruptcy. The express language of the statutory exception states that the prohibition ''shall not apply to any person who is unable to pay a civil penalty because such person is a debtor in a case under chapter 11 of title 11.'' PHMSA believes that the Congress, in creating the bankruptcy exception, did not intend to exempt all Chapter 11 debtors from the prohibition on hazardous materials operations after nonpayment of penalties. Congress recognized that the determination of whether a Chapter 11 debtor is able to pay certain debts is within the jurisdiction of the bankruptcy court. PHMSA interprets the statutory language as requiring the agency to seek a determination from the bankruptcy court of a debtor's ability to pay a civil penalty claim prior to imposing the prohibition on hazardous materials operation after nonpayment of penalties.

Under the automatic stay provisions of the Bankruptcy Code, a petition filed in bankruptcy ''operates as a stay, applicable to all entities of . . . the commencement or continuation . . . of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the bankruptcy case. . . .'' 11 U.S.C. § 362(a). However, ''the filing of a petition . . . does not operate as a stay . . . of the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power . . . and . . . of the enforcement of a judgment, other than a monetary judgment, obtained in an action or proceeding by a governmental unit to enforce such unit's police or regulatory power.'' 11 U.S.C 362(b)(4).

In determining whether an agency action fits within the exemption of section 362(b)(4), the courts have developed the ''public policy'' test, which distinguishes between governmental proceedings aimed at accomplishing public policy and those aimed at protecting the government's pecuniary interest in the debtor's property. See *Eddleman v. U.S. Department of Labor,* 923 F. 2d 782 (10th Cir. 1991); and *NLRB v. Edward Cooper Painting, Inc.,* 804 F. 2d 934 (6th Cir. 1986). Agency proceedings under Section 33010 of MAP–21 are designed to bring about the public policy of enforcing compliance with the Hazmat Law and the HMR. As a result, filing for bankruptcy protection under Chapter 11 or any other chapter does not automatically relieve a person from its regulatory or payment obligations.

Section 33010 of MAP–21 does not address or instruct DOT to prohibit hazardous materials operations by those persons who have not paid penalties assessed prior to the granting of this authority. Without specific instruction on retroactivity, the presumption against retroactive application prevents PHMSA from applying Section 33010 MAP–21 to respondents whose final order was issued prior to the issuance of a final rule. Consequently, provisions of this proposed rule, once finalized, will apply to all final agency orders that assess penalties issued on or after the effective date of the final rule.

III. Discussion of Rulemaking Proposals

This notice of proposed rulemaking (NPRM) amends 49 CFR Part 109 to implement the authority granted under Section 33010 to MAP–21's amendment to 49 U.S.C. § 5123 to prohibit a person from engaging in hazardous materials operations upon failure to pay a civil penalty. Specifically, we propose to adopt a new Subpart E to Part 109 setting forth procedures to require a person who is delinquent in paying civil penalties to cease hazardous materials operations until payment has been made or an acceptable payment plan has been arranged. We also propose to add procedural requirements to ensure that a person subject to the prohibition is notified in writing and given an opportunity to respond before being required to cease hazardous materials operations.

Under the provisions of this NPRM, the agency which issued the final order outlining the terms and outcome of an enforcement action will send the respondent a Cessation of Operations Order (COO) if payment has not been received within 45 calendar days after the payment due date or a payment plan installment date as specified in the final order. The COO would notify the respondent that it must cease hazardous materials operations on the 91st calendar day after failing to make payment in accordance with the agency's final order or payment plan arrangement, unless payment is made. A respondent will be allowed to appeal the COO within 20 days of receipt of the order according to the procedures set forth by the agency issuing the COO.

As discussed above, section 33010 of MAP–21 specifically states that the prohibition on hazardous materials operations shall not apply to a person unable to pay civil penalties because such person is a debtor in a case under chapter 11 of the Bankruptcy Code. Such a person must provide the enforcing agency with the following information about its bankruptcy proceeding: (1) The chapter of the Bankruptcy Code under which the bankruptcy proceeding is filed (i.e., Chapter 7 or 11); (2) the bankruptcy case number; (3) the court in which the bankruptcy proceeding was filed; and (4) any other information requested by the agency to determine a debtor's bankruptcy status. This information will enable the agency to verify debtor status and to work with the bankruptcy court, if needed, to assess the debtor's ability to pay penalties when determining whether to prohibit hazardous materials operations.

PHMSA, FAA, FMCSA, and FRA caution regulated entities not to construe the right to appeal a COO as an opportunity to re-argue the merits of the penalty assessment. They will have had ample opportunity to address these concerns at earlier stages in the enforcement process. The only information sufficient to prevent the prohibition on hazardous material operations after nonpayment of penalties would be proof of payment, proof of bankruptcy debtor status and an inability to pay, or an Emergency Stay issued by a Federal Circuit Court with jurisdiction over these matters. Additionally, at the discretion of the agency, upon appeal by the Respondent, the agency can rescind the COO if an agreeable payment plan has been arranged. Persons that continue to conduct regulated activities in violation of the COO will be subject to additional penalties, including criminal prosecution pursuant to 49 U.S.C. § 5124. PHMSA is providing a comment period of 60 days on this proposed rule.

IV. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This proposed rule is published under the authority of 49 U.S.C. 5103(b), which authorizes the Secretary to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce and under the authority of 49 U.S.C. 5121(e). This proposed rule would revise certain

civil enforcement authority to enable the appropriate DOT administration to issue a Cessation of Operations Order (COO) to a person who fails to pay civil penalties for violations of the HMR assessed pursuant to 49 CFR § 107.311 (PHMSA), 49 CFR Part 209, Subpart B (FRA), 49 CFR Part 386 (FMCSA), and 14 CFR Part 13 (FAA. The proposed rule carries out a statutory mandate and clarifies DOT's roles and responsibilities in ensuring that hazardous materials are being safely transported and in enhancing the regulated community's compliance with regulatory requirements.

B. Executive Order 13610, Executive Order 13563, Executive Order 12866, and DOT Regulatory Policies and Procedures

This NPRM is not considered a significant regulatory action under section 3(f) Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget (OMB). The proposed rule is not considered a significant rule under the Regulatory Policies and Procedures order issued by the U.S. Department of Transportation (44 FR 11034).

Executive Order 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review that were established in Executive Order 12866 Regulatory Planning and Review of September 30, 1993. Executive Order 13563, issued January 18, 2011, notes that our nation's current regulatory system must not only protect public health, welfare, safety, and our environment but also promote economic growth, innovation, competitiveness, and job creation. Further, this executive order urges government agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. In addition, federal agencies are asked to periodically review existing significant regulations, retrospectively analyze rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and modify, streamline, expand, or repeal regulatory requirements in accordance with what has been learned.

Executive Order 13610, issued May 10, 2012, urges agencies to conduct retrospective analyses of existing rules to examine whether they remain justified and whether they should be modified or streamlined in light of changed circumstances, including the rise of new technologies.

By building off of each other, these three Executive Orders require agencies to regulate in the ''most cost-effective manner,'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop regulations that ''impose the least burden on society.'' PHMSA is proposing no changes to the HMR which govern the transportation of hazmat thus the changes do not carry any additional compliance requirements or costs for entities that must comply with the HMR. The changes in this proposed rule will affect entities after they have violated the HMR in ways that substantially impact safety, a civil penalty has been assessed and the entities are delinquent in the payment of the finally adjudicated administrative penalties. Of the estimated 200,000 entities that PHMSA regulates, a limited number are subject to civil penalty assessments in a given year for violations related to the HMR. Fewer still disregard agency orders requiring payment of civil penalties. Since 2010, on average, only 10 companies per year have been referred for debt collection after being 90 days overdue on their civil penalty assessments for PHMSA enforcement actions. An entity that receives a COO and fails to pay its penalty will incur costs associated with the cessation of activities regulated under the HMR. However, this cost is associated with non-compliance. Companies in compliance with the HMR will not bear any costs.

C. Executive Order 13132

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). Pursuant to 49 U.S.C. 5125(i), the preemption provisions in Hazmat Law do ''not apply to any procedure . . . utilized by a State, or Indian tribe to enforce a requirement applicable to the transportation of hazardous material.'' Accordingly, this proposed rule has no preemptive effect on State, local, or Indian tribe enforcement procedures and penalties, and preparation of a federalism assessment is not warranted.

D. Executive Order 13175

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this proposed rule does not have tribal implications and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. §§ 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have significant impact on a substantial number of small entities. Based on the assessment in the preliminary regulatory evaluation, I hereby certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule applies to offerors and carriers of hazardous materials, some of which are small entities; however, there will not be any economic impact on any person who complies with the Hazmat Law and the regulations and orders issued under that law.

Potentially affected small entities. The provisions in this proposed rule will apply to persons who perform, or cause to be performed, functions related to the transportation of hazardous materials in commerce. This includes offerors of hazardous material and persons in physical control of a hazardous material during transportation in commerce. Such persons may primarily include motor carriers, air carriers, vessel operators, rail carriers, temporary storage facilities, and intermodal transfer facilities. Unless alternative definitions have been established by the agency in consultation with the Small Business Administration, the definition of ''small business'' has the same meaning as under the Small Business Act (15 CFR parts 631–657c). Therefore, because no such special definition has been established, PHMSA employs the thresholds (published in 13 CFR 121.201) of 1,500 employees for air carriers (NAICS Subgroup 481), 500 employees for rail carriers (NAICS Subgroup 482), 500 employees for vessel operators (NAICS Subgroup 483), $18.5 million in revenues for motor carriers (NAICS Subgroup 484), and $18.5 million in revenues for warehousing and storage companies (NAICS Subgroup 493). Of the approximately 200,000 entities to which this final rule would apply (104,000 of which are motor carriers), we estimate that about 90 percent are small entities.

Potential cost impacts. This proposed rule amends 49 CFR Part 109, which contains regulations on the process for collecting civil penalties. These regulations are not part of the HMR, which govern the transportation of hazmat, thus they do not carry any additional compliance requirements or

costs for entities that must comply with the HMR.

Alternate proposals for small business. Because this proposed rule addresses a Congressional mandate, we have limited latitude in defining alternative courses of action. Taking no action would be inconsistent with Congress' direction and undesirable from the standpoint of safety and enforcement. Failure to implement the new authority will substantially impact safety because entities that ignore assessed civil penalties for violations of the HMR will continue to conduct hazardous materials operations.

F. Paperwork Reduction Act

PHMSA has analyzed this proposed rule in accordance with the Paperwork Reduction Act of 1995 (PRA). The PRA requires Federal agencies to minimize the paperwork burden imposed on the American public by ensuring maximum utility and quality of federal information, ensuring the use of information technology to improve government performance, and improving the federal government's accountability for managing information collection activities. This proposed rule contains no new information collection requirements subject to the PRA.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. PHMSA has concluded that the proposed rule will not impose annual expenditures of $141.3 million on State, local, or tribal governments or the private sector, and thus does not require an Unfunded Mandates Act analysis.

I. Executive Order 13609 and International Trade Analysis

Under E.O. 13609, agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

Similarly, the Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of international standards, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

PHMSA participates in the establishment of international standards in order to protect the safety of the American public, and we have assessed the effects of the proposed rule to ensure that it does not cause unnecessary obstacles to foreign trade. Accordingly, this rulemaking is consistent with E.O. 13609 and PHMSA's obligations under the Trade Agreement Act, as amended.

J. Environmental Assessment

The National Environmental Policy Act, 42 U.S.C. §§ 4321–4375, requires Federal agencies to analyze proposed actions to determine whether an action will have a significant impact on the human environment. The Council on Environmental Quality (CEQ) regulations require Federal agencies to conduct an environmental review considering (1) the need for the proposed action; (2) alternatives to the proposed action; (3) probable environmental impacts of the proposed action and alternatives; and (4) the agencies and persons consulted during the consideration process. 40 CFR § 1508.9(b).

1. Purpose and Need

In § 33010 of MAP–21, Congress required the Secretary to issue regulations to require a person who is delinquent in paying civil penalties to cease any activity regulated under the Hazmat Law until payment has been made or until an acceptable payment plan has been arranged. PHMSA believes that persons who fail to comply with the Hazmat Law and fail to pay civil penalties are not fit to transport hazardous materials, as they are more likely to jeopardize public safety and/or the environment. The proposed rule and underlying legislation may encourage companies that disregard the HMR to exit the hazardous materials arena because continuing hazardous materials transportation after a COO is punishable by additional penalties and criminal prosecution. This tool will greatly enhance the enforcement and debt collection tools available to PHMSA, FAA, FMCSA, and FRA, without impacting entities that comply with final orders, the Hazmat Law, and the HMR. *See* Background section of the preamble to this final rule, supra.

2. Alternatives

In MAP–21's amendments to 49 U.S.C. 5123(i), Congress specifies that a person that ''fails to pay a civil penalty assessed under this chapter, or fails to arrange and abide by an acceptable payment plan for such civil penalty, may not conduct any activity regulated under this chapter beginning on the 91st day after the date specified by order of the Secretary for payment of such penalty.'' Congress also provided limited exceptions for debtors in a case under chapter 11 of title 11 and persons who have filed an appeal of an order. Because this final rule simply carries out a prescriptive Congressional mandate, PHMSA did not consider alternatives.

CEQ regulations suggest that agencies consider the alternative of no-action. 40 CFR §§ 1502.14(d) and 1508.25(b). Although the purpose of this rulemaking is to carry out the above-described mandate in MAP–21, PHMSA will consider the environmental impacts of the no-action alternative.

3. Analysis of Environmental Impacts

The goal of this proposed rule is to prevent violators of the HMR from ignoring enforcement proceedings and continuing to conduct business subject to the HMR. PHMSA believes that such companies are not fit to conduct hazardous materials transportation and may be more likely to commit further violations that could endanger the public and the environment. For these reasons, PHMSA believes that the proposed rule could decrease the likelihood of hazardous materials incidents.

A release of hazardous materials could result in a myriad of environmental and human health consequences such as fires, explosions, asphyxiation, contamination of marine environments, exposure of increased levels of radioactivity, etc. If hazardous

material shipments are not properly marked, labeled, packaged, and handled, as dictated by the HMR, risk of release and exposure increases. Incidents occurring during aircraft or vessel transportation are more likely to threaten human health and the environment. Emergency responders are also at greater risk and are less effective at responding to incidents when hazardous materials shipments do not comply with prescribed communication requirements. PHMSA believes that this proposed rule will further strengthen DOT's ability to ensure compliance with the HMR, which decreases the likelihood of a hazardous materials release, enhancing safety and environmental protection.

If PHMSA were to select the ''no action'' alternative, contrary to Congressional intent, entities that had been found to have violated the HMR and made no effort to pay a civil penalty for more than 90 days would be able to continue to perform functions subject to the HMR, including preparing hazardous materials for shipment and shipping hazardous materials in commerce. PHMSA believes allowing delinquent adjudicated violators to continue to engage in regulated activities while showing disregard for regulations and/or regulatory enforcement orders would weaken PHMSA's ability to ensure compliance with the HMR.

4. Agencies and Persons Consulted

In drafting this proposed rule, PHMSA consulted with FAA, FMCSA, and FRA.

Our determination is that this action would result in a generalized positive impact on the human environment, but not significant to such a degree as would warrant a detailed discussion of any impact(s); and would result in no negative impacts to the human environment because this action affects violators of the HMR. PHMSA encourages comments from members of the public and stakeholders about possible environmental impacts.

K. Privacy Act

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, 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 (65 FR 19477) or you may visit *http://www.dot.gov/privacy.html*.

List of Subjects

49 CFR Part 107

Administrative practices and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 109

Definitions, Inspections and investigations, Emergency orders, Imminent hazards, Remedies generally.

In consideration of the foregoing, we are proposing to amend 49 CFR Chapter I as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

■ 1. The authority citation for part 107 is revised to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–121 sections 212–213; Pub. L. 104–134 section 31001; Pub. L. 112–141 section 33006; 49 CFR 1.81 and 1.97.

■ 2. In Subpart D, add new § 107.338 to read as follows:

§ 107.338 Prohibition of Hazardous Materials Operations.

As provided for in Subpart E of part 109 of this subchapter, a person who fails to pay a civil penalty in accordance with agreed upon installments or in full within prescribed time lines, is prohibited from conducting hazardous materials operations and shall immediately cease all hazardous materials operations.

PART 109—DEPARTMENT OF TRANSPORTATION HAZARDOUS MATERIAL PROCEDURAL REGULATIONS

■ 3. The authority citation for part 109 is revised to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–121 sections 212–213; Pub. L. 104–134 section 31001; 49 CFR 1.81, 1.97.

■ 4. Revise the part heading to read as shown above.

■ 5. Add new Subpart E, Prohibition on Hazardous Materials Operations After Nonpayment of Penalties to read as follows:

Subpart E—Prohibition on Hazardous Materials Operations After Nonpayment of Penalties

Secs.

§ 109.101 Prohibition of Hazardous Materials Operations.
§ 109.103 Notice of Nonpayment of Penalties.

Subpart E—Prohibition on Hazardous Materials Operations After Nonpayment of Penalties

§ 109.101 Prohibition of Hazardous Materials Operations.

(a) *Definition of hazardous materials operations.* For the purposes of this subpart, hazardous materials operations means any activity regulated under the Federal hazardous material transportation law, this subchapter or subchapter C of this chapter, or an exemption or special permit, approval, or registration issued under this subchapter or under subchapter C of this chapter.

(b) *Failure to pay civil penalty in full.* A respondent that fails to pay a hazardous material civil penalty in full within 90 days after the date specified for payment by an order of the Pipeline and Hazardous Materials Safety Administration, Federal Motor Carrier Safety Administration, Federal Railroad Administration, or Federal Aviation Administration is prohibited from conducting hazardous materials operations and shall immediately cease all hazardous materials operations beginning on the next day (i.e., the 91st). The prohibition shall continue until payment of the penalty has been made in full or at the discretion of the agency issuing the order an acceptable payment plan has been arranged.

(c) *Civil penalties paid in installments.* On a case by case basis, a respondent may be allowed to pay a civil penalty pursuant to a payment plan, which may consist of installment payments. If the respondent fails to make an installment payment contained in the payment plan on the agreed upon schedule, the payment plan shall be null and void and the full outstanding balance of the civil penalty shall be payable immediately. A respondent that fails to pay the full outstanding balance of its civil penalty within 90 days after the date of the missed installment payment shall be prohibited from conducting hazardous materials operations beginning on the next day (i.e., the 91st). The prohibition shall continue until payment of the outstanding balance of the civil penalty has been made in full, including any incurred interest or until at the discretion of the agency issuing the order another acceptable payment plan has been arranged.

(d) *Appeals to Federal Court.* If the respondent appeals an agency order issued pursuant to § 109.103 to a Federal Circuit Court of Appeals, the terms and payment due date of the order are not stayed unless the Court so specifies.

(e) *Applicability to ticketing.* This section does not apply to a respondent who fails to pay a civil penalty assessed by a ticket issued pursuant to § 107.310 of this subchapter.

(f) *Applicability to debtors.* This section does not apply to a respondent who is unable to pay a civil penalty because the respondent is a debtor in a case under chapter 11, title 11, United States Code. A respondent who is a debtor in a case under chapter 11, title 11, United States Code must provide the following information to the agency decision maker identified in the original agency order or on its certificate of service.

(1) The chapter of the Bankruptcy Code under which the bankruptcy proceeding is filed;

(2) The bankruptcy case number;

(3) The court in which the bankruptcy proceeding was filed; and

(4) Any other information requested by the agency to determine a debtor's bankruptcy status.

(g) *Penalties for Prohibited Hazardous Materials Operations.* A respondent that continues to conduct hazardous materials operations in violation of this section may be subject to additional penalties, including criminal prosecution pursuant to 49 U.S.C. § 5124.

§ 109.103 Notice of Nonpayment of Penalties.

(a) If a full payment of a civil penalty, or an installment payment as part of agreed upon payment plan, has not been made within 45 days after the date specified for payment by the final agency order, the agency may issue a cessation of hazardous materials operations order to the respondent.

(b) The cessation of hazardous materials operations order issued under this section shall include the following information:

(1) A citation to the statutory provision or regulation the respondent was found to have violated and to the terms of the order or agreement requiring payment;

(2) A statement indicating that if the respondent fails to pay the full outstanding balance of the civil penalty within 90 days after the payment due date, the respondent shall be prohibited from conducting any activity regulated under the Federal hazardous material transportation law, this subchapter or subchapter C of this chapter, or an exemption or special permit, approval, or registration issued under this subchapter or under subchapter C of this chapter;

(3) A statement describing the respondent's options for responding to the order which will include an option to file an appeal for reconsideration of the cessation of operations order within 20 days of receipt of the order; and

(4) A description of the manner in which the respondent can make payment of any money due the United States as a result of the proceeding (i.e., the full outstanding balance of the civil penalty).

(c) The cessation of hazardous materials operation order will be delivered by personal service, unless such service is impossible or impractical. If personal service is impossible or impractical then service may be made by certified mail or commercial express service. If a respondent's principal place of business is in a foreign country, it will be delivered to the respondent's designated agent (as prepared in accordance with § 105.40 of this subchapter).

Issued in Washington, DC, on September 16, 2013, under authority delegated in 49 CFR Part 106.

Magdy El-Sibaie,

Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2013–22952 Filed 9–23–13; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–HQ–ES–2013–0051; 450 003 0115]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List 10 Sturgeon Species as Endangered or Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list 10 sturgeon species as endangered or threatened under the Endangered Species Act of 1973, as amended (Act). Based on our review, we find that the petition presents substantial scientific and commercial information indicating that the petitioned action may be warranted. Therefore, with the publication of this notice, we are initiating a review of the status of these species to determine if listing these 10 species is warranted. To ensure that this status review is comprehensive, we request scientific and commercial data and other information regarding these species. At the conclusion of this review, we will issue a 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act.

DATES: To allow us adequate time to conduct this review, we request that we receive information on or before November 25, 2013. After this date, you must submit information directly to the office listed in the **FOR FURTHER INFORMATION CONTACT** section below. Please note that we may not be able to address or incorporate information that we receive after the above requested date.

ADDRESSES: You may submit information by one of the following methods:

- *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search field, enter Docket No. FWS–HQ–ES–2013–0051, which is the docket number for this action. Then click on the Search button. You may submit a comment by clicking on ''Comment Now!'' If your comments will fit in the provided comment box, please use this feature of *http://www.regulations.gov,* as it is most compatible with our comment review procedures. If you attach your comments as a separate document, our preferred file format is Microsoft Word. If you attach multiple comments (such as form letters), our preferred format is a spreadsheet in Microsoft Excel.
- *By Hard Copy:* U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS–HQ–ES–2013–0051, Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will not accept comments by email or fax. 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 Information Requested section, below, for more information).

FOR FURTHER INFORMATION CONTACT: Janine Van Norman, Chief, Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 420, Arlington, VA 22203; telephone 703–358–2171; facsimile 703–358–1735. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Information Requested

For the status review to be complete and based on the best available scientific and commercial information,

we request information on 10 sturgeon species (see list in Table 1, below) from government agencies (including foreign national and provincial governments within the range of each of these species), the scientific community, industry, and any other interested parties. We seek information on:

(1) Each species' biology, range, and population trends, including:

(a) Habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns, particularly regarding their seasonal migrations;

(d) Historical and current population levels, and current and projected population trends;

(e) Potential threats to each species such as harvest or other threats not identified; and

(f) Past and ongoing conservation measures for each species or its habitat.

(2) The factors that are the basis for making a listing determination for a species or subspecies under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of their habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes, particularly data on hunting;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting their continued existence.

(3) The potential effects of climate change on each species and its habitat.

Please include sufficient information with your submission (such as full references) to allow us to verify any scientific or commercial information you include. Submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section. If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If you submit a hard copy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hard copy submissions on *http://www.regulations.gov.*

Information and supporting documentation that we received and used in preparing this finding will be available to review at *http://www.regulations.gov,* or you may make an appointment during normal business hours at the U.S. Fish and Wildlife Service, Endangered Species Program, Branch of Foreign Species (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly initiate a species status review, which we subsequently summarize in our 12-month finding.

Petition History

On March 12, 2012, the National Marine Fisheries Service (NMFS) received a petition dated March 8, 2012, from WildEarth Guardians and Friends of Animals to list as endangered or threatened under the Act the following 15 sturgeon species: Adriatic sturgeon (*Acipenser naccarii*); Baltic sturgeon (*A. sturio*); Russian sturgeon (*A. gueldenstaedtii*); ship sturgeon (*A. nudiventris*); Persian sturgeon (*A. persicus*); stellate sturgeon (*A. stellatus*); Siberian sturgeon (*A. baerii*); Yangtze sturgeon (*A. dabryanus*); Chinese sturgeon (*A. sinensis*); Sakhalin sturgeon (*A. mikadoi*); Amur sturgeon (*A. schrenckii*); Kaluga sturgeon (*Huso dauricus*); Syr Darya sturgeon (*Pseudoscaphirhynchus fedtschenkoi*); dwarf sturgeon (*P. hermanni*); and Amu Darya sturgeon (*P. kaufmanni*). The petition states that all 15 petitioned sturgeon species are affected by similar threats, which are primarily: Both legal and illegal harvest for meat and/or roe; habitat loss and degradation including dams or dam construction, and water pollution. The petition is available at *http://www.nmfs.noaa.gov/pr/pdfs/petitions/sturgeon15_petition2012.pdf.*

NMFS acknowledged receipt of this petition in a letter dated April 14, 2012, and informed the petitioners that NMFS would determine, under section 4 of the Act, whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. Although the petition was initially sent to NMFS, as a result of subsequent discussions between NMFS and the Service regarding the August 28, 1974, Memorandum of Understanding pertaining to ''Jurisdictional Responsibilities and Listing Procedures Under the Endangered Species Act of 1973,'' we have determined that 10 of the 15 petitioned sturgeon species are within the jurisdiction of the Service. Therefore, in April 2012, the Service notified WildEarth Guardians that we have jurisdiction over the 10 sturgeon species, listed below, that are the subject of this 90-day finding.

This 90-day finding considers whether the petitioned action may be warranted for the following 10 sturgeon species included in the petition: Siberian sturgeon (*Acipenser baerii*), Yangtze sturgeon (*A. dabryanus*), Russian sturgeon (*A. gueldenstaedtii*), ship sturgeon (*A. nudiventris*), Persian sturgeon (*A. persicus*), Amur sturgeon (*A. schrenckii*), stellate sturgeon (*A. stellatus*), Syr-Darya sturgeon (*Pseudoscaphirhynchus fedtschenkoi*), dwarf sturgeon (*P. hermanni*), and the Amu Darya sturgeon (*P. kaufmanni*). The best available information regarding the current ranges and population trends is summarized in Table 1, below.

TABLE 1—LIST OF SPECIES IN THIS 90-DAY FINDING

Species	IUCN Status	Population trend	Current range
Siberian sturgeon (*Acipenser baerii*)	Endangered	Decreasing	China; Kazakhstan; Mongolia; Russia.
Yangtze sturgeon (*Acipenser dabryanus*)	Critically Endangered	Decreasing	China.
Russian sturgeon (*Acipenser gueldenstaedtii*)	Critically Endangered	Decreasing	Azerbaijan; Bulgaria; Georgia; Iran; Kazakhstan; Moldova; Romania; Russia; Serbia; Turkey; Turkmenistan; Ukraine.
Ship sturgeon (*Acipenser nudiventris*)	Critically Endangered	Decreasing	Azerbaijan; Georgia; Hungary; Iran; Kazakhstan; Russia; Serbia; Turkey.
Persian sturgeon (*Acipenser persicus*)	Critically Endangered	Decreasing	Azerbaijan, Georgia, Iran, Kazakhstan, Russia, Turkey.
Amur sturgeon (*Acipenser schrenckii*)	Critically Endangered	Decreasing	China; Russia.
Stellate sturgeon (*Acipenser stellatus*)	Critically Endangered	Decreasing	Azerbaijan; Bulgaria; Iran; Kazakhstan; Moldova; Romania; Russia; Serbia; Turkey; Turkmenistan; Ukraine.
Syr Darya sturgeon (*Pseudoscaphirhynchus fedtschenkoi*).	Critically Endangered	Unknown	Kazakhstan, Tajikistan, Uzbekistan.
Dwarf sturgeon (*Pseudoscaphirhynchus hermanni*).	Critically Endangered	Decreasing	Afghanistan, Turkmenistan, Uzbekistan.
Amu Darya sturgeon (*Pseudoscaphirhynchus kaufmanni*).	Critically Endangered	Decreasing	Turkmenistan, Uzbekistan.

Introduction

These 10 sturgeon species are either anadromous (spend part of their lives in salt water and return to rivers to breed) or live solely in fresh water. Many sturgeon species are prized for their roe, which is made into caviar. The primary factors indicated in the petition as affecting these species include overharvest and damming of rivers, which affect the continued survival of all the petitioned sturgeon with the exception, at least at present, of those in the Amur River basin.

In 1997, Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) agreed to include all sturgeon species not already in the CITES Appendices in Appendix II. The listing became effective in April 1998. All 10 species of sturgeon in this finding were included in CITES Appendix II at that time. Pursuant to Article II, paragraph 2(a) of CITES, Appendix II includes species that are not necessarily threatened now with extinction, but may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival. In addition, Appendix II also includes species that may be listed due to their similarity in appearance with other species that are regulated under the treaty (CITES Article II 2(b)). Some of the 10 species of sturgeon in this finding were listed in accordance with the CITES criteria under paragraph 2(a) of Article II, while others were listed based upon the similarity of appearance provision.

CITES is a multinational agreement between governments. CITES Parties (signatory countries) regulate and monitor international trade in CITES-listed species (that is, their import, export, and re-export) through a system of permits and certificates. CITES lists species in one of three appendices—Appendix I, II, or III.

Evaluation of Information for a 90-Day Finding on a Petition

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR 424 set forth the procedures for adding a species to, or removing a species from, the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

In making this 90-day finding, we evaluated whether information regarding threats to each species, as presented in the petition and other information available in our files, is substantial, thereby indicating that the petitioned action may be warranted. Our evaluation of this information is presented in Appendix A. in Docket No. FWS–HQ–ES–2013–0051 on *http://www.regulations.gov.*

Finding

On the basis of our review under section 4(b)(3)(A) of the Act, we determine that the petition presents substantial scientific or commercial information indicating that listing these 10 sturgeon species as endangered or threatened may be warranted. This finding is based on information provided in the petition regarding the five factors: The present or threatened destruction, modification, or curtailment of its habitat or range (Factor A); overutilization for commercial, recreational, scientific, or educational purposes (Factor B); disease and predation (Factor C); the inadequacy of existing regulatory mechanisms (Factor D); and other natural or manmade factors affecting the species' continued existence (Factor E).

The primary factors identified in the petition as affecting these species are dams constructed within their range that fragment their habitat (Factor A); pollution that causes health and reproduction issues (Factor A); severe levels of overharvest (Factor B); and the inadequacy of existing regulatory mechanisms (Factor D) to address those threats. The petitioners also note that all of the petitioned species are affected by more than one factor (Petition, p. 50).

These species occur in several countries, and the factors affecting these species are complex and interrelated. Because we have found that the petition presents substantial information indicating that listing these 10 sturgeon species may be warranted, we are initiating a status review to determine whether listing these 10 sturgeon species under the Act as endangered or threatened is warranted.

The ''substantial information'' standard for a 90-day finding differs from the Act's ''best scientific and commercial data available'' standard

that applies to a 12-month finding (status review) as to whether a petitioned action is warranted. A 90-day finding is not a status assessment of the species and does not constitute a status review under the Act. In a 12-month finding, we will determine whether a petitioned action is warranted after we have completed a thorough status review of the species, which is conducted following a substantial 90-day finding. Because the Act's standards for 90-day and 12-month findings are different, as described above, a substantial 90-day finding does not mean that the 12-month finding will result in a warranted finding.

References Cited

A complete list of all references cited in this 90-day finding is available on the Internet at *http://www.regulations.gov* at Docket No. FWS–HQ–ES–2013–0051 or upon request from the Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary author of this finding is Amy Brisendine, Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 9, 2013.

Stephen D. Guertin,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2013–22879 Filed 9–23–13; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 78, No. 185

Tuesday, September 24, 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

September 19, 2013.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725—17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: OIRA_Submission@omb.eop.gov or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received by October 24, 2013. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Housing Service

Title: 7 CFR 1980–D, Rural Housing Loans.

OMB Control Number: 0575–0078.

Summary of Collection: The Rural Housing Service (RHS) is a credit agency for Rural Development for the U.S. Department of Agriculture. Section 517(d) of Title V of the Housing Act of 1949, as amended, (Act) provides the authority for the Secretary of Agriculture to issue loan guarantees for the acquisition of new or existing dwellings and related facilities to provide decent, safe, and sanitary living conditions and other structures in rural areas. The Act also authorizes the Secretary to pay the holder of a guaranteed loan the difference between the rate of interest paid by the borrower and the market rate of interest.

Congress passed Public Law 111–212, Supplemental Disaster Relief and Summer Jobs Act of 2010 which authorized the Agency to assess an annual fee in an effort to maintain a budget-neutral loan program. Effective in fiscal year 2011, the Agency began assessing an annual fee against newly closed guaranteed loans. The program introduced an electronic method for lenders to pay the annual fee through the Guaranteed Annual Fee (GAF) system. This new Web-based system allows loan servicers to authorize pre-authorized debit (PAD) payments as well as review annual fee advance notice, billing, and payment reconciliation details for guaranteed loans that they service.

Need and Use of the Information: Information collected is used to determine if borrowers qualify for all assistance. Eligibility for this program includes very low, low, and moderate-income families or persons whose income does not exceed 115 percent of the median income for the area. The information requested by RHS includes borrower financial information such as household income, assets and liabilities, and monthly expenses. Information requested on lenders is required to ensure lenders are eligible to participate in the GRH program and are in compliance with OMB Circular A–129. If the information collected was less frequent or not at all, the agency could not effectively monitor lenders and assess the program.

Description of Respondents: Individuals or households; Business or other for-profit.

Number of Respondents: 154,197.

Frequency of Responses: Reporting: Monthly; On occasion.

Total Burden Hours: 880,796.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2013–23241 Filed 9–23–13; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2013–0065]

Notice of Request for Extension of Approval of an Information Collection; Importation of Horses, Ruminants, Swine, and Dogs; Inspection and Treatment for Screwworm

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the regulations for the importation of horses, ruminants, swine, and dogs from regions of the world where screwworm is considered to exist.

DATES: We will consider all comments that we receive on or before November 25, 2013.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2013-0065-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2013–0065, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0065* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the regulations for the importation of horses, ruminants, swine, and dogs from regions of the world where screwworm is considered to exist, contact Dr. Ellen Buck, Equine Import Specialist, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737; (301) 851–3361. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Importation of Horses, Ruminants, Swine, and Dogs; Inspection and Treatment for Screwworm.

OMB Number: 0579–0165.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) is authorized, among other things, to prohibit or restrict the importation and interstate movement of animals and animal products to prevent the introduction into and dissemination within the United States of livestock diseases and pests.

The regulations in 9 CFR part 93 prohibit or restrict the importation of certain animals into the United States to prevent the introduction of communicable diseases of livestock and poultry. Subparts C, D, E, and F of part 93 govern the importation of horses, ruminants, swine, and dogs, respectively, and include provisions for the inspection and treatment of these animals if imported from any region of the world where screwworm is considered to exist. Screwworm is a pest native to tropical areas of South America, the Indian subcontinent, Southeast Asia, tropical and sub-Saharan Africa, and the Arabian peninsula. Screwworm causes extensive damage to livestock and other warmblooded animals.

The regulations in subparts C, D, E, and F involve the use of two information collection activities. One information collection activity includes a USDA–APHIS Veterinary Services (VS) Application for Import or In Transit Permit (Animals, Animal Semen, Animal Embryos, Birds, Poultry, or Hatching Eggs) (VS Form 17–129) for horses, ruminants, and swine. The second information collection activity includes a certificate for horses, ruminants, swine, and dogs signed by a full-time salaried veterinary official of the exporting region stating that the animal has been inspected, under certain conditions, and found free of screwworm and, as appropriate, that the animal was treated for screwworm.

Since the last approval of these collection activities, APHIS has adjusted the number of responses. We have increased the number of responses to reflect the number of health certificates that are presented for dogs. APHIS does not track the number of health certificates presented for dogs; however, we increased our estimate from 2 to 50 by counting the number of inquiries from individuals interested in importing dogs from areas where screwworm exists. We have also increased the number of responses for completion of health certificates for horses from 99 to 1,650, because the number of responses per respondent has increased from 3 to 50. The number of importers of horses has remained the same, but the number of responses per importer has been updated to accurately reflect the number of health certificates for horses that are presented. APHIS tracks the number of health certificates presented for horses.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.05 hours per response.

Respondents: Full-timed salaried veterinary officials of exporting regions and importers of horses, ruminants, swine, and dogs from regions where screwworm is considered to exist.

Estimated annual number of respondents: 91.

Estimated annual number of responses per respondent: 21.31.

Estimated annual number of responses: 1,939.

Estimated total annual burden on respondents: 97 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 18th day of September 2013.

Michael C. Gregoire,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–23193 Filed 9–23–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2013–0070]

Notice of Request for Extension of Approval of an Information Collection; Swine Health

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the regulations to prevent the interstate spread of swine diseases and protect swine health.

DATES: We will consider all comments that we receive on or before November 25, 2013.

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

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2013-0070-0001.*

• *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2013–0070, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0070* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the regulations to prevent the interstate spread of swine diseases and to protect swine health, contact Dr. Troy Bigelow, Swine Health Veterinarian, NCAHP, VS, APHIS, 210 Walnut Street, Room 891, Des Moines, IA 50309; (301) 851–3304. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Swine Health.

OMB Number: 0579–0137.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) is authorized, among other things, to prohibit or restrict the interstate movement of animals and animal products to prevent the dissemination within the United States of animal diseases and pests of livestock and to conduct programs to detect, control, and eradicate pests and diseases of livestock. APHIS regulations at 9 CFR, chapter I, subchapter C, govern the interstate movement of animals and other articles to prevent the spread of pests and diseases of livestock within the United States.

The regulations in part 71 contain requirements for the interstate movement of swine within a production system to prevent the spread of swine diseases, and part 85 regulates the interstate movement of swine to prevent the spread of the pseudorabies virus (PRV). In addition, part 52 allows for the payment of indemnity, under the Pseudorabies Eradication Program, to owners for depopulation of swine known to be infected with PRV. These regulations protect the health of the U.S. swine population.

Information collection activities associated with the regulations include, for part 71, a swine production system health plan, an interstate movement report and notification, a Quarterly Report of Pseudorabies Control/Eradication Activities (Veterinary Services (VS) Form 7–1), and recordkeeping; for part 85, a Permit to Move Restricted Animals (VS Form 1–27), a certificate of veterinary inspection (CVI), an owner-shipper statement, and an accredited veterinarian's statement concerning embryos for implantation and semen shipments; and, for part 52, an appraisal and indemnity claim form (VS Form 1–23), a herd management plan, and a report of net salvage proceeds. Additionally, the regulations require swine to be moved to slaughter in a means of conveyance sealed with an official seal.

Since the last approval of these collection activities, APHIS has adjusted the number of responses and respondents. We have increased the estimated annual number of responses to more accurately reflect the changes in production and industry practices, such as the movement of animals from certain slaughter facilities to another. In addition, we overestimated the number of veterinarians participating in swine health-related activities, which resulted in a decrease in the number of CVIs that we estimated would be issued. This contributed to the decrease in the number of respondents. However, the estimated annual number of responses per respondent increased because more swine are being moved due to changes in production practices and participation in exhibitions.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.24 hours per response.

Respondents: U.S. swine herd owners, producers, and shippers; hobby farmers; State animal health officials; and accredited veterinarians.

Estimated annual number of respondents: 5,120.

Estimated annual number of responses per respondent: 28.

Estimated annual number of responses: 144,705.

Estimated total annual burden on respondents: 35,696 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 18th day of September 2013.

Michael C. Gregoire,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–23194 Filed 9–23–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2013–0072]

Notice of Request for Extension of Approval of an Information Collection; Communicable Diseases in Horses

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the regulations for the interstate movement of horses that have tested positive for equine infectious anemia.

DATES: We will consider all comments that we receive on or before November 25, 2013.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS–2013–0072–0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2013–0072, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS–2013–0072* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the regulations for the interstate movement of horses that have tested positive for equine infectious anemia, contact Dr. Rory Carolan, Equine Specialist, Aquaculture, Swine, Equine, and Poultry Programs, VS, APHIS, 4700 River Road Unit 46, Riverdale, MD 20737; (301) 851–3558. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Communicable Diseases in Horses.

OMB Number: 0579–0127.

Type of Request: Extension of approval of an information collection.

Abstract: Under the authority of the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) regulates the importation and interstate movement of animals and animal products, and conducts various other activities to protect the health of U.S. livestock and poultry.

Equine infectious anemia (EIA) is an infectious and potentially fatal viral disease of equines. There is no vaccine or treatment for the disease. It is often difficult to differentiate from other fever-producing diseases, including anthrax, influenza, and equine encephalitis.

The regulations in 9 CFR 75.4 govern the interstate movement of equines that have tested positive to an official test for EIA (EIA reactors) and provide for the approval of laboratories, diagnostic facilities, and research facilities. Ensuring the safe movement of these horses requires the use of information collection activities, including an EIA laboratory test form, a certificate or permit for the interstate movement of an EIA reactor, a supplemental investigation form if a horse tests positive for EIA, agreements, request for hearing, and written notification of withdrawal of approval.

Since the last approval of these collection activities, APHIS has adjusted the estimates of burden, responses, and respondents. We have decreased the estimated total annual burden hours from 163,949 to 139,547 based on refinements to our calculations. For instance, as part of the last approval, we instituted the use of a permit for the movement of EIA-positive horses. However, we discovered that we overcalculated the number of respondents who would use the form. Similarly, the estimated number of respondents and responses per respondent for the EIA laboratory test form have been adjusted to more accurately reflect the use of the form. Lastly, we decreased our estimates as to the use of the supplemental investigation form, agreements, requests for hearing, and written notification of approval withdrawal because we have received fewer requests than we estimated for these processes.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.083 hours per response.

Respondents: Accredited and State veterinarians; laboratory, diagnostic, and research facility personnel; stockyard personnel; and owners and shippers of horses.

Estimated annual number of respondents: 253,785.

Estimated annual number of responses per respondent: 6.6.

Estimated annual number of responses: 1,681,142.

Estimated total annual burden on respondents: 139,547 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 18th day of September 2013.

Michael C. Gregoire,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–23192 Filed 9–23–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2013–0077]

Availability of an Environmental Assessment for Field Testing of a DNA Immunostimulant

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment concerning authorization to ship for the purpose of field testing, and then to field test, an unlicensed DNA Immunostimulant recommended for reduction in morbidity and mortality due to *Escherichia coli* in chickens and reduction in bovine respiratory disease due to *Mannheimia haemolytica* in cattle. The environmental assessment, which is based on a risk analysis prepared to assess the risks associated with the field testing of this veterinary biological product and related information, examines the potential effects that field testing this product could have on the quality of the human environment. Based on the risk analysis

and other relevant data, we have reached a preliminary determination that field testing this product will not have a significant impact on the quality of the human environment, and that an environmental impact statement need not be prepared. We intend to authorize shipment of this product for field testing following the close of the comment period for this notice unless new substantial issues bearing on the effects of this action are brought to our attention. We also intend to issue a U.S. Veterinary Biological Product license for this product, provided the field test data support the conclusions of the environmental assessment and the issuance of a finding of no significant impact and the product meets all other requirements for licensing.

DATES: We will consider all comments that we receive on or before October 24, 2013.

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

- Federal eRulemaking Portal: Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2013-0077-0001.*
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS–2013–0077, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0077* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 7997039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Donna Malloy, Section Leader, Operational Support Section, Center for Veterinary Biologics, Policy, Evaluation, and Licensing, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1231; phone (301) 851–3426, fax (301) 734–4314; email: *Donna.L.Malloy@aphis.usda.gov.* For information regarding the environmental assessment or the risk analysis, or to request a copy of the environmental assessment or the risk analysis (with confidential business information redacted), contact Dr. Patricia Foley, Risk Manager, Center for Veterinary Biologics, Policy, Evaluation, and Licensing, VS, APHIS, 1920 Dayton Avenue, P.O. Box 844, Ames, IA 50010; phone (515) 337–6100, fax (515) 337–6120

SUPPLEMENTARY INFORMATION: Under the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*), a veterinary biological product must be shown to be pure, safe, potent, and efficacious before a veterinary biological product license may be issued. A field test is generally necessary to satisfy prelicensing requirements for veterinary biological products. Prior to conducting a field test on an unlicensed product, an applicant must obtain approval from the Animal and Plant Health Inspection Service (APHIS), as well as obtain APHIS' authorization to ship the product for field testing.

To determine whether to authorize shipment and grant approval for the field testing of the unlicensed product referenced in this notice, APHIS conducted a risk analysis to evaluate the potential effects of this product on the safety of animals, public health, and the environment. Using the risk analysis and other relevant data, APHIS has prepared an environmental assessment (EA) concerning the field testing of the following unlicensed product:

Requester: Bayer HealthCare LLC, Animal Health Division.

Product: DNA Immunostimulant.

Possible Field Test Locations: Texas, Mississippi, and Georgia for poultry; Nebraska, Indiana, and Missouri for cattle.

The above mentioned product consists of non-replicating plasmid DNA in an immunogenic complex for use as an immunostimulant. This product will be recommended for the reduction in morbidity and mortality due to *Escherichia coli* in chickens and reduction in bovine respiratory disease due to *Mannheimia haemolytica* in cattle.

The EA has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Unless substantial issues with adverse environmental impacts are raised in response to this notice, APHIS intends to issue a finding of no significant impact (FONSI) based on the EA and authorize shipment of the above product for the initiation of field tests following the close of the comment period for this notice.

Because the issues raised by field testing and by issuance of a license are identical, APHIS has concluded that the EA that is generated for field testing would also be applicable to the proposed licensing action. Provided that the field test data support the conclusions of the original EA and the issuance of a FONSI, APHIS does not intend to issue a separate EA and FONSI to support the issuance of the veterinary biological product license, and would determine that an environmental impact statement need not be prepared. APHIS intends to issue a veterinary biological product license for this product following completion of the field test provided no adverse impacts on the human environment are identified and provided the product meets all other requirements for licensing.

Authority: 21 U.S.C. 151–159.

Done in Washington, DC, this 19th day of September 2013.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–23175 Filed 9–23–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2013–0063]

Supplemental Environmental Impact Statement for the Bird Hazard Reduction Program at John F. Kennedy International Airport

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of intent and public scoping process.

SUMMARY: We are advising the public that a supplemental environmental impact statement will be prepared by the Animal and Plant Health Inspection Service to analyze a proposed method for managing hazards to aircraft at John F. Kennedy International Airport associated with non-native mute swans in the Gateway National Recreation Area. This action is a supplement to the Gull Hazard Reduction Program at John F. Kennedy International Airport Final Environmental Impact Statement (EIS), May 1994, and the Supplemental EIS, June 2012.

DATES: We will consider all comments that we receive on or before October 24, 2013.

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

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2013-0063-0001.*

• *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2013–0063, USDA–APHIS Wildlife Services, 1930 Route 9, Castleton, NY 12033–9653.

Any comments we may receive on this notice may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0063* or at the New York USDA–APHIS Wildlife Services State Office at the address listed under **FOR FURTHER INFORMATION CONTACT**. Office hours are 8 a.m. to 4:30 p.m. Monday through Friday, except holidays. To be sure someone is there to help you, please call (518) 477–4837 before coming.

This notice and associated documents are also posted on the APHIS Web site at *http://www.aphis.usda.gov/regulations/ws/ws_environmental_new_york.shtml.*

FOR FURTHER INFORMATION CONTACT: Mr. Martin Lowney, Wildlife Services, APHIS, 1930 Route 9, Castleton, NY 12033–9653; (518) 477–4837.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS), in cooperation with the Department of the Interior's Fish and Wildlife Service and National Park Service, the Federal Aviation Administration, the New York State Department of Environmental Conservation (NYSDEC), the Port Authority of New York and New Jersey, and the New York City Departments of Environmental Protection and Parks and Recreation, intends to prepare a supplemental environmental impact statement (SEIS) to consider additional methods to reduce aircraft hazards associated with the mute swan population in Gateway National Recreation Area. Subsequent to the completion of a 2012 Supplement to the Gull Hazard Reduction Program at John F. Kennedy International Airport Final Environmental Impact Statement (FEIS), 1994, APHIS has determined there is a need for additional mute swan damage management beyond the impact parameter examined in the 2012 SEIS.

The agencies are proposing to add additional techniques to the list of methods which may be used to reduce hazards from mute swans residing at Gateway National Recreation Area. Lethal methods could include shooting or euthanasia in conjunction with live traps. Non-lethal methods could include live-capture and adoption by private entities with some mobility restrictions (e.g., pinioned wings, no release on public waters, release on private ponds only, marking or banding individual birds, and sterilization). Live-capture and relocation is not being proposed as an alternative at this time because it is currently prohibited by the NYSDEC.

APHIS will use an interdisciplinary approach in compliance with National Environmental Policy Act (NEPA) and Agency mandates, policies, and regulations to address the following questions in the proposed SEIS:

• How can the agencies best respond to the need to minimize damage threats to aircraft and human safety from mute swan strikes?

• What are the environmental impacts of implementing various management strategies, lethal and non-lethal, such as shooting, euthanasia, live capture, relocation, etc.?

• Will the management strategies mentioned above have significant environmental impacts?

The scope of the 2012 SEIS will be broadened to include analysis for expanded mute swan hazard management at the Gateway National Recreation Area. The SEIS will review the efficacy and impacts of current mute swan management efforts and analyze impacts of new and/or expanded methods for wildlife hazard management at John F. Kennedy International Airport. Members of the public are encouraged to visit the Web site for the SEIS at *http://www.aphis.usda.gov/regulations/ws/ws_environmental_new_york.shtml* to learn more about mute swan hazards to aircraft and methods for addressing hazards associated with mute swans at Gateway National Recreation Area.

We anticipate that the draft SEIS will be available for review by the general public by November 30, 2013. The SEIS will be prepared in accordance with: (1) NEPA, as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 19th day of September 2013.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–23184 Filed 9–23–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Information Collection; Direct Loan Servicing-Regular

AGENCY: Farm Service Agency, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) is seeking comments from all interested individuals and organizations on the extension with a revision of a currently approved information collection that supports Direct Loan Servicing-Regular programs. The information is used to determine borrower compliance with loan agreements, assist the borrower in achieving business goals, and regular servicing of the loan account such as graduation, subordination, partial release, and use of proceeds. The number of respondents and annual number of responses in this information collection has been adjusted to reflect the improved reporting ability for respondents and to correct some calculation errors in the previous information collection numbers. No additional forms, response actions, or time increases (other than travel time) were added as part of this revision.

DATES: We will consider comments that we receive by November 25, 2013.

ADDRESSES: We invite you to submit comments on this notice. In your comments, include date, volume, and page number, and the OMB control number and the title of the information collection of this issue of the **Federal Register**. You may submit comments by any of the following methods:

• *Federal eRulemaking Portal:* Go to: *www.regulations.gov*. Follow the online instructions for submitting comments.

• *Mail:* J. Lee Nault, Loan Specialist, USDA/FSA/FLP, STOP 0523, 1400 Independence Avenue, SW., Washington, DC 20250–0503.

You may also send comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Copies of the information collection may be requested by contacting J. Lee Nault at the above address.

FOR FURTHER INFORMATION CONTACT: J. Lee Nault, Loan Specialist, Farm Service Agency, (202) 720–6834.

SUPPLEMENTARY INFORMATION:

Title: (7 CFR part 765) Farm Loan Programs—Direct Loan Servicing-Regular.

OMB Number: 0560–0236.

Expiration Date: 02/28/2014.

Type of Request: Extension with a revision.

Abstract: FSA's Farm Loan Programs provide loans to family farmers to purchase real estate and equipment, and finance agricultural production. Direct Loan Servicing—Regular, as specified in 7 CFR part 765, provides the requirements related to routine servicing actions associated with direct loans. FSA is required to actively supervise its borrowers and provide credit counseling, management advice and financial guidance. Additionally, FSA must document that credit is not available to the borrower from commercial credit sources in order to maintain eligibility for assistance. Information collections established in the regulation are necessary for FSA to monitor and account for loan security, including proceeds derived from the sale of security, and to process a borrower's request for subordination or partial release of security. Borrowers are required to provide financial information to determine graduation eligibility based on commercial lender standards provided to FSA.

The number of respondents and annual number of responses in this information collection has been adjusted to reflect the improved reporting ability for respondents and to correct some calculation errors in the previous information collection numbers. No additional forms, response actions, or time increases (other than travel time) were added as part of this revision.

Estimate of Average Time to respond: 19 minutes per response. The average travel time, which is included in the total annual burden, is estimated to be 1 hour per respondent.

Respondents: Individuals or households, businesses or other for profit farms

Estimated Annual Number of Respondents: 52,765.

Estimated Number of Reponses per Respondent: 1.98.

Total Annual Responses: 104,518.

Estimated Total Annual Burden Hours: 64,771. We are requesting comments on all aspects of this information collection to help us to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of FSA, including whether the information will have practical utility;

(2) Evaluate the accuracy of FSA's estimate of burden including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected;

(4) 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, including name and addresses when provided, will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed on September 17, 2013.

Juan M. Garica,

Administrator, Farm Service Agency.

[FR Doc. 2013–23227 Filed 9–23–13; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

[Docket No. NRCS–2013–0004]

Notice of Availability of the Record of Decision (ROD) and Findings of No Significant Impact (FONSI) for the Grand Prairie Area Demonstration Project

AGENCY: Natural Resources Conservation Service (NRCS), USDA.

ACTION: Notice of availability of Record of Decision and Findings of No Significant Impact.

SUMMARY: This notice announces NRCS' adoption, under provisions provided for in 40 CFR 1506.3 of the U.S. Army Corps of Engineers' Final Environmental Impact Statement (EIS) entitled: ''General Reevaluation Report and Environmental Impact Statement for the Grand Prairie Demonstration Project dated September 1999'' (GRR/EIS) and the availability of an associated NRCS ROD. NRCS has also adopted the two Environmental Assessments (EAs) associated with the project entitled: ''Environmental Assessment Grand Prairie Area Demonstration Project, Post General Reevaluation Design Changes'' (2004 EA) and ''Environmental Assessment Grand Prairie Area Demonstration Project Canal Realignment and Pumping Station Borrow Area, Prairie County, Arkansas'' (2010 EA), and an NRCS FONSI for each EA is available.

ADDRESSES: Copies of the ROD and FONSI are available upon request from the Natural Resources Conservation Service, Room 3416, Federal Building, 700 West Capitol Avenue, Little Rock, Arkansas 72201–3225.

FOR FURTHER INFORMATION CONTACT: Charlotte Bowie, State Irrigation Engineer, Natural Resources Conservation Service, Room 3416, Federal Building, 700 West Capitol Avenue, Little Rock, Arkansas 72201–3225; telephone: (501) 301–3148.

SUPPLEMENTARY INFORMATION: NRCS prepared the ROD and FONSI in compliance with the National Environmental Policy Act after reviewing the EIS and the EAs and concurring with the analysis and findings therein, and finding that the proposed project modifications described in the EAs will not result in significant impacts to the environment.

The Grand Prairie Area Demonstration Project is located in eastern Arkansas and includes portions of Prairie, Arkansas, Lonoke, and Monroe Counties. This project will provide for agricultural water supply, ground water protection, and wildlife enhancement within the project area. The project features include a major pumping station, conveyance channels and pipelines, and conservation measures for the Grand Prairie area.

Signed this 13th day of September, 2013, in Washington, DC

Terry J. Cosby,

Acting Regional Conservationist, Natural Resources Conservation Service.

[FR Doc. 2013–23134 Filed 9–23–13; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

[Docket No. NRCS–2013–0005]

Notice of Availability of the Record of Decision (ROD) and Finding of No Significant Impact (FONSI) for the Bayou Meto Basin Project, Arkansas

AGENCY: Natural Resources Conservation Service (NRCS), USDA.

ACTION: Notice of availability of Record of Decision and Finding of No Significant Impact.

SUMMARY: This notice announces NRCS' adoption, under provisions provided for in 40 CFR 1506.3 of the U.S. Army Corps of Engineers' Final Environmental Impact Statement (EIS) entitled: ''General Reevaluation Report and Environmental Impact Statement for the Bayou Meto Basin project dated November 2006 and revised March 2007'' (GRR/EIS) and the availability of an associated NRCS ROD. NRCS has

also adopted the Environmental Assessment (EA) entitled ''Final Environmental Assessment Bayou Meto Basin, Arkansas Post General Reevaluation Design Changes'' dated July 21, 2010, and an NRCS FONSI for the EA is available.

ADDRESSES: Copies of the ROD and FONSI are available upon request from the Natural Resources Conservation Service, Room 3416, Federal Building, 700 West Capitol Avenue, Little Rock, Arkansas 72201–3225.

FOR FURTHER INFORMATION CONTACT: Charlotte Bowie, State Irrigation Engineer, Natural Resources Conservation Service, Room 3416, Federal Building, 700 West Capitol Avenue, Little Rock, Arkansas 72201–3225; telephone: (501) 301–3148.

SUPPLEMENTARY INFORMATION: NRCS prepared the ROD and FONSI in compliance with the National Environmental Policy Act after reviewing the EIS and the EA and concurring with the analysis and findings therein, and finding that the proposed project modifications described in the EA will not result in significant impacts to the environment.

The project area is located in east central Arkansas in Lonoke, Pulaski, Prairie, Jefferson, and Arkansas Counties, which forms the Bayou Meto Improvement Project Area. The project provides a water supply and on-farm infrastructure for irrigation, waterfowl habitat, and flood damage reduction of the Bayou Meto area of Arkansas.

Signed this 13th day of September, 2013, in Washington, DC

Terry J. Cosby,

Acting Regional Conservationist, Natural Resources Conservation Service.

[FR Doc. 2013–23133 Filed 9–23–13; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility to Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and Opportunity for Public Comment.

Pursuant to Section 251 of the Trade Act 1974, as amended (19 U.S.C. 2341 et seq.), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[9/12/2013 through 9/18/2013]

Firm name	Firm address	Date accepted for investigation	Product(s)
MacKenzie Co., LLC.	78015 Chemical Rd., Bush, LA 70431.	9/12/2013	The firm manufacturers metal acetylacetonates, chemical compounds, toll manufacturing, and full line custom formulations.
Crescent Moon Snowshoes, Inc.	5401 Western Ave, Suite C, Boulder, CO 80301.	9/13/2013	The firm manufactures snowshoes.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: September 18, 2013.

Michael DeVillo,

Eligibility Examiner.

[FR Doc. 2013–23200 Filed 9–23–13; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–86–2013]

Notification of Proposed Production Activity; Benteler Automotive Corporation (Automotive Suspension and Body Components); Duncan, South Carolina

Benteler Automotive Corporation (Benteler), operator of Subzone 38F, submitted a notification of proposed production activity for its facility located in Duncan, South Carolina. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on August 28, 2013.

The subzone currently has authority to produce automotive suspension components and subassemblies using certain foreign-status components. The current request would add bumper assemblies, body reinforcement assemblies, suspension parts (*e.g.,* links, control arms), and sub-frames to the list of approved finished products and would also add foreign-status components to the scope of authority. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Benteler from customs duty payments on the foreign status

materials and components used in export production. On its domestic sales, Benteler would be able to choose the duty rate during customs entry procedures that applies to bumper assemblies, body reinforcement assemblies, suspension parts, and sub-frames (2.5%) for the foreign status inputs noted below. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

The components and materials sourced from abroad include: Metal stampings (crash cans, reinforcement plates, flange plates); bumper beams; toe hooks; cross member shells; side tubes; steel blanks; brackets; gussets; closing plates; castings of aluminum; flat-rolled steel; tapping plates; fasteners; hub-bearing assemblies; metal knuckle protective caps; control arms; stabilizer links; struts; wheel carriers; snap rings; drive flange hubs; bearings; backing plates; and, adjuster nuts/spacers/blocks (duty rate ranges from free to 5.8%).

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is November 4, 2013.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Pierre Duy at *Pierre.Duy@trade.gov* or (202) 482–1378.

Dated: September 13, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–23202 Filed 9–23–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Denial of Export Privileges; Sixing Liu

In the Matter of: Sixing Liu, a/k/a Steve Liu, Inmate #43102–424, FCI Oxford, Federal Correctional Institution, P.O. Box 1000, Oxford, WI 53952

Order Denying Export Privileges

On March 26, 2013, in the U.S. District Court for the District of New Jersey, Sixing Liu, a/k/a Steve Liu (''Liu''), was convicted of violating Section 38 of the Arms Export Control Act (22 U.S.C. 2778 (2006 & Supp. IV 2010)) (''AECA''). Specifically, Liu was convicted of knowingly and willfully exporting and attempting to export to the People's Republic of China defense articles, specifically, technical data on the United States Munitions List related to fire control, range finder, optical and guidance and control equipment, without having first obtained from the U.S. Department of State a license or written approval for such export. Liu was sentenced to 70 months of imprisonment, three years of supervised release, a $15,000 criminal fine, and an assessment of $900.00.

Section 766.25 of the Export Administration Regulations (''EAR'' or ''Regulations'')[1] provides, in pertinent part, that ''[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the Export Administration Act (''EAA''), the EAR, or any order, license or authorization issued thereunder; any regulation, license, or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778).'' 15 CFR 766.25(a); *see also* Section 11(h) of the EAA, 50 U.S.C. app. 2410(h). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d); *see also* 50 U.S.C. app. 2410(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security's Office of Exporter Services may revoke any Bureau of Industry and Security (''BIS'') licenses previously issued in which the person had an interest in at the time of his conviction.

I have received notice of Liu's conviction for violating the AECA, and have provided notice and an opportunity for Liu to make a written submission to BIS, as provided in Section 766.25 of the Regulations. I have not received a submission from Liu.

Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Liu's export privileges under the Regulations for a period of 10 years from the date of Liu's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Liu had an interest at the time of his conviction.

Accordingly, it is hereby

Ordered

I. Until March 26, 2023, Sixing Liu, a/k/a Steve Liu, with a last known address at: Inmate Number #43102–424, FCI Oxford, Federal Correctional Institution, P.O. Box 1000, Oxford, WI 53952, and when acting for or on behalf of Liu, his representatives, assigns, agents or employees (the ''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, 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.

II. 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

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2013). The Regulations issued pursuant to the Export Administration Act (50 U.S.C. app. 2401–2420 (2000)) (''EAA''). Since August 21, 2001, the EAA 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 8, 2013 (78 FR 49107 (August 12, 2013)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2006 & Supp. IV 2010)).

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.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Liu by affiliation, ownership, control or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order if necessary to prevent evasion of the Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until March 26, 2023.

VI. In accordance with Part 756 of the Regulations, Liu may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VII. A copy of this Order shall be delivered to the Liu. This Order shall be published in the **Federal Register**.

Issued this 18th day of September, 2013.

Bernard Kritzer,

Director, Office of Exporter Services.

[FR Doc. 2013–23141 Filed 9–23–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–557–805]

Extruded Rubber Thread From Malaysia; Notice of Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* [Insert date of publication in the **Federal Register**].

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood, 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.

SUPPLEMENTARY INFORMATION:

Amended Final Results

On March 16, 1998, the Department of Commerce (the Department) published the final results of its administrative review of the antidumping duty order on extruded rubber thread from Malaysia.[1] The period of review (POR) is October 1, 1995, through September 30, 1996.

Following the publication of the final results, Heveafil Sdn. Bhd.[2] and Filmax Sdn. Bhd. (collectively, ''Heveafil'') filed a lawsuit with the United States Court of International Trade (CIT) challenging the Department's use of adverse facts available (AFA) to determine its dumping margin. On February 28, 2001, the CIT affirmed the Department's *Final Results* in relevant part.[3]

Heveafil appealed the CIT's February 28, 2001, decision before the Court of Appeals for the Federal Circuit (CAFC). On March 19, 2003, the CAFC affirmed the Department's use of AFA to determine Heveafil's dumping margin in the *Final Results;* however, it remanded to the CIT the specific rate assigned as AFA because the source of the corroboration of this rate was invalidated after the *Final Results.*[4]

Pursuant to the CAFC's decision, on May 28, 2003, the CIT remanded this case to the Department to assign a new AFA margin to Heveafil.[5] On September 4, 2003, the Department filed its remand results with the Court, assigning Heveafil a revised AFA margin of 52.89 percent.[6]

On June 25, 2013, the United States and Heveafil entered into an agreement to settle this dispute and requested a stipulated judgment. On September 4, 2013, the CIT issued an order of stipulated judgment. Consistent with the June 2013 agreement and the stipulated judgment, we will instruct U.S. Customs and Border Protection to liquidate all unliquidated entries of certain extruded rubber thread from Malaysia produced and/or exported by Heveafil, and entered, or withdrawn from warehouse, for consumption in the United States during the POR at the rate of duty in effect at the time of entry. However, we are not establishing a revised cash deposit rate for Heveafil because the antidumping duty order on extruded rubber thread from Malaysia was revoked on August 24, 2004, with an effective date of October 1, 2003.[7]

We are issuing this determination and publishing these amended final results and notice in accordance with 19 U.S.C. 1516a(e).

Dated: September 18, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2013–23208 Filed 9–23–13; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Extruded Rubber Thread From Malaysia; Final Results of Antidumping Duty Administrative Review,* 63 FR 12752 (Mar. 16, 1998) (*Final Results*).

[2] Heveafil Sdn. Bhd. is also known as Heveafil Sdn.

[3] *See Heveafil et al.* v. *United States,* Slip Op. 2001–23 (CIT 2001). While the CIT remanded to the Department its duty absorption inquiry, on August 9, 2001, it affirmed the Department's final results of remand redetermination on this issue. As the result of the remand redetermination, the Department did not change Heveafil's AFA rate.

[4] *See Heveafil Sdn. Bhd.* v. *U.S.,* 58 Fed. Appx. 843 (Fed. Cir. 2003).

[5] *See Heveafil Sdn. Bhd. and Filati Lastex Sdn. Bhd.* v. *United States,* Court No. 98–00908 (CIT May 28, 2003).

[6] The Court had stayed this litigation pending the outcome of a challenge to the effective date of the revocation of the order on extruded rubber thread from Malaysia. *See Extruded Rubber Thread From Malaysia; Notice of Final Results of Changed Circumstances Review of the Antidumping Duty Order and Intent To Revoke Antidumping Duty Order,* 69 FR 51989 (Aug. 24, 2004) (*Revocation of AD Order*).

[7] *See Revocation of AD Order,* 69 FR at 51989.

DEPARTMENT OF COMMERCE

International Trade Administration

U.S. Environmental Solutions Toolkit

AGENCY: International Trade Administration, DOC.

ACTION: Notice and Request for Comment.

SUMMARY: This notice sets forth a request for input from U.S. businesses capable of exporting their goods or services relevant to (a) arsenic removal

from drinking water; (b) management, use, or disposal of biosolids; and (c) secondary and advanced wastewater treatment. The Department of Commerce continues to develop the web-based *U.S. Environmental Solutions Toolkit* to be used by foreign environmental officials and foreign end-users of environmental technologies The Toolkit outline U.S. approaches to a series of environmental problems and highlight participating U.S. vendors of relevant U.S. technologies. The Toolkit will support the President's National Export Initiative by fostering export opportunities for the U.S. environmental industry, as well as advancing global environmental protection.

DATES: U.S. companies capable of exporting goods or services relevant to the environmental issues outlined above that are interested in participating in the U.S. Environmental Solutions Toolkit should self-identify by November 1, 2013, at 5:00 p.m. Eastern Standard Time (EST).

ADDRESSES: Please indicate interest in participating in the U.S. Environmental Solutions Toolkit by post, email, or fax to the attention of Maureen Hinman, Office of Energy & Environmental Industries, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Ave. NW., Room 4053, Washington, DC 20230; 202–482–0627; email *envirotech@trade.gov*; fax 202–482–5665.

SUPPLEMENTARY INFORMATION: The development of the *U.S. Environmental Solutions Toolkit* requires the identification of U.S. vendors capable of supplying relevant goods and services to foreign buyers. U.S. exporters interested in being listed on the Toolkit Web site are encouraged to submit their company's name, Web site address, contact information, and environmental solution category of interest from the following list:

(1) Arsenic removal from drinking water

(2) Management, use, or disposal of biosolids

(3) Secondary and advanced wastewater treatment

For purposes of participation in the Toolkit, ''United States exporter'' has the meaning found in 15 U.S.C. 4721(j), which provides: ''United States exporter means (A) a United States citizen; (B) a corporation, partnership, or other association created under the laws of the United States or of any State; or (C) a foreign corporation, partnership, or other association, more than 95 percent of which is owned by persons described in subparagraphs (A) and (B), that exports, or seeks to export, goods or services produced in the United States . . . .''

An expression of interest in being listed on the Toolkit Web site in response to this notice will serve as a certification that the company is a United States exporter, as defined by 15 U.S.C. 4721(j), and seeks to export environmental solutions that fall within the category or categories indicated in the response. Responding to this notification constitutes consent to participate in the Toolkit and to the public sharing of the company name. It also constitutes consent to the inclusion of the name of the company on the Toolkit Web site. The company name will be listed along with a link to the company-specific Web site indicated in the response to this notice. No additional company information will be posted.

The U.S. Environmental Solutions Toolkit will refer users in foreign markets to U.S. approaches to solving environmental problems and to U.S. companies that can export related technologies. The Toolkit Web site will note that its contents and links do not constitute an official endorsement or approval by the U.S. Commerce Department or the U.S. Government of any of the companies, Web sites, products, or services listed.

FOR FURTHER INFORMATION CONTACT: Maureen Hinman, Office of Energy & Environmental Industries (OEEI), International Trade Administration, Room 4053, 1401 Constitution Avenue, NW., Washington, DC 20230. (Phone: 202–482–0627; Fax: 202–482–5665; email: *maureen.hinman@trade.gov*).

Dated: September 18, 2013.

Catherine Vial,

Team Leader, Environmental and Renewable Energy Industries, Office of Energy and Environmental Industries.

[FR Doc. 2013–23111 Filed 9–23–13; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Construction Safety Team Advisory Committee Meeting

AGENCY: National Institute of Standards and Technology, Department of Commerce

ACTION: Notice of open meeting.

SUMMARY: The National Construction Safety Team (NCST) Advisory Committee (Committee) will meet on Tuesday, October 15, 2013 from 8:30 a.m. to 5:00 p.m. Eastern time and Wednesday, October 16, 2013, from 8:30 a.m. to 12:30 p.m. Eastern time. The meeting will be open to the public. The primary purpose of this meeting is to update the Committee on the status of the National Institute of Standards and Technology (NIST) Disaster and Failure Studies Program, receive NIST's response to the Committee's 2012 annual report recommendations, update the Committee on the progress of the NIST Technical Investigation of the May 22, 2011 Tornado in Joplin, MO, and gather information for the Committee's 2013 Annual Report to Congress. The agenda may change to accommodate Committee business. The final agenda will be posted on the NIST Web site at *http://www.nist.gov/el/disasterstudies/ncst/*.

DATES: The NCST Advisory Committee will meet on Tuesday, October 15, 2013 from 8:30 a.m. until 5:00 p.m. Eastern time and Wednesday, October 16, 2013, from 8:30 a.m. to 12:30 p.m. Eastern time.

ADDRESSES: The meeting will be held in Lecture Room A, Administration Building, National Institute of Standards and Technology (NIST), 100 Bureau Drive, Gaithersburg, Maryland 20899. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Eric Letvin, Director, Disaster and Failure Studies Program, Engineering Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8611, Gaithersburg, Maryland 20899–8611. Mr. Letvin's email address is *eric.letvin@nist.gov* and his phone number is (301) 975–5412.

SUPPLEMENTARY INFORMATION: The Committee was established pursuant to Section 11 of the NCST Act (Pub. L. 107–231), codified at 15 U.S.C. 7301 et seq. The Committee is composed of ten members, appointed by the Director of NIST, who were selected for their technical expertise and experience, established records of distinguished professional service, and their knowledge of issues affecting teams established under the NCST Act. The Committee advises the Director of NIST on the functions and composition of Teams established under the NCST Act and on the exercise of authorities enumerated in the NCST Act and reviews the procedures developed to implement the NCST Act and reports issued under section 8 of the NCST Act. Background information on the NCST Act and information on the NCST Advisory Committee is available at

http://www.nist.gov/el/disasterstudies/ncst/.

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the NCST Advisory Committee will meet on Tuesday, October 15, 2013, from 8:30 a.m. until 5:00 p.m. Eastern time and on Wednesday, October 16, 2013, from 8:30 a.m. until 12:30 p.m. Eastern time. The meeting will be open to the public.

The primary purpose of this meeting is to update the Committee on the status of the NIST Disaster and Failure Studies Program, receive NIST's response to the Committee's 2012 annual report recommendations, update the Committee on the progress of the NIST Technical Investigation of the May 22, 2011 Tornado in Joplin, MO, and gather information for the Committee's 2013 Annual Report to Congress. The agenda may change to accommodate Committee business. The final agenda will be posted on the NIST Web site at *http://www.nist.gov/el/disasterstudies/ncst/*.

Individuals and representatives of organizations who would like to offer comments and suggestions related to items on the Committee's agenda for this meeting are invited to request a place on the agenda. On October 15, 2013, approximately fifteen minutes will be reserved near the conclusion of the meeting for public comments, and speaking times will be assigned on a first-come, first-served basis. The amount of time per speaker will be determined by the number of requests received, but is likely to be 5 minutes each. The exact time for public comments will be included in the final agenda that will be posted on the NCST Advisory Committee Web site at *http://www.nist.gov/el/disasterstudies/ncst/*. Questions from the public will not be considered during this period. All those wishing to speak must submit their request by email to the attention of Mr. Eric Letvin, *eric.letvin@nist.gov*, by 5:00 p.m. Eastern time, Tuesday, October 8, 2013.

Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend in person are invited to submit written statements to the National Construction Safety Team Advisory Committee, National Institute of Standards and Technology, 100 Bureau Drive, MS 8611, Gaithersburg, Maryland 20899–8611, via fax at (301) 975–4032, or electronically by email to *eric.letvin@nist.gov*.

All visitors to the NIST site are required to pre-register to be admitted. Anyone wishing to attend this meeting must register by 5:00 p.m. Eastern time, Tuesday, October 8, 2013, in order to attend. Please submit your full name, email address, and phone number to Sonum Chaudhari. Non-U.S. citizens must also submit their country of citizenship, title, and employer/sponsor. Ms. Chaudhari's email address is *sonumc@nist.gov*, and her phone number is (301) 975–5324.

Dated: September 19, 2013.

Willie E. May,

Associate Director for Laboratory Programs.

[FR Doc. 2013–23214 Filed 9–23–13; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC825

Fisheries of the Caribbean; Southeast Data, Assessment and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 35 Data Workshop for Caribbean Red Hind.

SUMMARY: The SEDAR 35 assessment of Caribbean Red Hind will consist of: a Data Workshop; a series of Assessment Webinars; and a Review Workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 35 Data Workshop will be held from 9 a.m. on October 9, 2013 until 12 p.m. on October 11, 2013; the Assessment Webinars and Review Workshop dates and times will publish in a subsequent issue in the **Federal Register**. See **SUPPLEMENTARY INFORMATION**.

ADDRESSES:

Meeting address: The SEDAR 35 Data Workshop will be held at the Frenchman's Reef & Morning Star Marriott, 5 Estate Bakkeroe, St. Thomas, VI 00802, +1–340–776–8500 or 1–800–524–2000.

SEDAR address: 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie Neer, SEDAR Coordinator; telephone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520; email: *Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the SEDAR process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species (HMS) Management Division, and Southeast Fisheries Science Center. Participants include: data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in the Data Workshop agenda are as follows:

1. An assessment data set and associated documentation will be developed.

2. Participants will evaluate all available data and select appropriate sources for providing information on life history characteristics, catch statistics, discard estimates, length and age composition, and fishery dependent and fishery independent measures of stock abundance, as specified in the Terms of Reference (TOR) for the workshop.

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 these meetings. 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 intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the council office (see **ADDRESSES**) 3 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: September 19, 2013.

Tracey L. Thompson,

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

[FR Doc. 2013–23147 Filed 9–23–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC776

Advisory Committee to the U.S. Section of the International Commission for the Conservation of Atlantic Tunas; Fall Meeting

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

ACTION: Notice of public meeting.

SUMMARY: In preparation for the 2013 International Commission for the Conservation of Atlantic Tunas (ICCAT) meeting, the Advisory Committee to the U.S. Section to ICCAT is announcing the convening of its fall meeting.

DATES: The meeting will be held October 10–11, 2013. There will be an open session on Thursday, October 10, 2013, from 9 a.m. through approximately 2:15 p.m. The remainder of the meeting will be closed to the public and is expected to end by 5 p.m. on October 11. Interested members of the public may present their views during the public comment session on October 10, 2013.

ADDRESSES: The meeting will be held at the Sheraton Hotel, 8777 Georgia Ave., Silver Spring, MD 20910. Written comments should be sent via email (*Rachel.O'Malley@noaa.gov*). Comments may also be sent via mail to Rachel O'Malley at NMFS, Office of International Affairs, Room 10653, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Rachel O'Malley, Office of International Affairs, 301–427–8373.

SUPPLEMENTARY INFORMATION: The Advisory Committee to the U.S. Section to ICCAT will meet October 10–11, 2013, first in an open session to consider management- and research-related information on stock status of Atlantic highly migratory species and then in a closed session to discuss sensitive matters. There will be an opportunity for oral public comment during the October 10, 2013, open session. The open session will be from 9 a.m. through 2:15 p.m. The public comment portion of the meeting is scheduled to begin at approximately 12:00 p.m. but could begin earlier depending on the progress of discussions. Comments may also be submitted in writing for the Advisory Committee's consideration. Interested members of the public can submit comments by mail or email; use of email is encouraged. All written comments must be received by October 8, 2013 (see **ADDRESSES**).

ICCAT has recently initiated a 3-year process to develop amendments to its Convention in several areas. Key issues under discussion include: (1) Clarification of the scope of the Convention, in particular with respect to shark conservation and management; (2) ecosystem considerations and the precautionary approach; (3) improvements to the decision-making processes of the Commission (e.g., voting rules, objection procedures, the timing of entry into force of measures, and dispute settlement); and (4) provisions to allow the participation of fishing entities such as Taiwan (known as Chinese Taipei) in ICCAT.

Clarifying the scope of the Convention is one of the more significant issues being considered in this process. ICCAT has adopted conservation and management measures for sharks and other bycatch species caught in association with ICCAT fisheries over the years. It is generally agreed, however, that there would be a benefit to clarifying the authority of the organization in this regard. In addition, some Contracting Parties to the organization consider that ICCAT should have unambiguous authority to manage certain shark species, whether taken in directed fisheries or as bycatch.

ICCAT has not yet determined how it will proceed with regard to the question of Convention scope as it relates to sharks. Some approaches to this issue that have been discussed include those reflected in existing Pacific tuna treaties, namely, the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean and the Antigua Convention. These models, if applied in the ICCAT context, would bring a wide array of shark species and fisheries under the competence of the ICCAT Convention. Another option suggested during the Convention Amendment Working Group Meeting was to amend the Convention to cover those shark species that are ''oceanic, pelagic, and highly migratory.'' The intention of the proposal was to narrow the shark species that would come under ICCAT management by excluding purely coastal sharks—whether they occur only within one country's exclusive economic zone or are shared among two or more countries.

Any expansion of ICCAT's management authority for sharks has potential implications for ICCAT, for the covered shark species and fisheries, and for U.S. domestic shark management. ICCAT's Convention Working Group is also considering a number of other important issues, including ecosystem approaches to management, the precautionary approach, and the decision making processes of the Commission. The United States is in the process of considering its position with respect to these matters and welcomes any views that members of the public may wish to share.

NMFS expects members of the public to conduct themselves appropriately at the open session of the Advisory Committee meeting. At the beginning of the public comment session, an explanation of the ground rules will be provided (e.g., alcohol in the meeting room is prohibited, speakers will be called to give their comments in the order in which they registered to speak, each speaker will have an equal amount of time to speak and speakers should not interrupt one another). The session will be structured so that all attending members of the public are able to comment, if they so choose, regardless of the degree of controversy of the subject(s). Those not respecting the ground rules will be asked to leave the meeting.

After the open session, the Advisory Committee will meet in closed session to discuss sensitive information relating to upcoming international negotiations regarding the conservation and management of Atlantic highly migratory species.

Special Accommodations

The meeting location is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Rachel O'Malley at (301) 427–8373 or *Rachel.O'Malley@noaa.gov* at least 5 days prior to the meeting date.

Dated: September 19, 2013.

Dean Swanson,

Acting Director, Office of International Affairs, National Marine Fisheries Service.

[FR Doc. 2013–23203 Filed 9–23–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–BD69

Takes of Marine Mammals Incidental to Specified Activities; U.S. Navy Training and Testing Activities in the Mariana Islands Training and Testing Study Area

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

ACTION: Notice; receipt of application for letter of authorization; request for comments and information.

SUMMARY: NMFS has received a request from the U.S. Navy (Navy) for authorization to take marine mammals incidental to the training and testing activities conducted in the Mariana Islands Training and Testing (MITT) Study Area from July 2015 through July 2020. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is announcing our receipt of the Navy's request for the development and implementation of regulations governing the incidental taking of marine mammals and inviting information, suggestions, and comments on the Navy's application and request.

DATES: Comments and information must be received no later than October 24, 2013.

ADDRESSES: Comments on the application should be addressed to Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing email comments is *ITP.Magliocca@noaa.gov.* NMFS is not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 10-megabyte file size.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* 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.

A copy of the Navy's application may be obtained by visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* The Navy's Draft Environmental Impact Statement (DEIS) for MITT was made available to the public on September 13, 2013. A 60-day public comment period is open through November 12, 2013. Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Michelle Magliocca, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by United States citizens who engage in a specified activity (other than commercial fishing) within a specific geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * *an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

With respect to military readiness activities, the MMPA defines ''harassment'' as: ''(i) any act that injures or has the significant potential to injure a marine mammal stock in the wild [Level A Harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].''

Summary of Request

On April 22, 2013, NMFS received an application from the Navy requesting a Letters of Authorization (LOA) for the take of 26 species of marine mammals incidental to Navy training and testing activities to be conducted in the MITT Study Area over 5 years. The Navy is requesting a 5-year LOA for training and testing activities to be conducted from 2015 through 2020. The Study Area includes the existing Mariana Islands Range Complex, a transit corridor between the Mariana Islands and the Hawaii Range Complex, and Navy pierside locations where sonar maintenance or testing may occur (see Figure 2–1 of the Navy's application for a map of the MITT Study Area). The activities conducted within the MITT Study Area are classified as military readiness activities. The Navy states that these activities may expose some of the marine mammals present within the MITT Study Area to sound from underwater acoustic sources and explosives. In addition, incidental takes of marine mammals may occur from ship strike. The Navy is requesting authorization to take 26 marine mammal species by Level B (behavioral) harassment; 15 of those marine mammal species may be taken by injury or mortality.

Description of the Specified Activity

In the application submitted to NMFS, the Navy requests authorization to take marine mammals incidental to conducting the following training and testing activities: anti-surface warfare; anti-submarine warfare; mine warfare; naval special warfare; major training activities; Naval Air Systems Command (NAVAIR) testing; anti-surface warfare testing; anti-submarine warfare testing; Naval Sea Systems Command (NAVSEA) testing; and Office of Naval Research (ONR) and Naval Research Laboratory (NRL) testing. Detailed descriptions of these activities, including duration, location, and equipment involved, are provided in the Navy's application. The Navy has also prepared a Draft Environmental Impact Statement (DEIS) analyzing the effects on the human environment of implementing their preferred alternative (among others).

Information Solicited

Interested persons may submit information, suggestions, and comments concerning the Navy's request (see

ADDRESSES). All input related to the Navy's MITT request and NMFS' role in governing the incidental taking of marine mammals will be considered by NMFS when developing, if appropriate, the most effective regulations governing the issuance of a Letter of Authorization.

Dated: September 12, 2013.

Perry Gayaldo,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–23105 Filed 9–23–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0197]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 25, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics, 3010 Defense Pentagon, Washington, DC 20301–3010, or call at (703)602–4353.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Application for Homeowners Assistance; DD form 1607; OMB Control Number 0704–0463.

Needs and Uses: The Department plans to expand its Homeowners Assistance Program (HAP), with $555 million in Recovery Act funds dedicated to helping military families and DoD civilians who recently sold their homes at a loss. The expanded program will assist families forced to relocate due to base closures or normal assignment rotations. But, the most important aspect is that priority access to the funds will go to survivors of those killed during deployment, and those who were wounded, ill or injured during deployment.

Affected Public: Individuals or Households

Annual Burden Hours: 17,000 hours

Number of Respondents: 17,000

Responses Per Respondent: 1

Average Burden per Response: 1 hour

Frequency: On Occasion

The Secretary of Defense is authorized to provide financial help to eligible homeowners serving or employed at or near military installations which were ordered closed or partially closed, realigned or were ordered to reduce the scope of operations. The Department of the Army acts as executive agent for DoD in administering the program for all military departments. Before benefits can be paid, certain conditions must be met. Eligible homeowners use the DD Form 1607, ''Application for Homeowners

Assistance'' to apply. The application is reviewed by a department personnel office, military or civilian, for verification of service or employment and mailed to the appropriate office of the U.S. Army Corps of Engineers which administers the program. The U.S. Army Corps of Engineers will notify the applicant.

It is the objective of the Department of Defense to assure that all applications for assistance under this program are given full consideration and that benefits under the program are extended to all homeowners who are entitled to assistance in accordance with applicable policies and procedures. This request has been submitted to the Office of Management and Budget (OMB) for emergency approval. Any comments received on this notice will be addressed in a subsequent information collection package to be submitted to OMB under regular processing timeframes.

Dated: September 19, 2013,

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–23196 Filed 9–23–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the National Commission on the Structure of the Air Force

AGENCY: Director of Administration and Management, DoD.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Department of Defense is publishing this notice to announce that the following Federal Advisory Committee closed meeting of the National Commission on the Structure of the Air Force (''the Commission'') will take place.

DATES: *Dates of Closed Meeting, including Hearing and Commission Discussion:* Thursday, September 26, 2013, from 1:00 p.m. to 5:00 p.m.

ADDRESSES: 2521 South Clark Street, Suite 525, Crystal City, VA 22202 and a secure video teleconferencing line.

FOR FURTHER INFORMATION CONTACT: Mrs. Marcia Moore, Designated Federal Officer, National Commission on the Structure of the Air Force, 1950 Defense Pentagon, Room 3A874, Washington, DC 20301–1950. Email: *marcia.l.moore12.civ@mail.mil.* Desk (703) 545–9113. Facsimile (703) 692–5625.

SUPPLEMENTARY INFORMATION: *Purpose of Meeting:* The members of the Commission will hear testimony from General Charles H. Jacoby, Jr, the Commander of the U.S. Northern Command, in the form of a question and answer session and then will discuss the information presented at the hearing.

Agenda: The Combatant Commander of the U.S. Northern Command oversees the movement and deployment of forces and materiel necessary to defend the U.S. under the Posse Comitatus Act, a unique Federal law of interest to the Commission. The Commander will discuss classified information regarding mission plans and strategies. Due to the inability of the Commander to respond to the following questions without also disclosing classified information, the meeting is closed to the public. While the Commander may give an opening statement, the Commissioners are primarily interested in his response to the following types of questions addressing the Combatant Commander's requirements:

1. Describe your requirements and assets available from the reserve, Guard, and active duty forces.
2. Are there enough assets to meet the requirements?
3. Under what planning scenarios do you encounter shortfalls in assets?
4. How do you establish requirements [on the Guard/reserve/active duty] for a given mission?
5. What separates a reserve mission from other missions?
6. Are there geographic challenges to missions involving forces from different components?
7. Are there issues with lines of authority and the blending of forces from different components?
8. Do you have comments on how the Commission might best consider the current state of requirements for missions of the Air Force, and how these should best be resourced going forward?
9. Do the Services each have a different approach to readiness requirements, and does this have an impact on force mix considerations?

This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) 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. Due to difficulties finalizing the meeting agenda for the scheduled meeting of September 26, 2013 of the Commission the requirements of 41 CFR § 102–3.150(a) were not met. Accordingly, the Advisory Committee Management Officer for the DoD, pursuant to 41 CFR § 102–3.150(b), waives the 15-calendar day notification requirement.

Meeting Accessibility: In accordance with section 10(d) of the FACA, 5 U.S.C. 552b, and 41 CFR § 102–3.155, the DoD has determined that the meeting scheduled for September 26, 2013 will be closed to the public. Specifically, the Director of Administration and Management, with the coordination of the DoD FACA Attorney, has determined in writing that this meeting will be closed to the public because it will discuss classified information and matters covered by 5 U.S.C. 552b(c)(1).

Written Comments: Pursuant to 41 CFR §§ 102–3.105(j) and 102–3.140 and section 10(a)(3) of the FACA, the public or interested organizations may submit written comments to the Commission in response to the stated agenda of the open and/or closed meeting or the Commission's mission. The Designated Federal Officer (DFO) will review all submitted written statements before forwarding to the Commission. Written comments should be submitted to Mrs. Marcia Moore, DFO, via facsimile or electronic mail, the preferred modes of submission. Each page of the comment must include the author's name, title or affiliation, address, and daytime phone number. All contact information may be found in the **FOR FURTHER INFORMATION CONTACT** section.

Background:

The National Commission on the Structure of the Air Force was established by the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239). The Department of Defense sponsor for the Commission is the Director of Administration and Management, Mr. Michael L. Rhodes. The Commission is tasked to submit a report, containing a comprehensive study and recommendations, by February 1, 2014 to the President of the United States and the Congressional defense committees. The report will contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislation and administrative actions it may consider appropriate in light of the results of the study. The comprehensive study of the structure of the U.S. Air Force will determine whether, and how, the structure should be modified to best fulfill current and anticipated mission requirements for the U.S. Air Force in a manner consistent with available resources.

The evaluation factors under consideration by the Commission are for a U.S. Air Force structure that—(a) meets current and anticipated requirements of the combatant commands; (b) achieves an appropriate balance between the regular and reserve components of the Air Force, taking advantage of the unique strengths and capabilities of each; (c) ensures that the regular and reserve components of the Air Force have the capacity needed to support current and anticipated homeland defense and disaster assistance missions in the United States; (d) provides for sufficient numbers of regular members of the Air Force to provide a base of trained personnel from which the personnel of the reserve components of the Air Force could be recruited; (e) maintains a peacetime rotation force to support operational tempo goals of 1:2 for regular members of the Air Forces and 1:5 for members of the reserve components of the Air Force; and (f) maximizes and appropriately balances affordability, efficiency, effectiveness, capability, and readiness.

Dated: September 19, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–23205 Filed 9–23–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board; Notice of Federal Advisory Committee Meeting

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing this notice to announce the following meeting of the Strategic Environmental Research and Development Program, Scientific Advisory Board (SAB). DATES: Tuesday, October 15, 2013, from 9:00 a.m. to 5:00 p.m. and Wednesday, October 16, 2013, from 8:30 a.m. to 4:25 p.m.

ADDRESSES: Potomac Institute for Policy Studies, 901 North Stuart Street, Suite 200, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Bunger, SERDP Office, 4800 Mark Center Drive, Suite 17D08, Alexandria, VA 22350–3605; or by telephone at (571) 372–6384.

SUPPLEMENTARY INFORMATION: The meeting is being held 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. This notice is published in accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463).

Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is

open to the public. Seating is on a first-come basis.

The purpose of the September 11–12, 2013 meeting is to review new start research and development projects requesting Strategic Environmental Research and Development Program funds in excess of $1 million over the proposed length of the project as required by the SERDP Statute, U.S. Code - Title 10, Subtitle A, Part IV, Chapter 172, § 2904. The full agenda follows:

Tuesday, October 15, 2013		
9:00 a.m.	Convene/Opening Remarks Approval of September 2013 Minutes	Mr. Joseph Francis, Chair.
9:10 a.m.	Program Update	Dr. Anne Andrews, Acting Executive Director.
9:25 a.m.	Weapons Systems and Platforms Overview	Dr. Robin Nissan, Weapons Systems and Platforms, Program Manager.
9:35 a.m.	14 WP04–002 (WP–2405): Proof of Concept Novel Low-Toxicity Obscurant (FY14 New Start).	Mr. Rutger Webb, TNO, Rijswijk, Netherlands.
10:20 a.m.	Weapons Systems and Platforms Overview	Dr. Robin Nissan, Weapons Systems and Platforms, Program Manager.
10:30 a.m.	14 WP01–009 (WP–2400): Environmentally Sustainable Liquid Gas Generator Formulations (FY14 New Start).	Mr. Gary Holland, Aerojet General Corporation, Redmond, WA.
11:15 a.m.	Break.	
11:30 a.m.	14 WP01–011 (WP–2401): Development of Low-Toxicity Liquid Propellant System for Orbital/Sub-Orbital Applications (FY14 New Start).	Mr. Joseph Clubb, Naval Air Warfare Center, Weapons Division, China Lake, CA.
12:15 p.m.	Lunch.	
1:15 p.m.	Environmental Restoration Overview	Dr. Andrea Leeson, Environmental Restoration, Program Manager.
1:25 p.m.	14 ER02–023 (ER–2423): In Situ Treatment Train for Remediation of Perfluoroalkyl Contaminated Groundwater: In Situ Chemical Oxidation of Sorbed Contaminants (ISCO–SC) (FY14 New Start).	Dr. Michelle Crimi, Clarkson University, Potsdam, NY.
2:10 p.m.	14 ER02–030 (ER–2424): Investigating Electrocatalytic and Catalytic Approaches for in situ Treatment of Perfluoroalkyl Contaminants in Groundwater (FY14 New Start).	Dr. Charles Schaefer, Shaw Environmental, Inc., Lawrenceville, NJ.
2:55 p.m.	Break.	
3:10 p.m.	14 ER02–031 (ER–2425): Development of a Novel Approach for In Situ Remediation of PFC Contaminated Groundwater Systems (FY14 New Start).	Dr. Matt Simcik, University of Minnesota, Minneapolis, MN.
3:55 p.m.	14 ER02–041 (ER–2426): Quantification of In Situ Chemical Reductive Defluorination (ISCRD) of Perfluoroalkyl Acids in Ground Water Impacted by AFFFs (FY14 New Start).	Dr. Linda Lee, Purdue University, West Lafayette, IN.
4:40 p.m.	Strategy Session	Dr. Anne Andrews, Acting Executive Director.
5:00 p.m.	Public Discussion/Adjourn for the day.	

Wednesday, October 16, 2013		
8:30 a.m.	Convene	Mr. Joseph Francis, Chair.
8:40 a.m.	Munitions Response Overview	Dr. Herb Nelson, Munitions Response, Program Manager.
8:50 a.m.	14 MR01–017 (MR–2410): Large-Scale Laboratory Experiments of Incipient Motion, Transport, and Fate of Underwater Munitions under Waves, Currents, and Combined-Flows (FY14 New Start).	Dr. Marcelo Garcia, University of Illinois at Urbana-Champaign, Urbana, IL.
9:35 a.m.	14 MR01–009 (MR–2439): Multipass and Non-Concentric Target CSAS (FY14 New Start).	Dr. Jermaine Kennedy, NSWC–PCD, Panama City Beach, FL.
10:20 a.m.	Break.	
10:35 a.m.	Environmental Restoration Overview	Dr. Andrea Leeson, Environmental Restoration, Program Manager.
10:45 a.m.	14 ER03–002 (ER–2427): Understanding the Relationships Among Low Level Metal Influx, Remediated Sediments, and Biological Receptors (FY14 New Start).	Dr. Anna Knox, Savannah River National Laboratory, Aiken, SC.
11:30 a.m.	14 RC01–015 (RC–2434): Seed Dispersal Networks and Novel Ecosystem Functioning in Hawaii (FY14 Re-Brief).	Dr. Jeffrey Foster, Northern Arizona University, Flagstaff, AZ.
12:00 p.m.	Lunch.	
1:00 p.m.	14 ER03–025 (ER–2428): Assessment and Management of Stormwater Impacts on Sediment Recontamination (FY14 New Start).	Dr. Danny Reible, University of Texas, Austin, TX.
1:45 p.m.	14 ER03–028 (ER–2429): Combining Mass Balance Modeling with Passive Sampling at Contaminated Sediment Sites to Evaluate Continuing Inputs and Food Web Responses to Remedial Actions (FY14 New Start).	Dr. Philip Gschwend, Massachusetts Institute of Technology, Cambridge, MA.
2:30 p.m.	Break.	
2:45 p.m.	14 ER03–035 (ER–2431): Quantitative Thermodynamic Exposure Assessment (Q–TEA) Supporting Resilient Contaminated Sediment Site Restoration (FY14 New Start).	Dr. Todd Bridges, USACE–ERDC–EL, Vicksburg, MS.
3:30 p.m.	Environmental Restoration Overview	Dr. Andrea Leeson, Environmental Restoration, Program Manager.
3:40 p.m.	14 ER04–001 (ER–2135): Application of Biofilm Covered Activated Carbon Particles as a Microbial Inoculum Delivery System in Weathered PCB Contaminated Sediment (FY14 Follow On).	Dr. Birthe Kjellerup, Goucher College, Baltimore, MD.

4:25 p.m.	Public Discussion/Adjourn.	

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the Strategic Environmental Research and Development Program, Scientific Advisory Board. Written statements to the committee may be submitted to the committee at any time or in response to an approved meeting agenda.

All written statements shall be submitted to the Designated Federal Officer (DFO) for the Strategic Environmental Research and Development Program, Scientific Advisory Board. The DFO will ensure that the written statements are provided to the membership for their consideration. Contact information for the DFO can be obtained from the GSA's FACA Database at *http://facasms.fido.gov/.*

Time is allotted at the close of each meeting day for the public to make comments. Oral comments are limited to 5 minutes per person.

Dated: September 18, 2013.

Aaron Siegel,

Alternate OSD **Federal Register** *Liaison Officer, Department of Defense.*

[FR Doc. 2013–23109 Filed 9–23–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2013–ICCD–0096]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Early Childhood Longitudinal Study Kindergarten Class of 2010–11 (ECLS–K:2011) Spring Third-Grade National Collection, Fourth-Grade Recruitment, and Fifth-Grade Tracking

AGENCY: Institute of Education Sciences/National Center for Education Statistics (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before October 24, 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–0096 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 Acting 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: For questions related to collection activities or burden, please call Kathy Axt, 540–776–7742 or 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: Early Childhood Longitudinal Study Kindergarten Class of 2010–11 (ECLS–K:2011) Spring Third-Grade National Collection, Fourth-Grade Recruitment, and Fifth-Grade Tracking

OMB Control Number: 1850–0750

Type of Review: Revision of an existing collection of information.

Respondents/Affected Public: Individuals or households

Total Estimated Number of Annual Responses: 143,825

Total Estimated Number of Annual Burden Hours: 52,702

Abstract: The Early Childhood Longitudinal Study, Kindergarten Class of 2010–11 (ECLS–K:2011), sponsored by the National Center for Education Statistics (NCES) within the Institute of Education Sciences (IES) of the U.S. Department of Education (ED), is a survey that focuses on children's early school experiences beginning with kindergarten and continuing through the fifth grade. It includes the collection of data from parents, teachers, school administrators, and nonparental care providers, as well as direct child assessments. Like its sister study, the Early Childhood Longitudinal Study, Kindergarten Class of 1998–99 (ECLS–K), the ECLS–K:2011 is exceptionally broad in its scope and coverage of child development, early learning, and school progress, drawing together information from multiple sources to provide rich data about the population of children who were kindergartners in the 2010–11 school year. This submission requests OMBs clearance for (1) a spring 2014 third-grade national data collection; (2) recruitment for the spring 2015 fourth-grade data collection, and (3) tracking students for the spring 2016 fifth-grade data collection.

Dated: September 19, 2013.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–23207 Filed 9–23–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2506–228]

Upper Peninsula Power Company; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Types of Application:* Request to amend the project boundary.

b. *Project No.:* 2506–228.

c. *Date Filed:* May 24, 2013, and supplemented September 6 and 9, 2013.

d. *Applicant:* Upper Peninsula Power Company.

e. *Name of Project:* Escanaba Hydroelectric Project.

f. *Location:* Escanaba River, near the township of Escanaba in Delta and Marquette counties, Michigan.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a-825r.

h. *Applicant Contact:* Mr. Shawn Puzen, Upper Peninsula Power Company, 700

North Adams Street, P.O. Box 19001, Green Bay, Wisconsin, 54307–9001, (920) 433–1094.

i. *FERC Contact:* Mr. Jeremy Jessup, (202) 502–6779, Jeremy.Jessup@ferc.gov.

j. Deadline for filing comments, motions to intervene, and protests, is 30 days from the issuance date of this notice by the Commission. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/doc-sfiling/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–2506–228.

k. *Description of Request:* The applicant proposes to amend the project boundary to remove lands that are not necessary for the operation and maintenance of the project or do not serve a project purpose. The applicant also proposes to add an approximately one acre parcel of land that it owns and is used for recreation and flowage. The proposed amendment will reduce the size of the project boundary by approximately 90 acres and the changes will only impact the Dam #1 and Dam #3 developments. The applicant states that all of the lands proposed to be removed are under private ownership and are not owned by the licensee.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208- 3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All motions to intervene, protests, or comments should relate to project works which are the subject of the application. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: September 18, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–23173 Filed 9–23–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–541–000]

Floridian Natural Gas Storage Company, LLC; Notice of Application

Take notice that on September 4, 2013, Floridian Natural Gas Storage Company, LLC (Floridian Gas Storage), 1000 Louisiana Street, Suite 4361, Houston, Texas 77002, filed in Docket No. CP13–541–000 an application under section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, seeking to amend its certificate of public convenience and authorizing the construction and operation of the Floridian Natural Gas Storage Project (Floridian Gas Storage Project) that the Commission granted in Docket No. CP08–13–000, amended in Docket No. CP12–100–000 and extended in Docket No. CP08–13–000. Floridian Gas Storage seeks authorization to modify part of its Phase 1 facilities by changing one 4 billion cubic feet (Bcf) full containment tank to a 1 Bcf single containment tank and reducing the associated vaporization capacity, from the original 400 million cubic feet per day (MMcf/d) per day to 100 MMcf/d, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Copies of this filing are available for review at the Commission in the Public Reference Room, or may be viewed on the Commission's Web site web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Joan Darby by mail at Dickstein Shapiro LLP, 1825 Eye Street NW., Washington, DC 20006, by telephone at 202–420–2200, or by email at *darbyj@dicksteinshapiro.com*.

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for

Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 5 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the internet in lieu of paper; see, 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: October 8, 2013.

Dated: September 17, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–23129 Filed 9–23–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2150–111]

Puget Sound Energy, Inc.;

Notice of Application Accepted for Filing, Soliciting Comments, Motions to Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Types of Application:* Request to amend the project boundary

b. *Project No.:* 2150–111

c. *Date Filed:* August 27, 2013

d. *Applicant:* Puget Sound Energy, Inc.

e. *Name of Project:* Baker River Hydroelectric Project

f. *Location:* Baker River in Skagit and Whatcom counties, Washington

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Tom Flynn, P.E., Puget Sound Energy, Inc., 10885 NE. 4th Street, P.O. Box 97034, Bellevue, WA 98009–9734, (425) 457–5868, *tom.flynn@pse.com*

i. *FERC Contact:* Mr. Jeremy Jessup, (202) 502–6779, *Jeremy.Jessup@ferc.gov*

j. Deadline for filing comments, motions to intervene, and protests, is 30 days from the issuance date of this notice by the Commission. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/doc-sfiling/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–2150–111.

k. *Description of Request:* The applicant proposes to amend the project boundary to incorporate an approximately six-acre parcel of land that the licensee is leasing for the temporary storage of large woody debris. The parcel is located north of West Pass Dike on the west side of Baker Lake. The adjustment of the project boundary does not impact the amount of federal lands that are occupied by the project.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208- 3676 or email *FERCOnlineSupport@ferc.gov,* for

TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All motions to intervene, protests, or comments should relate to project works which are the subject of the application. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: September 18, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–23171 Filed 9–23–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC13–147–000
Applicants: Mehetia Inc.
Description: Section 203 Application of Mehetia Inc. for Authorization of Disposition of Jurisdictional Facilities, and Requests for Waivers of Certain Filing Requirements, Shortened Comment Period, Expedited Consideration, and Confidential Treatment.
Filed Date: 9/13/13
Accession Number: 20130913–5147
Comments Due: 5 p.m. ET 10/4/13

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG13–57–000
Applicants: Genesis Solar, LLC
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Genesis Solar, LLC.
Filed Date: 9/16/13
Accession Number: 20130916–5078
Comments Due: 5 p.m. ET 10/7/13

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER05–168–003, EL05–19–004
Applicants: Southwestern Public Service Company
Description: Refund Report to be effective N/A to the August 15, 2013 Opinion 501–A to make Compliance Filing quantifying refunds relating to cost of service rates.
Filed Date: 9/16/13
Accession Number: 20130916–5161
Comments Due: 5 p.m. ET 10/7/13

Docket Numbers: ER06–274–007
Applicants: Southwestern Public Service Company
Description: Refund Report to be effective N/A to the August 15, 2013 Order on Initial Decision to make Compliance Filing quantifying refunds relating to cost of service rates.
Filed Date: 9/16/13
Accession Number: 20130916–5151
Comments Due: 5 p.m. ET 10/7/13

Docket Numbers: ER12–1865–002
Applicants: Mustang Hills, LLC
Description: Triennial Market Power Analysis for the Southwest Region of Mustang Hills, LLC.
Filed Date: 9/16/13
Accession Number: 20130916–5094
Comments Due: 5 p.m. ET 11/15/13

Docket Numbers: ER13–64–001
Applicants: PacifiCorp
Description: OATT Order 1000 Interregional Compliance Filing -NTTG to be effective 10/1/2015.
Filed Date: 9/17/13
Accession Number: 20130917–5000
Comments Due: 5 p.m. ET 10/16/13

Docket Numbers: ER13–65–001
Applicants: Deseret Generation & Transmission Co-operative
Description: OATT Order No. 1000 Interregional Compliance Filing to be effective 10/1/2015.
Filed Date: 9/16/13
Accession Number: 20130916–5144
Comments Due: 5 p.m. ET 10/16/13

Docket Numbers: ER13–67–001
Applicants: NorthWestern Corporation
Description: OATT Order No. 1000 Regional Compliance Filing—MT to be effective 10/1/2015.
Filed Date: 9/16/13
Accession Number: 20130916–5095
Comments Due: 5 p.m. ET 10/16/13

Docket Numbers: ER13–68–001
Applicants: Portland General Electric Company
Description: OATT Order No. 1000 Regional Compliance Filing to be effective 10/1/2015.
Filed Date: 9/16/13
Accession Number: 20130916–5117
Comments Due: 5 p.m. ET 10/16/13

Docket Numbers: ER13–2384–000
Applicants: Midcontinent Independent System Operator, Inc.
Description: 09–16–2013 SA 2006 Ameren-SEC WDS to be effective 3/30/2011.
Filed Date: 9/16/13
Accession Number: 20130916–5076
Comments Due: 5 p.m. ET 10/7/13

Docket Numbers: ER13–2385–000
Applicants: Midcontinent Independent System Operator, Inc.
Description: 09–16–13 Expansion of Advisory Committee to be effective 12/18/2013.
Filed Date: 9/16/13
Accession Number: 20130916–5096
Comments Due: 5 p.m. ET 10/7/13

Docket Numbers: ER13–2386–000
Applicants: Lakeswind Power Partners, LLC
Description: Application for Market-Based Rate Authority to be effective 11/15/2013.
Filed Date: 9/16/13

Accession Number: 20130916–5126

Comments Due: 5 p.m. ET 10/7/13

Docket Numbers: ER13–2387–000

Applicants: Duke Energy Florida, Inc.

Description: MBR Name Change to be effective 11/15/2013.

Filed Date: 9/16/13

Accession Number: 20130916–5145

Comments Due: 5 p.m. ET 10/7/13

Docket Numbers: ER13–2388–000

Applicants: Duke Energy Florida, Inc.

Description: Cancellation of Duke Energy Florida, Inc. Market-Based Rates Tariffs to be effective 11/15/2013.

Filed Date: 9/16/13

Accession Number: 20130916–5146

Comments Due: 5 p.m. ET 10/7/13

Docket Numbers: ER13–2389–000

Applicants: Glenwood Energy Partners, Ltd.

Description: Glenwood Energy Partners, Ltd. submits Glenwood Energy Partners Tariff Cancelation to be effective 9/17/2013.

Filed Date: 9/17/13

Accession Number: 20130917–5001

Comments Due: 5 p.m. ET 10/8/13

Docket Numbers: ER13–2390–000

Applicants: LoneStar Energy Partners LLC

Description: Lonestar Energy Partners Tariff Cancelation to be effective 9/17/2013.

Filed Date: 9/17/13

Accession Number: 20130917–5002

Comments Due: 5 p.m. ET 10/8/13

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 17, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–23166 Filed 9–23–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC13–148–000

Applicants: U.S. Gas & Electric, Inc., Energy Services Providers, Inc., Massachusetts Gas & Electric, Inc., Connecticut Gas & Electric, Inc.

Description: Application for Authorization for Disposition of Jurisdictional Facilities of U.S. Gas & Electric, Inc., et al.

Filed Date: 9/17/13

Accession Number: 20130917–5066

Comments Due: 5 p.m. ET 10/8/13

Docket Numbers: EC13–149–000

Applicants: Wheat Field Wind Power Project LLC

Description: Application for Authorization for Disposition of Jurisdictional Facilities and Request for Expedited Action of Wheat Field Wind Power Project LLC.

Filed Date: 9/17/13

Accession Number: 20130917–5072

Comments Due: 5 p.m. ET 10/8/13

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER13–2103–001

Applicants: ORNI 47 LLC

Description: ORNI 47 LLC Amendment to Petition to be effective 10/1/2013.

Filed Date: 9/17/13

Accession Number: 20130917–5028

Comments Due: 5 p.m. ET 10/8/13

Docket Numbers: ER13–2105–001

Applicants: Exelon Generation Company, LLC

Description: ExGen NOSA Rate Schedule 21 Supplemental Filing to be effective 12/31/9998.

Filed Date: 9/17/13

Accession Number: 20130917–5034

Comments Due: 5 p.m. ET 10/8/13

Docket Numbers: ER13–2295–001

Applicants: Midcontinent Independent System Operator, Inc.

Description: 09–17–2013 TCDC Amendment Filing to be effective 11/1/2013.

Filed Date: 9/17/13

Accession Number: 20130917–5059

Comments Due: 5 p.m. ET 9/24/13

Docket Numbers: ER13–2391–000

Applicants: PJM Interconnection, L.L.C.

Description: Notice of Cancellation of Original Service Agreement No. 3344, Queue X1–088 to be effective 9/16/2013.

Filed Date: 9/17/13

Accession Number: 20130917–5060

Comments Due: 5 p.m. ET 10/8/13

Docket Numbers: ER13–2392–000

Applicants: PJM Interconnection, L.L.C.

Description: Notice of cancellation of executed Interconnection Service Agreement No. 1351, Queue No. K02_CE18 of PJM Interconnection, L.L.C.

Filed Date: 9/17/13

Accession Number: 20130917–5065

Comments Due: 5 p.m. ET 10/8/13

Docket Numbers: ER13–2393–000

Applicants: PJM Interconnection, L.L.C.

Description: Notice of cancellation of executed Interconnection Service Agreement No. 2123, Queue No. Q28 of PJM Interconnection, L.L.C.

Filed Date: 9/17/13

Accession Number: 20130917–5068

Comments Due: 5 p.m. ET 10/8/13

Docket Numbers: ER13–2394–000

Applicants: Midcontinent Independent System Operator, Inc.

Description: 09–17–2013 Ameren-Norris Construction Agr to be effective 9/3/2013.

Filed Date: 9/17/13

Accession Number: 20130917–5071

Comments Due: 5 p.m. ET 10/8/13

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 17, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–23167 Filed 9–23–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: PR13–62–000
Applicants: Columbia Gas of Maryland, Inc.
Description: Tariff filing per 284.123/.224: Statement of Operating Conditions to be effective 8/30/2013
Filed Date: 8/30/13
Accession Number: 20130830–5107
Comments Due: 5 p.m. ET 9/20/13
Docket Numbers: PR13–63–000
Applicants: American Midstream (SIGCO Intrastate), LLC
Description: Tariff filing per 284.123(b)(2)/.: SIGCO Rate Petition to be effective 8/12/2013
Filed Date: 9/11/13
Accession Number: 20130911–5073
Comments Due: 5 p.m. ET 10/2/13
Docket Numbers: CP13–548–000
Applicants: Montana-Dakota Utilities Co.
Description: Application for a Limited Jurisdiction Blanket Certificate of Public Convenience and Necessity
Filed Date: 9/17/13
Accession Number: 20130917–5080
Comments Due: 5 p.m. ET 9/30/13
Docket Numbers: RP13–1329–000
Applicants: Southeast Supply Header, LLC
Description: Hourly Nomination/Scheduling Flexibility to be effective 10/16/2013
Filed Date: 9/16/13
Accession Number: 20130916–5112
Comments Due: 5 p.m. ET 9/30/13

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 18, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–23168 Filed 9–23–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2280–017, 2343–084, 2459–245, 2516–057, 2517–036, 3494–091, 3671–086, 2391–046, 2425–052, and 2509–046]

FirstEnergy Generation, LLC, Allegheny Energy Supply Company, LLC, and Green Valley Hydro, LLC, Seneca Generation, LLC, Lake Lynn Generation, LLC, All Dams Generation, LLC, and PE Hydro Generation, LLC; Notice of Application for Transfer of Licenses, and Soliciting Comments and Motions to Intervene

September 18, 2013.

On September 4, 2013, a transfer of license application was filed to include the following projects:

Project numbers	Transferors	Transferees	Project names	Locations
P–2280–017	FirstEnergy Generation, LLC.	Seneca Generation, LLC	Kinzua Pumped Storage	Allegheny River, Warren County, PA
P–2343–084	Allegheny Energy Supply Company, L.L.C..	PE Hydro Generation, LLC	Millville	Shenandoah River, Jefferson County, WV
P–2459–245	Allegheny Energy Supply Company, L.L.C..	Lake Lynn Generation, LLC	Lake Lynn	Cheat River a tributary of the Monongahela River, Monongalia County, WV & Fayette County, PA
P–2516–057	Allegheny Energy Supply Company, L.L.C..	PE Hydro Generation, LLC	Dam No. 4 Hydro Station	Potomac River, Berkeley and Jefferson counties, WV
P–2517–036	Allegheny Energy Supply Company, L.L.C..	PE Hydro Generation, LLC	Dam No. 5 Hydro Station	Potomac River, Berkeley County, WV
P–3494–091	Allegheny Energy Supply Company, L.L.C..	All Dams Generation, LLC	Allegheny Lock & Dam No. 6.	Allegheny River, Armstrong County, PA
P–3671–086	Allegheny Energy Supply Company, L.L.C..	All Dams Generation, LLC	Allegheny Lock & Dam No. 5.	Allegheny River, Armstrong County, PA
P–2391–046	Green Valley Hydro, LLC	PE Hydro Generation, LLC	Warren	Shenandoah River, Warren County, VA
P–2425–052	Green Valley Hydro, LLC	PE Hydro Generation, LLC	Luray and Newport Developments	Shenandoah River, Page County, VA
P–2509–046	Green Valley Hydro, LLC	PE Hydro Generation, LLC	Shenandoah	Shenandoah River, Page County, VA

Applicants seek Commission approval to transfer the licenses for the above projects from the transferors to the transferees.

Applicants' Contact: For Transferors: Mr. Morgan E. Parke, FirstEnergy Service Company, 76 South Main Street, Akron, OH 44308–1890, (330) 384–4595 and Mr. John A. Whittaker, IV, Winston & Strawn LLP, 1700 K Street NW., Washington, DC 20006–3817, (202) 282–5766. For Transferees: Mr. Scott Carver, LS Power Development, LLC, Two Tower Center, 11th Floor, East Brunswick, NJ 08816, (732) 249–6750 and Mr. James B. Vasile, Davis Wright Tremaine LLP, 1919 Pennsylvania Avenue NW., Suite 800, Washington, DC 20006, (202) 973–4262.

FERC Contact: Patricia W. Gillis (202) 502–8735, *patricia.gillis@ferc.gov.*

Deadline for filing comments and motions to intervene: 30 days from the issuance date of this notice by the Commission. Comments and motions to intervene may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1) and the instructions on the Commission's Web site under *http://*

www.ferc.gov/docs-filing/efiling.asp. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original plus seven copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. More information about this project can be viewed or printed on the eLibrary link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number(s) (P–2280, P–2343, P–2459, P–2516, P–2517, P–3494, P–3671, P–2391, P–2425, or P–2509) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Dated: September 18, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–23172 Filed 9–23–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13570–002]

Warm Springs Irrigation District; Notice of Technical Meeting

a. *Project Name and Number:* Warm Springs Dam Hydroelectric Project No. 13570

b. *Date and Time of Meeting:* October 1, 2013; 11:00 a.m. Pacific Time (2:00 p.m. Eastern Time).

c. *Place:* Telephone conference call.

d. *FERC Contact:* Kelly Wolcott, *kelly.wolcott@ferc.gov* or (202) 502–6480.

e. *Purpose of Meeting:* Discuss the special status species plant survey for *Stanleya confertiflora* requested by the U.S. Bureau of Land Management on June 7, 2013; the coordination of the National Environmental Policy Act (NEPA) analysis; and the overall processing schedule for the project.

f. *Proposed Agenda:*

1. Introduction.
2. Meeting objectives.
3. Plant survey discussion.
4. NEPA coordination.
5. Schedule of Project.

g. A summary of the meeting will be prepared for the project's record.

h. All local, state, and federal agencies, Indian tribes, and other interested parties are invited to participate by phone. Please contact Kelly Wolcott at *kelly.wolcott@ferc.gov* or (202) 502–6480 by close of business Thursday, September 26, 2013, to RSVP and to receive specific instructions on how to participate.

Dated: September 17, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–23130 Filed 9–23–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13705–002]

White Pine Waterpower, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Competing Applications

On September 4, 2013, White Pine Waterpower, LLC, Idaho, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the White Pine Pumped Storage Project (or project) to be located near the town of Ely, White Pine County, Nevada. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) An artificially lined, upper reservoir having a capacity of 5,535 acre-feet at 8,550 feet above mean sea level (msl); (2) an artificially lined, lower reservoir having a capacity of 5,535 acre-feet at 6,325 feet msl; (3) a 1,270-foot-long, 185-foot-high concrete-face, rock-fill (CFRD) or roller-compacted concrete (RCC) upper dam; (4) a 250-foot-long, 10-foot-high earthen dike; (5) a 630-foot-long, 40-foot-high CRFD or earthen dike; (6) a 7,200-foot-long, 40-foot-high zoned earth-and rock-fill or earthen dam; (7) a 3,400-foot-long, 17-foot-diameter unlined or concrete-lined low pressure tunnel; (8) a 2,200-foot-long, 17-foot-diameter concrete-lined and steel-lined vertical pressure shaft; (9) a 6,500-foot-long, 17-foot-diameter steel-lined high pressure tunnel; (10) a 2,200-foot-long, 20.5-foot-diameter unlined or concrete-lined tailrace; (11) a 350-foot-long by 100-foot-wide by 120-foot-high powerhouse located underground approximately 1,500 feet east of the lower reservoir at an elevation of approximately 6,000 feet msl; (12) three 250-megawatt (MW) reversible pump-turbines, totaling 750 MW of generating capacity; (13) a 2,950-foot-long, 24-foot-diamter access tunnel that would lead from ground level to the powerhouse; (14) either a single-circuit 345-kilovolt (kV) or double-circuit 230-kV transmission line extending approximately 1.1 mile in length to the Gondor substation, operated by Sierra Pacific Power and owned by Mt. White Power and partners in the Intermountain Power Project; and (15) associated interconnection equipment. The estimated annual generation of the project would be 1,970 gigawatt-hours.

Applicant Contact: Mr. Matthew Shapiro, CEO, Gridflex Energy, LLC, 1210 W. Franklin St., Ste. 2, Boise, Idaho 83702; phone: (208) 246–9925.

FERC Contact: Mary Greene; phone: (202) 502–8865.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–13705–002.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13705) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: September 18, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–23174 Filed 9–23–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD13–9–000]

Hydropower Regulatory Efficiency Act of 2013; Supplemental Notice of Workshop

As announced in the Notice issued on September 3, 2013, the Federal Energy Regulatory Commission (FERC or Commission) staff will hold a workshop on October 2, 2013, from 12:00 p.m. to 4:00 p.m. eastern daylight time (EDT). This workshop will solicit public comments and recommendations on the feasibility of a two-year process for the issuance of a license for hydropower development at non-powered dams and closed-loop pumped storage projects in compliance with section 6 of the Hydropower Regulatory Efficiency Act of 2013. The workshop will be held in the Commission Meeting Room at 888 First Street NE., Washington, DC 20426. The workshop will be open to the public and all interested parties are invited to participate. Commission members will attend and may participate in the workshop. An agenda for the workshop is attached to this notice.

This workshop will be transcribed. Transcripts of the workshop will be immediately available for a fee from Ace-Federal Reporters, Inc. at (202) 347–3700. A free webcast of this event will be available through *www.ferc.gov.* Anyone with internet access who wants to view this event can do so by navigating to the Calendar of Events at *www.ferc.gov* and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for webcasts and offers the option of listening to the workshop via phone-bridge for a fee. If you have any questions, visit *www.CapitolConnection.org* or call (703) 993–3100.

Those interested in attending the workshop or viewing the webcast are encouraged to register at *https://www.ferc.gov/whats-new/registration/efficiency-act-10–02–13-form.asp* by September 25, 2013. A limited number of phone lines will be available on a first-come, first-served basis for interested parties to participate via teleconference. If you would like to participate via teleconference, please contact Ken Wilcox at (202) 502–6835 or *kenneth.wilcox@ferc.gov* by September 25, 2013.

Commission workshops are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov,* call (866) 208–3372 (toll free) or (202) 208–8659 (TTY), or send a FAX to (202) 208–2106 with the required accommodations.

Those who wish to file written comments may do so by November 1, 2013. The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number AD13–9–000.

All comments will be placed in the Commission's public files and will be available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *www.ferc.gov* using the eLibrary link. Enter AD13–9 in the docket number field to access documents. For assistance, please contact FERC Online Support.

For more information about this workshop, please contact:

Brandon Cherry (Technical Information), Office of Energy Projects, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 502–8328, *brandon.cherry@ferc.gov*

Sarah McKinley (Logistical Information), Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8004, *sarah.mckinley@ferc.gov*

Dated: September 18, 2013.

Kimberly D. Bose,

Secretary.

Two-Year Licensing Process Workshop

Purpose: To solicit comments and recommendations on a two-year process for licensing hydropower development at non-powered dams and closed-loop pumped storage projects.

Workshop Agenda

1. Introduction—12:00 p.m. to 12:30 p.m.[1]
   - 1.1 Opening remarks from the Commissioners
   - 1.2 Introduction of FERC staff and panel members
   - 1.3 Workshop procedures
2. Background (FERC staff presentation)—12:30 p.m. to 12:45 p.m.
   - 2.1 Section 6 of the Hydropower Regulatory Efficiency Act of 2013
   - 2.2 Licensing process steps
   - 2.3 Process times for recently authorized projects
   - 2.4 Actions implemented to shorten process times
   - 2.5 Common factors that lengthen process times
3. Investigating the feasibility of a two-year process (Input solicited from panel and participants)—12:45 p.m. to 3:00 p.m.
   - 3.1 Is a two-year process feasible?
   - 3.2 What pre-filing process steps can be eliminated, shortened, or combined?
   - 3.3 What post-filing process steps can be eliminated, shortened, or combined?
   - 3.4 In a two-year process, how much time should be allotted to pre-filing versus post-filing?
   - 3.5 What, if any, process modifications are needed to account for mandatory conditions and other agency authorizations (e.g. sections 4(e) and 18 of the FPA, 401 certifications, ESA consultation)? What about fish and wildlife recommendations made under section 10(j) of the FPA?
   - 3.6 Could memorandums of understanding between FERC and federal or state agencies help expedite processing?
   - 3.7 Are there economic factors that affect the practicality of a two-year process?
   - 3.8 Does the type of project (i.e., non-powered dam versus closed-loop pumped storage) affect the steps included in a two-year process?
   - 3.9 Should there be a single standard two-year process or should developers be allowed to propose unique, project-specific processes?
   - 3.10 Is a two-year process needed for exemptions from licensing or are existing procedures adequate for expedited processing of these projects?

[1] All times are eastern daylight time.

4. Factors and criteria for identifying pilot projects (Input solicited from panel and participants)—3:00 p.m. to 3:55 p.m.
   - 4.1 What project design or siting criteria should be met to be eligible to use a two-year process? Would the same criteria apply to projects at non-powered dams and closed-loop pumped storage projects?
   - 4.2 What environmental criteria should be met to be eligible to use a two-year process? Would the same criteria apply to projects at non-powered dams and closed-loop pumped storage projects?
   - 4.3 In order for a project to qualify for a two-year process, should there be agreement on, and limits to, the need to develop new information?
   - 4.4 Are there certain types of issues that should preclude a project from being eligible for a two-year process?
   - 4.5 Are there developers that will be ready to begin testing a two-year process by February 5, 2014?
5. Closing comments and next steps—3:55 p.m. to 4:00 p.m.

[FR Doc. 2013–23170 Filed 9–23–13; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL—9901–26–OA]

Notification of a Public Meeting of the Science Advisory Board Panel for the Review of the EPA Water Body Connectivity Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public meeting of the SAB Panel to conduct a review of the EPA draft report, *Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence (September, 2013 External Review Draft, EPA/600/R–11/098B).*

DATES: The public meeting will be held on Monday December 16, 2013 from 9:00 a.m. to 5:00 p.m., Tuesday December 17, 2013 from 8:30 a.m. to 5:00 p.m., and Wednesday December 18, 2013 from 8:30 a.m. to 1:00 p.m. (Eastern Time).

ADDRESSES: The public meeting will be held at the Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning the public meeting may contact Dr. Thomas Armitage, Designated Federal Officer (DFO), EPA Science Advisory Board Staff Office (1400R), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; via telephone at (202) 564–2155 or via email at *armitage.thomas@epa.gov*. General information concerning the SAB can be found on the EPA Web site at *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION: The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDDAA), codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. Pursuant to FACA and EPA policy, notice is hereby given that the SAB Panel for the Review of the EPA Water Body Connectivity Report will hold a public meeting to conduct a review of the EPA's draft report, *Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence (September, 2013 External Review Draft, EPA/600/R–11/098B).* This SAB panel will provide advice to the Administrator through the chartered SAB.

Background

The EPA's Office of Research and Development (ORD) has developed a draft report reviewing and synthesizing the peer-reviewed scientific literature on the connectivity or isolation of streams and wetlands relative to large water bodies such as rivers, lakes, estuaries and oceans. The purpose of the report, Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence (September, 2013 External Review Draft, EPA/600/R–11/098B), is to summarize the current understanding about these connections, the factors that influence them, and the mechanisms by which connected waters singly or in aggregate, affect the function of downstream waters.

The SAB Staff Office announced to the public through a **Federal Register** notice published on March 8, 2013 (78 FR 15012—15013) that it was soliciting nominations of scientific experts to serve on the SAB Panel for the Review of the EPA Water Body Connectivity Report. Information about the formation of this SAB Panel can be found on the SAB Web site at *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/Watershed%20Connectivity%20Report?OpenDocument*.

Technical Contact for EPA's Draft Report: Any technical questions concerning EPA's draft report should be directed to Dr. Laurie Alexander, National Center for Environmental Assessment, Office of Research and Development, U.S. EPA, 1200 Pennsylvania Avenue NW., Mail Code 8623P, Washington, DC 20460, telephone (703) 347–8630 or via email at *alexander.laurie@epa.gov*.

Availability of Meeting Materials: The draft EPA report, *Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence (September, 2013 External Review Draft, EPA/600/R–11/098B),* and the charge to the SAB Panel are available on the SAB Web site at *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/Watershed%20Connectivity%20Report?OpenDocument*. The agenda and other meeting materials will be available on the SAB Web site at the URL listed above prior to the meeting.

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. The intended use of comments submitted to the SAB is different from the purpose of comments submitted to the EPA's program offices. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Interested members of the public may submit relevant comments for the SAB Panel to consider pertaining to the review materials, including the charge to the Panel. Input from the public to the SAB Panel will have the most impact if it provides specific scientific or technical information or analysis for the SAB Panel to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide written comments may submit them to the EPA Docket electronically via *www.regulations.gov*, by email, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the written statements section of this notice.

Members of the public wishing to provide oral statements to the SAB Panel should contact the DFO directly. *Oral Statements:* In general, individuals or groups requesting an oral presentation at a public meeting will be limited to five minutes. Interested

parties should contact Dr. Thomas Armitage, DFO, in writing (preferably via email) at the contact information noted above by December 9, 2013 to be placed on the list of public speakers for the meeting. *Written Statements:* Written statements for the December 16–18, 2013 meeting should be received in the EPA Docket by November 6, 2013 so that the information may be made available to the SAB Panel for its consideration. Written statements should be identified by Docket ID No. EPA–HQ–OA–2013–0582 and submitted to the Docket at *www.regulations.gov* by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: Docket_OEI@epa.gov*: Include the docket number in the subject line of the message.
- *Fax:* (202) 566–9744
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 28221T), Docket ID No. EPA–HQ–OA–2013–0582, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460. The phone number is (202) 566–1752.
- *Hand Delivery:* The OEI Docket is located in the EPA headquarters Docket Center, Room 3334, EPA West Building, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744. Deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Direct your comments to Docket ID No. EPA–HQ–OA–2013–0582. Please ensure that your comments are submitted by November 6, 2013. Comments received after that date will be marked late and may not be provided to the SAB Panel for consideration before the December 16–18 meeting. It is EPA's policy to include all comments received in the public docket without change and to make the comments available on-line at *www.regulations.gov*, including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to EPA without going through *www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comments due to technical difficulties and cannot contact you for clarification, the SAB Panel may not be able to consider your comments. Electronic files should avoid the use of special characters and any form of encryption and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *www.epa.gov/epahome/dockets.htm*.

Documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Thomas Armitage at the phone number or email address noted above, preferably at least ten days prior to the meeting to give EPA as much time as possible to process your request.

Dated: September 17, 2013.

Thomas H. Brennan,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2013–23198 Filed 9–23–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

FDIC Advisory Committee on Economic Inclusion (ComE–IN); Notice of Meeting

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of open meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, notice is hereby given of a meeting of the FDIC Advisory Committee on Economic Inclusion, which will be held in Washington, DC The Advisory Committee will provide advice and recommendations on initiatives to expand access to banking services by underserved populations.

DATES: Wednesday, October 9, 2013, from 9:00 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held in the FDIC Board Room on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Committee Management Officer of the FDIC, at (202) 898–7043.

SUPPLEMENTARY INFORMATION: *Agenda:* The agenda will be focused on expanding access to safe accounts, financial education strategies, steps to support household savings, mobile financial services, and the FDIC's economic inclusion research projects. The agenda may be subject to change. Any changes to the agenda will be announced at the beginning of the meeting.

Type of Meeting: The meeting will be open to the public, limited only by the space available on a first-come, first-served basis. For security reasons, members of the public will be subject to security screening procedures and must present a valid photo identification to enter the building. The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (703) 562–6067 (Voice or TTY) at least two days before the meeting to make necessary arrangements. Written statements may be filed with the committee before or after the meeting. This ComE–IN meeting will be Webcast live via the Internet at: *http://www.vodium.com/goto/fdic/advisorycommittee.asp.* This service is free and available to anyone with the following systems requirements: *http://www.vodium.com/home/sysreq.html.* Adobe Flash Player is required to view these presentations. The latest version of Adobe Flash Player can be downloaded at *http://www.adobe.com/shockwave/download/download.cgi?P1_Prod_Version=ShockwaveFlash.* Installation questions or troubleshooting help can be found at the same link. For optimal viewing, a high speed Internet connection is recommended. The ComE–IN meeting videos are made available on-demand approximately two weeks after the event.

Dated: September 19, 2013.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary, Federal Deposit Insurance Corporation.

[FR Doc. 2013–23140 Filed 9–23–13; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

September 19, 2013.

TIME AND DATE: 10:00 a.m., Tuesday, October 1, 2013.

PLACE: The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW., Washington, DC 20004 (entry from F Street entrance).

STATUS: Open .

MATTERS TO BE CONSIDERED: The Commission will hear oral argument in the matter *Secretary of Labor v. Twentymile Coal Co.,* Docket Nos. WEST 2008–788–R, et al. (Issues include whether the Administrative Law Judge erred in concluding that violations involving accumulations of coal dust and an inadequate pre-shift examination were ''significant and substantial.'')

Any person attending this oral argument who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Emogene Johnson,

Administrative Assistant.

[FR Doc. 2013–23304 Filed 9–20–13; 4:15 pm]

BILLING CODE 6735–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

September 19, 2013.

TIME AND DATE: 1:00 p.m., Tuesday, October 1, 2013

PLACE: The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW., Washington, DC 20004 (entry from F Street entrance)

STATUS: Open

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor* v. *Twentymile Coal Co.,* Docket Nos. WEST 2008–788–R, et al. (Issues include whether the Administrative Law Judge erred in concluding that violations involving accumulations of coal dust and an inadequate pre-shift examination were ''significant and substantial.'')

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Emogene Johnson,

Administrative Assistant.

[FR Doc. 2013–23303 Filed 9–20–13; 4:15 pm]

BILLING CODE 6735–01–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 October 18, 2013.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02210–2204:

1. *Equitable Bancorp, MHC,* Lynn, Massachusetts, to become a bank holding company by acquiring 100 percent of the voting shares of Equitable Cooperative Bank, Lynn, Massachusetts.

In connection with this application, Equitable Bancorp, Inc., Lynn, Massachusetts, to acquire 100 percent of the voting shares of Equitable Cooperative Bank, Lynn, Massachusetts.

Board of Governors of the Federal Reserve System, September 18, 2013.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2013–23087 Filed 9–23–13; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: HHS–OS–20557–60D]

Agency Information Collection Activities; Proposed Collection; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, announces plans to submit a new Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting that ICR to OMB, OS seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on the ICR must be received on or before November 25, 2013.

ADDRESSES: Submit your comments to *Information.CollectionClearance@hhs.gov* or by calling (202) 690–6162.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the document identifier HHS–OS–20557–60D for reference.

Proposed Project: Pregnancy Assistance Fund (PAF) Performance Measures Collection: HHS–OS–0990–NEW–PAF.

Abstract: The Pregnancy Assistance Fund (PAF) is a competitive grant program authorized by the Patient

Protection and Affordable Care Act (Pub. L. 111–148) and administered by the Office of Adolescent Health (OAH). PAF provides funding to States and Tribes to provide expectant and parenting teens, women, fathers and their families with a seamless network of supportive services to help them complete high school or postsecondary degrees and gain access to health care, child care, family housing, and other critical supports. The Act appropriates $25 million for each of fiscal years 2010 through 2019, and in August 2013, OAH awarded the first grants to 17 entities for up to four years. Grantees may use PAF grants to carry out activities in any of the following four *implementation categories:* (1) Support pregnant and parenting student services at institutions of higher education (IHE); (2) Support pregnant and parenting teens at high schools and community service centers; (3) Improve services for pregnant women who are victims of domestic violence, sexual violence, sexual assault, and stalking; and (4) Increase public awareness and education efforts about services available to pregnant and parenting teens and women.

This request is for a 3-year approval of the collection of PAF performance data. This is an annual reporting requirement of all PAF grantees. The reporting requirement varies according to the type(s) of activities implemented by each grantee. All PAF grantees are required to report a standard set of data elements that capture the demographic and social characteristics of the individuals served (''participants'') and the number and types of organizations that participate in implementing the project. In addition, grantees are required to report data for a set of measures defined for each implementation category.

Need and Proposed Use of the Information: The collection of annual performance data is important to OAH because it will provide OAH leadership and PAF program administrators with data needed to administer the PAF program and manage PAF awards and projects, including information to assess beneficiary characteristics; measure and monitor project implementation, outputs, and outcomes; and comply with reporting requirements specified in the Affordable Care Act. In addition, OAH will use the performance data to inform planning and resource allocation decisions; identify training, technical assistance, and evaluation needs; and provide Congress, OMB, and the general public with information about the individuals who participate in PAF-funded activities and the range and scope of services they receive.

Likely Respondents: States and Tribes that are PAF grant awardees.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions, to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information, to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information, and to transmit or otherwise disclose the information. The table below summarizes the total annual burden hours estimated for this ICR.

EXHIBIT 3—ESTIMATED ANNUALIZED BURDEN HOURS

Form	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per respondent	Total burden hours
Participant & Partner Characteristics (17 measures).	All Grantees	17	1	19	323
Category 1 Measures (4 measures).	Category 1 Grantees: Implementing activities to support pregnant and parenting student services at institutions of higher education.	2	1	6	12
Category 2 Measures (6 measures).	Category 2 Grantees: Implementing activities to support pregnant and parenting teens at high schools and community service centers.	14	1	9	126
Category 3 Measures (2 measures).	Category 3 Grantees: Implementing activities to improve services for pregnant women who are victims of domestic violence, sexual violence, sexual assault, and stalking;.	6	1	3	18
Category 4 Measures (1 measures).	Category 4 Grantees: Implementing public awareness and education activities.	13	1	1	13
Total		17			492

The Offices of the Secretary specifically requests comments on (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Keith A. Tucker,

Information Collection Clearance Officer.

[FR Doc. 2013–23176 Filed 9–23–13; 8:45 am]

BILLING CODE 4168–11–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Standards for Culturally and Linguistically Appropriate Services (CLAS) in Health and Health Care

AGENCY: Office of Minority Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Department of Health and Human Service (HHS), Office of the Secretary, Office of Minority Health (OMH) announces the publication of the final enhanced *National Standards for Culturally and Linguistically Appropriate Services (CLAS) in Health and Health Care,* known as the enhanced National CLAS Standards. In developing the enhanced National CLAS Standards, OMH undertook the National CLAS Standards Enhancement Initiative. From 2010–2012, this initiative included input from a National Project Advisory Committee composed of subject matter experts representing public, private and government sectors, regional public meetings, public comment period, and a systematic literature review. The enhanced National CLAS Standards, including a brief background summary of the development process and public comment period, are printed below.

DATES: The final enhanced *National Standards for Culturally and Linguistically Appropriate Services (CLAS) in Health and Health Care* will be available beginning September 24, 2013.

ADDRESSES: The final enhanced *National Standards for Culturally and Linguistically Appropriate Services (CLAS) in Health and Health Care* can be found online at *www.thinkculturalhealth.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: CDR Jacqueline Rodrigue, Deputy Director, Office of Minority Health, Department of Health and Human Services, 1101 Wootton Parkway, Suite 600, Rockville, MD 20852. Attn: Enhanced National CLAS Standards. Telephone: (240) 453–2882.

SUPPLEMENTARY INFORMATION: In 2001, the HHS OMH published the *National Standards for Culturally and Linguistically Appropriate Services (CLAS) in Health Care,* known as the original National CLAS Standards, to address inequities that existed in the provision of health services, and to make these services more responsive to the individual needs of all patients and consumers. The original National CLAS Standards resulted from extensive research, discussions, input from stakeholders across the country, and offered a practical framework for the implementation of services and organizational structures that helped health care organizations and providers become more responsive to culturally and linguistically diverse communities. For the past decade, the original National CLAS Standards have served as catalyst and conduit for efforts to improve the quality of care and achieve health equity.

The HHS OMH undertook the National CLAS Standards Enhancement Initiative from 2010 to 2012 to recognize the nation's increasing diversity, to reflect the tremendous growth in the fields of cultural and linguistic competency over the past decade, and to ensure relevance with new national policies and legislation, such as the Affordable Care Act. A decade after the publication of the original National CLAS Standards, there is still much work to be done. Racial and ethnic disparities in health and health care remain a significant public health issue, despite advances in health care technology and delivery, even when factors such as insurance coverage, income, and educational attainment are taken into account. Cultural and linguistic competency strives to improve the quality of care received and to reduce disparities experienced by racial and ethnic minorities and other underserved populations. Through the National CLAS Standards Enhancement Initiative (Enhancement Initiative), a new benchmark is being established for culturally and linguistically appropriate services to improve the health of all individuals.

The Enhancement Initiative followed the same development process as the original National CLAS Standards project in 1999–2001. The development process had three major components: (1) Input from a National Project Advisory Committee comprised of subject matter experts representing public, private, and government sectors; (2) regional public meetings, public comment period; and (3) a systematic literature review. The goals of the Enhancement Initiative were to update the original National CLAS Standards in order to reflect the advancements of the past decade, expand their scope, and improve upon their clarity in order to encourage more widespread understanding and implementation. The Enhancement Initiative also sought to develop a product that could assist individuals and organizations in the implementation of the enhanced National CLAS Standards.

Public Comment Period and Regional Public Meetings

As part of the National CLAS Standards Enhancement Initiative, OMH invited the public to submit comments on the original National CLAS Standards in late 2010, with the purpose of increasing public awareness of the National CLAS Standards. The announcement of the public comment period appeared in the **Federal Register** published on September 23, 2010 (75 FR 57957—58), at *www.thinkculturalhealth.hhs.gov/CLCCHC/HealthNews/FederalRegister_CLAS.pdf.*

The **Federal Register** announcement highlighted the various ways in which the public could provide comment, including submitting comments via an online portal, or submitting letters directly to OMH and/or its support team at SRA International, Inc. Individuals and organizations were encouraged to review the original National CLAS Standards and send written and/or online public comments during a 103-day period between September 20, 2010, and December 31, 2010. Over 500 individuals and 90 organizations participated in the public comment period.

Concurrent with the public comment period, three in-person regional public meetings were convened. The purpose of the regional public meetings was to gather and solicit detailed feedback from interested individuals and organizations that would complement and enhance the public comments received by OMH through online and written submissions. These three public meetings were held on October 22, 2010, in Baltimore, Maryland; November 4, 2010, in San Francisco, California; and on November 15, 2010, in Chicago, Illinois. The total number of attendees for all three meetings was approximately 100 individuals from different organizations. The project team recorded and transcribed all three meetings. A qualitative theme analysis of the public meetings' transcripts was completed to determine relevant themes.

Analysis and Response to Public Comments Meetings on the enhanced National CLAS Standards

The following themes arose from the comments heard across the three public meetings.

The enhanced National CLAS Standards should:

- Encompass a broad definition of culture to include religion and spirituality; lesbian, gay, bisexual, and transgender community individuals; deaf and hearing impaired individuals; and blind and vision impaired individuals
- Incorporate the areas of patient satisfaction and safety
- Address issues of health literacy
- Establish congruency with other standards in the field
- Be action oriented
- Reflect advancements in terminology, technology, and more,

including medical homes, electronic health records, and language access.

Analysis and Response to Written and Online Comments on the enhanced National CLAS Standards

A series of Likert-type statements were posed to those responding via the online portal and written submissions, and respondents were asked to indicate the degree to which they agreed or disagreed with each statement. Examples of the statements and responses are as follows:

1. ''The National CLAS Standards meet my needs.''

Fifty-nine percent (59%) of the respondents either strongly agreed or agreed with the statement that the original National CLAS Standards met their needs as someone who works to improve the health of diverse communities. In a follow-up question, ''In order for the CLAS Standards to meet my needs, the following enhancements would need to be made:'' 29%, (n=51) of the respondents requested additional resources (e.g., additional training, funding, guides). In addition, 13% (n=24) requested CLAS enforcement mechanisms, 7% (n=13) requested promotion (i.e., need for increased awareness), 7% (n=13) requested increased clarity, and 7% (n=12) requested increased inclusivity of the populations addressed.

2. ''I believe the National CLAS Standards [as a whole] should be revised'' Forty-eight percent (48%) of respondents either strongly agreed or agreed with the statement that the CLAS Standards should be revised. In a follow-up question, ''I believe with revisions my utilization of the CLAS Standards will* * *'' 29% (n=103) indicated that their utilization of the CLAS Standards would increase upon revision, while 25% (n=88) indicated that their utilization would stay the same. Similarly, 32% (n=113) of respondents indicated their belief that their organization's utilization of the CLAS Standards would increase upon revision.

After December 31, 2010, when the public comment period ended, the project team analyzed the public comments received from all sources, including the 90 organizations that submitted online or written public comments. The following overarching themes emerged:

The enhanced National CLAS Standards should:

- Expand the target audience beyond health care organizations
- Encompass a broad definition of culture to include religion and spirituality; lesbian, gay, bisexual, and transgender individuals; deaf and hearing impaired individuals; and blind and vision impaired individuals
- Offer more guidance pertaining to language assistance services
- Establish congruency with other related standards in the field.

National Project Advisory Committee

The National Project Advisory Committee (NPAC) of National CLAS Standards Enhancement Initiative is comprised of 36 subject matter experts in the fields of cultural and linguistic competency representing HHS agencies, academic institutions, health associations, and other private organizations. A complete list of NPAC members is available at *www.thinkculturalhealth.hhs.gov.* The NPAC provided insight, recommendations, and review throughout the development of the enhanced National CLAS Standards. The Enhancement Initiative Project Team conducted informal interviews in fall 2010 with the members of the NPAC to gather input on the enhanced National CLAS Standards from subject matter experts representing a myriad of roles in the field of cultural and linguistic competency. These conversations, along with the public comment and the systematic literature review, served to begin the laying of the foundation for the enhanced National CLAS Standards in fall 2010. The topics of discussion included the purpose and scope of the future National CLAS Standards, the target audience, and issues surrounding implementation and promotion.

The NPAC convened twice in Washington, DC during 2011. At the January 2011 meeting, the NPAC discussed the following topics in depth: Purpose, Definitions, Inclusivity, Audience, Health Literacy, Language Access Services, Measurements, Implementation, Promotion, and End Product.

The January 2011 meeting built the framework for the Project Team to begin drafting the enhanced National CLAS Standards. During spring 2011, the NPAC reviewed and provided feedback on a document of terminology and definitions that would serve as the conceptual underpinning of the enhanced National CLAS Standards. The NPAC met virtually for a series of webinars in summer 2011 to define the direction of the enhanced National CLAS Standards and discuss draft Standards. Another recurring theme throughout the public comment portion of the National CLAS Standards Enhancement Initiative was the request for additional support and guidance in the implementation and maintenance of the National CLAS Standards. To address this issue, the NPAC began compiling information and materials for the guidance document, *National Standards for Culturally and Linguistically Appropriate Services in Health and Health Care: A Blueprint for Advancing and Sustaining CLAS Policy and Practice* (*The Blueprint)* to accompany the enhanced National CLAS Standards. *The Blueprint,* which describes each stage of the development process, is available at *www.thinkculturalhealth.hhs.gov.*

Systematic Literature Review

The systematic literature review, developed in 2010, discusses the evolution of the efforts to improve cultural and linguistic appropriateness since the publication of the original National CLAS Standards in 2001. It addresses the broad dissemination, promotion, and implementation nationwide of the National CLAS Standards and the concepts of CLAS. In addition, the report covers cultural competency education initiatives; adoption of CLAS at the federal, state, and organizational levels; changes in accreditation standards to explicitly include CLAS; the proliferation of technical assistance regarding CLAS; and research and evaluation of the National CLAS Standards' impact. The report concludes with areas for consideration that emerged from the literature and research of the last 10 years, which provided insight into the issues the enhanced National CLAS Standards should address.

Rationale for the Enhancement of the CLAS Standards

The public comments from the online portal, the written submissions, the regional public meetings, systematic literature review, and the NPAC offered a great pool of suggestions on how to enhance the National CLAS Standards. The enhanced *National Standards for Culturally and Linguistically Appropriate Services in Health and Health Care* are composed of 15 Standards that provide individuals and organizations with a blueprint for successfully implementing and maintaining culturally and linguistically appropriate services. Culturally and linguistically appropriate health care and services, broadly defined as care and services that are respectful of and responsive to the cultural and linguistic needs of all individuals, are increasingly seen as essential to reducing disparities and improving health care quality.

All 15 Standards are necessary to advance health equity, improve quality,

and help eliminate health care disparities. As important as each individual Standard is, the exclusion of any Standard diminishes health professionals' and organizations' ability to meet an individual's health and health care needs in a culturally and linguistically appropriate manner. Thus, it is strongly recommended that each of the 15 Standards be implemented by health and health care organizations.

Statement of Intent

In response to public comment and the National Project Advisory Committee feedback requesting further clarification on the intent of the National CLAS Standards, a statement of intent for the enhanced National CLAS Standards was crafted and has been added as an introductory sentence to the Standards:

The National CLAS Standards are intended to advance health equity, improve quality, and help eliminate health care disparities by establishing a blueprint for health and health care organizations to:

As the enhanced National CLAS Standards are disseminated, the inclusion of the statement of intent within the actual Standards ensures that every person who uses the Standards will understand their importance. Although this introductory sentence does not convey the only purpose of the Standards, it does convey their primary goal. The addition of the statement of intent ties the culturally and linguistically competent policies and practices posed in the enhanced National CLAS Standards directly to the goals of advancing health equity, improving quality, and eliminating health care disparities.

Advance Health Equity

Health equity is defined as the attainment of the highest level of health for all people (HHS OMH, National Stakeholder Strategy for Achieving Health Equity, 2011). Currently, many individuals are unable to attain their highest level of health for several reasons, including social factors such as inequitable access to quality care and individual factors such as limited resources. Lack of health equity has a significant economic and societal impact.

Improve Quality

Culturally and linguistically appropriate services and related education initiatives affect several aspects of an organization's continuous quality improvement initiatives. For example, research suggests that after implementation of CLAS initiatives, there are substantial increases in provider knowledge and skill acquisition and improvements in provider attitudes toward culturally and linguistically diverse patient populations.[1] Studies also indicate that patient satisfaction increases when culturally and linguistically appropriate services are delivered.[2] At the organizational level, hospitals and clinics that support effective communication by addressing CLAS have been shown to have higher patient-reported quality of care and more trust in the organization.[3] Preliminary research has shown a positive impact of CLAS on patient outcomes,[4] and a growing body of evidence illustrates the effectiveness of culturally and linguistically appropriate services in improving the quality of care and services received by individuals.[5]

Help Eliminate Health Care Disparities

Eliminating health care disparities is one of the ultimate goals of advancing health equity. Disparities exist and persist across many culturally diverse groups, with individuals who identify as racial or ethnic minorities being less likely to receive preventive health services, even when insured.[6]

Clarity and Action

Each of the National CLAS Standards was revised for greater clarity and focus. In addition, the wording of each of the 15 Standards now begins with an action word to emphasize how the desired goal may be achieved.

Standards of Equal Importance

The original National CLAS Standards designated each Standard as a recommendation, mandate, or guideline. The recommendation (original 14 Standards) was a suggestion for voluntary adoption by health care organizations. The mandates (original Standards 4, 5, 6, and 7) were Federal requirements for all recipients of Federal funds. The guidelines (original Standards 1, 2, 3, 8, 9, 10, 11, 12, and 13) were activities recommended for adoption as mandates by federal, state, and national accrediting agencies.

However, the enhanced National CLAS Standards promote collective adoption of all Standards as the most effective approach to improve the health and well-being of all individuals. The Standards are intended to be used together, as mutually reinforcing actions, and each of the 15 Standards should be understood as an equally important guideline to advance health equity, improve quality, and help eliminate health care disparities.

Although the enhanced National CLAS Standards are not statutory or regulatory requirements, failure by a recipient of Federal financial assistance to provide services consistent with Standards 5 through 8 (Communication and Language Assistance Standards) could result in a violation of Title VI of the Civil Rights Act of 1964 and its implementing regulations (42 USC 2000d et seq. and 45 CFR Part 80). Therefore, implementation of these goals may help ensure that health care organizations and individual providers serve persons of diverse backgrounds in a culturally and linguistically appropriate manner in accordance with the law. Health care organizations and individual providers are encouraged to seek technical assistance from the HHS Office for Civil Rights or review the *HHS Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited*

[1] Beach, M.C., Cooper, L.A., Robinson, K.A., Price, E.G., Gary, T.L., Jenckes, M.W., … Powe, N.R. (2004). Strategies for improving minority healthcare quality. (AHRQ Publication No. 04–E008–02). Retrieved from the Agency of Healthcare Research and Quality Web site: *http://archive.ahrq.gov/downloads/pub/evidence/pdf/minqual/minqual.pdf.*

[2] Beach, M.C., Cooper, L.A., Robinson, K.A., Price, E.G., Gary, T.L., Jenckes, M.W., * * * Powe, N.R. (2004). Strategies for improving minority healthcare quality. (AHRQ Publication No. 04–E008–02). Retrieved from the Agency of Healthcare Research and Quality Web site: *http://archive.ahrq.gov/downloads/pub/evidence/pdf/minqual/minqual.pdf.*

[3] Wynia, M.K., Johnson, M., McCoy, T.P., Passmore Griffin, L., & Osborn, C.Y. (2010). Validation of an organizational communication climate assessment toolkit. American Journal of Medical Quality, 25(6), 436–443. doi:10.1177/1062860610368428.

[4] Lie, D.A., Lee-Rey, E., Gomez, A., Bereknyel, S., & Braddock, C.H. (2010). Does cultural competency training of health professionals improve patient outcomes? A systematic review and proposed algorithm for future research. Journal of General Internal Medicine, 26(3), 317–325. doi:10.1007/s11606–010–1529–0.

[5] Beach, M.C., Cooper, L.A., Robinson, K.A., Price, E.G., Gary, T.L., Jenckes, M.W., … Powe, N.R. (2004). Strategies for improving minority healthcare quality. (AHRQ Publication No. 04–E008–02). Retrieved from the Agency of Healthcare Research and Quality Web site: *http://archive.ahrq.gov/downloads/pub/evidence/pdf/minqual/minqual.pdf.*

Goode, T.D., Dunne, M.C., & Bronheim, S. M. (2006). The evidence base for cultural and linguistic competency in health care. (Commonwealth Fund Publication No. 962). Retrieved from The Commonwealth Fund Web site: *http://www.commonwealthfund.org/usr_doc/Goode_evidencebasecultlinguisticcomp_962.pdf.*

[6] DeLaet, D.E., Shea, S., & Carrasquillo, O. (2002). Receipt of preventive services among privately insured minorities in managed care versus fee-for-service insurance plans. Journal of General Internal Medicine, 17, 451–457. doi:10.1046/1525–1497.2002.10512.x.

English Proficient Persons document (HHS Office for Civil Rights, 2003) to assess whether or to what extent language access services must be provided in order to comply with the Title VI requirement to take reasonable steps to provide meaningful access to their programs for persons with limited English proficiency.

Principal Standard and Three Enhanced Themes

Principal Standard

Standard 1 has been made the Principal Standard with the understanding that it frames the essential goal of all of the Standards, and if the other 14 Standards are adopted, implemented, and maintained, then the Principal Standard will be achieved.

1. Provide effective, equitable, understandable, respectful, and quality care and services that are responsive to diverse cultural health beliefs and practices, preferred languages, health literacy, and other communication needs.

Theme 1: Governance, Leadership, and Workforce

Changing the name of Theme 1 from *Culturally Competent Care* to *Governance, Leadership, and Workforce* provides greater clarity on the specific locus of action for each of these Standards and emphasizes the importance of the implementation of CLAS as a systemic responsibility, requiring the investment, support, and training of all individuals within an organization.

The Standards in this theme include:

2. Advance and sustain governance and leadership that promotes CLAS and health equity
3. Recruit, promote, and support a diverse governance, leadership, and workforce
4. Educate and train governance, leadership, and workforce in CLAS

Theme 2: Communication and Language Assistance

Changing the name of Theme 2 from *Language Access Services* to *Communication and Language Assistance* broadens the understanding and application of appropriate services to include all communication needs and services, including sign language, braille, oral interpretation, and written translation.

The Standards in this theme include:

5. Offer communication and language assistance
6. Inform individuals of the availability of language assistance
7. Ensure the competence of individuals providing language assistance
8. Provide easy-to-understand materials and signage

Theme 3: Engagement, Continuous Improvement, and Accountability

Changing the name of Theme 3 from *Organizational Supports* to *Engagement, Continuous Improvement, and Accountability* underscores the importance of establishing individual responsibility in ensuring that CLAS is supported, while retaining the understanding that effective delivery of CLAS demands actions across an organization. This revision focuses on the supports necessary for adoption, implementation, and maintenance of culturally and linguistically appropriate policies and services regardless of one's role within an organization or practice. All individuals are accountable for upholding the values and intent of the National CLAS Standards.

The Standards in this theme include:

9. Infuse CLAS goals, policies, and management accountability throughout the organization's planning and operations
10. Conduct organizational assessments
11. Collect and maintain demographic data
12. Conduct assessments of community health assets and needs
13. Partner with the community
14. Create conflict and grievance resolution processes
15. Communicate the organization's progress in implementing and sustaining CLAS.

The past decade has shown that the National CLAS Standards are a dynamic framework. Therefore, as best and promising practices in the field of cultural and linguistic competence develop, there will be future enhancements of the National CLAS Standards. The HHS OMH also maintains a Web version of *The Blueprint* to provide a more comprehensive and up-to-date resource, with supporting material online at *www.thinkculturalhealth.hhs.gov.*

Dated: September 11, 2013.

J. Nadine Gracia,

Deputy Assistant Secretary for Minority Health, Office of Minority Health, U.S. Department of Health and Human Services.

[FR Doc. 2013–23164 Filed 9–23–13; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health (ABRWH or Advisory Board), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), and pursuant to the requirements of 42 CFR 83.15(a), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

Board Public Meeting Times and Dates (All times are Mountain Time):
8:15 a.m.–5:00 p.m., October 16, 2013.
8:15 a.m.–12:00 p.m., October 17, 2013.

Public Comment Times and Dates (All times are Mountain Time):
5:00 p.m.–6:00 p.m.*, October 16, 2013.

**Please note that the public comment periods may end before the times indicated, following the last call for comments. Members of the public who wish to provide public comments should plan to attend public comment sessions at the start times listed.*

Place: Doubletree by Hilton Denver—Westminster, 8773 Yates Drive, Westminster, CO 80031, Phone: (303) 427–4000; Fax: (303)426–1680. Audio Conference Call via FTS Conferencing. The USA toll-free, dial-in number is 1–866–659–0537 with a pass code of 9933701. Live Meeting CONNECTION: *https://www.livemeeting.com/cc/cdc/join?id=7B82CG&role=attend&pw=ABRWH;* Meeting ID: 7B82CG; Entry Code: ABRWH

Status: Open to the public, limited only by the space available. The meeting space accommodates approximately 150 people.

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines which have been promulgated by the Department of Health and Human Services (HHS) as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, advice on the scientific validity and quality of dose estimation and reconstruction efforts being

performed for purposes of the compensation program, and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2013.

Purpose: This Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters to be Discussed: The agenda for the Advisory Board meeting includes: NIOSH Program Update; Department of Labor Program Update; Department of Energy Program Update; SEC petitions for: Rocky Flats Plant, Sandia National Laboratory—Livermore (Livermore, CA); Site Profile reviews for: General Steel Industries, DuPont Deepwater Works (Deepwater, New Jersey); Procedures Review Subcommittee Report; SEC Issues Work Group Report on ''Sufficient Accuracy''/ Co-Worker Dose Modeling; SEC Petitions Update, and Board Work Sessions.

The agenda is subject to change as priorities dictate.

In the event an individual cannot attend, written comments may be submitted in accordance with the redaction policy provided below. Any written comments received will be provided at the meeting and should be submitted to the contact person below well in advance of the meeting.

Policy on Redaction of Board Meeting Transcripts (Public Comment): (1) If a person making a comment gives his or her personal information, no attempt will be made to redact the name; however, NIOSH will redact other personally identifiable information, such as contact information, social security numbers, case numbers, etc., of the commenter.

(2) If an individual in making a statement reveals personal information (e.g., medical or employment information) about themselves that information will not usually be redacted. The NIOSH Freedom of Information Act (FOIA) coordinator will, however, review such revelations in accordance with the Federal Advisory Committee Act and if deemed appropriate, will redact such information.

(3) If a commenter reveals personal information concerning a living third party, that information will be reviewed by the NIOSH FOIA coordinator, and upon determination, if deemed appropriated, such information will be redacted, unless the disclosure is made by the third party's authorized representative under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) program.

(4) In general, information concerning a deceased third party may be disclosed; however, such information will be redacted if (a) the disclosure is made by an individual other than the survivor claimant, a parent, spouse, or child, or the authorized representative of the deceased third party; (b) if it is unclear whether the third party is living or deceased; or (c) the information is unrelated or irrelevant to the purpose of the disclosure.

The Board will take reasonable steps to ensure that individuals making public comment are aware of the fact that their comments (including their name, if provided) will appear in a transcript of the meeting posted on a public Web site. Such reasonable steps include: (a) A statement read at the start of each public comment period stating that transcripts will be posted and names of speakers will not be redacted; (b) A printed copy of the statement mentioned in (a) above will be displayed on the table where individuals sign up to make public comments; (c) A statement such as outlined in (a) above will also appear with the agenda for a Board Meeting when it is posted on the NIOSH Web site; (d) A statement such as in (a) above will appear in the **Federal Register** Notice that announces Board and Subcommittee meetings.

Contact Person For More Information: Theodore Katz, Designated Federal Official, NIOSH, CDC, 1600 Clifton Road, MS E–20, Atlanta GA 30333, telephone: (513)533–6800, toll free: 1–800–CDC–INFO, email: *dcas@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 CDC and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2013–23135 Filed 9–23–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Recordkeeping/Reporting Requirements Under Emergency

Review by the Office of Management and Budget (OMB)

Title: OCSE–75 Tribal Child Support Enforcement Program Annual Data Report.

OMB No.: 0970–0320 New Collection.

Description: The data collected by form OCSE–75 are used to prepare the OCSE preliminary and annual data reports. In addition, Tribes administering CSE programs under Title IV–D of the Social Security Act are required to report program status and accomplishments in an annual narrative report and submit the OCSE–75 report annually.

Respondents: Tribal Child Support Enforcement Organizations or the Department/Agency/Bureau responsible for Child Support Enforcement in each tribe.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
OCSE–75	60	1	60	3,600

Estimated Total Annual Burden Hours: 3,600

Additional Information:

ACF is requesting that OMB grant a 180 day approval for this information collection under procedures for emergency processing by September 30, 2013. A copy of this information collection, with applicable supporting documentation, may be obtained by calling the Administration for Children and Families, Reports Clearance Officer, Robert Sargis at (202) 690–7275.

Comments and questions about the information collection described above should be directed to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ACF, Office of Management and Budget, Paperwork Reduction Project, 725 17th Street NW., Washington, DC 20503; FAX: (202) 395–7285; email: *oira_submission@omb.eop.gov.*

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2013–23188 Filed 9–23–13; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–0636]

Global Unique Device Identification Database; Draft Guidance for Industry; 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 ''Global Unique Device Identification Database (GUDID).'' FDA is issuing this draft guidance to communicate our current thinking of how the GUDID will operate. The guidance includes both information about how device labelers (in most instances, the device manufacturer) will interface with the GUDID, as well as information on the database elements that must be submitted to the GUDID and their definitions. We intend to publish a final guidance after the close of the comment period and our implementation of the GUDID.

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 November 25, 2013.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled ''Global Unique Device Identification Database (GUDID)'' to the Division of Small Manufacturers, International, and Consumer Assistance, Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4613, Silver Spring, MD 20993–0002. Send a fax request to 301–847–8149 to receive a hard copy. Alternatively, you may submit written requests for single copies of the draft guidance to the Office of Communication, Outreach and Development (HFM–40), Center for Evaluation and Research, 1401 Rockville Pike, suite 200N, Rockville, MD 20852. Send one self-addressed adhesive label to assist that office in processing your request. 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: Jay Crowley, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 3216, Silver Spring, MD 20993–0002, email: *udi@fda.hhs.gov;* or Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

Section 226 of the Food and Drug Administration Amendments Act of 2007, 121 Stat. 854, and Section 614 of the Food and Drug Administration Safety and Innovation Act (FDASIA) of 2012, 126 Stat. 1061, amended the Federal Food, Drug, and Cosmetic Act to add section 519(f) (21 U.S.C. 360i(f)), which directs FDA to issue regulations establishing a unique device identification system for medical devices along with implementation timeframes for certain medical devices. The unique device identification (UDI) system proposed rule was published on July 10, 2012 (77 FR 40736), followed by an amendment modifying the implementation timeframe for certain devices, which was published on November 19, 2012 (77 FR 69393).

In developing the proposed rule, FDA solicited and considered input from a variety of stakeholders (e.g., manufacturers, global regulatory bodies, the clinical community, patient advocates) to ensure that as many perspectives as possible were incorporated. The GUDID is a critical component of the UDI System. While the UDI assigned to each device is a globally unique, yet unintelligent code, the GUDID will house a uniform set of required attribute information, including the device identifier (DI) component of the UDI, for the devices reported to the GUDID. Being unique for each device, the DI component of the UDI can be effectively used by stakeholders to access the other GUDID attribute information for that device.

Labelers will be responsible for submitting information to the GUDID as part of their UDI requirements. This draft guidance document describes how labelers would obtain access to the GUDID, how to submit DI records to the GUDID, and how all stakeholders can search and retrieve device information. This draft guidance is being issued to provide general information about the GUDID.

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 the GUDID. 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.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm,* or at *http://www.regulations.gov.* To receive ''Global Unique Device Identification Database (GUDID),'' 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 1831 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to proposed collections of information described in FDA's July 10, 2012, proposed rule on the UDI system (77 FR 40736), which this draft guidance is intended to interpret. The proposed collections of information in the proposed rule are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). As required by the PRA, FDA has published an analysis of the information collection provisions of the proposed rule (77 FR 40736 at 40762) and has submitted them for OMB approval (OMB control number 0910–0720).

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: September 18, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–23058 Filed 9–20–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH & HUMAN SERVICES

Health Resources and Services Administration

State System Development Initiative (SSDI) Grant Program; Single-Case Deviation From Competition Requirements

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice of Single-Case Deviation from Competition Requirements for the Maternal and Child Health (MCH) Bureau's States System Development Initiative (SSDI) Grant.

SUMMARY: HRSA will be issuing a non-competitive program expansion supplement for one State SSDI Grant. Approximately $82,332 in supplemental funding will be made available in the form of a grant to the Department of Health Care Services, Sacramento, California, Grant Number H18MC24474, during the budget period of December 1, 2012, through November 30, 2013.

The SSDI Grant program, CFDA No. 93.110, is authorized by Title V, Social Security Act, Section 501(a)(2); as amended (42 U.S.C. 701(a)(2)).

The SSDI Grant program was developed to complement the Title V MCH Services Block Grant program by assisting state MCH and Children with Special Health Care Needs (CSHCN) programs in the building of state data capacity and infrastructure that support comprehensive, community-based systems of care for all children and their families. SSDI grants to states are intended to not only advance and strengthen data capacity by directing grant resources towards Title V MCH Block Grant program's Health Systems Capacity Indicator (HSCI) #09A (i.e., the ability of states to assure that the MCH programs and Title V agency have access to policy and program relevant information and data), but also to move states forward in developing improved capacity for reporting standardized and quality data that is timely.

SUPPLEMENTARY INFORMATION:

Intended Recipient of the Award: Department of Health Care Services, Sacramento, California.

Amount of the Non-Competitive Award: $82,332.

CFDA Number: 93.110.

Current Project Period: 05/01/2012–11/30/2014.

Period of Supplemental Funding: 12/01/2012–11/30/2013.

Authority: Title V, Social Security Act, Section 501(a)(2); as amended (42 U.S.C. 701).

Justification: Consistent with its legislative purpose to improve the health of all mothers and children, a key objective of the Title V MCH Block Grant program is to reduce maternal mortality. Due to small numbers for many states, maternal mortality cannot be universally tracked whereas severe, life-threatening maternal morbidity is at least 100 times as common and may be tracked annually for all states. Although a severe maternal morbidity index has been developed using administrative hospital discharge data, a validation in comparison to medical records is needed to determine whether its accuracy is sufficient for use as a national performance measure reported at the state level.

The California Title V MCH program has been a leader in assessing maternal mortality and conducting maternal mortality reviews. In particular, the California Maternal Quality Care Collaborative (CMQCC) is the oldest and largest maternity care collaborative in the country with a longstanding track record of analyzing maternal health data and developing metrics to improve clinical practice and prevent maternal death and injury. The promising work that the California Title V program is doing stands to benefit not only the state but all state MCH programs in promoting a better understanding of the causes of maternal mortality/morbidity and in offering potential solutions. Based on their prior work, established data networks, and sheer size of their birth cohort, the State of California is uniquely qualified to evaluate and make recommendations for a state-level severe maternal morbidity measure.

FOR FURTHER INFORMATION CONTACT: Scott Snyder, MPH, Division of State and Community Health, Maternal and Child Health Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 18–31, Rockville, Maryland 20857; *ssnyder@hrsa.gov.*

Grantee/organization name	Grant No.	State	FY 2013 authorized funding level	FY 2013 estimated supplemental funding
Department of Health Care Services	H18MC24474	CA	$100,000	$82,332

Dated: September 17, 2013.

Mary K. Wakefield,

Administrator.

[FR Doc. 2013–23074 Filed 9–23–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Medical Imaging Study Section, October 07, 2013, 08:00 a.m. to October 08, 2013, 05:00 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on September 10, 2013, FR 78 55268–55270.

The meeting will be held October 7, 2013, 9:30 a.m. to 5:30 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: September 18, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–23081 Filed 9–23–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; 2014–01 Reducing Health Disparity SBIR Review.

Date: November 8, 2013.

Time: 10:00 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, Suite 920, 6707 Democracy Boulevard, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Ruixia Zhou, Ph.D., Scientific Review Officer, 6707 Democracy Boulevard, Suite 957, Bethesda, MD 20892, 301–496–4773, *zhour@mail.nih.gov.*

Dated: September 18, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–23083 Filed 9–23–13; 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; Neurobiology, genetics, stress and mood/anxiety disorders.

Date: October 10, 2013.

Time: 5:30 p.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Washington, DC Convention Center, 900 10th Street NW., Washington, DC 20001.

Contact Person: Jay Joshi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892, (301) 408–9135, *joshij@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Non-HIV Microbial Vaccine Development.

Date: October 18, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Scott Jakes, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4198, MSC 7812, Bethesda, MD 20892, 301–495–1506, *jakesse@mail.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Biostatistical Methods and Research Design Study Section.

Date: October 18, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Inner Harbor, 301 W. Lombard Street, Baltimore, MD 21201.

Contact Person: Tomas Drgon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, 301–435–1017, *tdrgon@csr.nih.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Cancer Biomarkers Study Section.

Date: October 18, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Houston JW Marriott, 5150 Westheimer Road, Houston, TX 77056.

Contact Person: Lawrence Ka-Yun Ng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7804, Bethesda, MD 20892, 301–357–9318, *ngkl@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Host Interactions with Bacterial Pathogens Study Section.

Date: October 18, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Fouad A El-Zaatari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7808, Bethesda, MD 20892, (301) 435–1149, *elzaataf@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Risk, Prevention and Health Behavior.

Date: October 18, 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.

Contact Person: Claire E Gutkin, Ph.D., MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3106, MSC 7808, Bethesda, MD 20892, 301–594–3139, *gutkincl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Molecular Neuroscience of Channels and Receptors.

Date: October 18, 2013.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Carol Hamelink, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7850, Bethesda, MD 20892, (301) 213–9887, *hamelinc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 13–213: Outcome Measures for Use in Treatment Trials for Individuals with Intellectual and Developmental Disabilities (R01).

Date: October 18, 2013.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Jane A Doussard-Roosevelt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–4445, *doussarj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 13–008 Robotic Bioanalytical Shared Instrumentation.

Date: October 18, 2013.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marie-Jose Belanger, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181, MSC 7804, Bethesda, MD 20892, *belangerm@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: September 18, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–23082 Filed 9–23–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Request for Information: The National Toxicology Program Requests Information on Use, Human Exposure, and Toxicity of Vinpocetine

SUMMARY: To facilitate the design of toxicological studies for vinpocetine (CAS RN: 42971–09–5), the National Toxicology Program (NTP) at the National Institute of Environmental Health Sciences (NIEHS) requests the submission of available information regarding (1) exposure, pharmacokinetics, toxicity, safety, or efficacy in humans; (2) production, use, and consumption patterns in the United States; (3) genotoxicity, repeated dose toxicity, prenatal developmental toxicity, reproductive toxicity, chronic toxicity, and carcinogenicity studies in experimental animals; and (4) any other information relative to the safety or toxicity of vinpocetine not listed above.

DATES: The deadline for receipt of information is November 4, 2013.

ADDRESSES: Submission of information via email to *surhi@niehs.nih.gov* is preferred.

FOR FURTHER INFORMATION CONTACT: Dr. Inok Surh, Research Fellow, Toxicology Branch, Division of the NTP, NIH/NIEHS, P.O. Box 12233, MD K2–12, Research Triangle Park, NC 27709. Phone: (919) 541–3862, Fax: (919) 541–4255, Email: *surhi@niehs.nih.gov.* Hand Delivery/Courier: 530 Davis Drive, Room 2067, Morrisville, NC 27560.

SUPPLEMENTARY INFORMATION:

Background: The National Cancer Institute nominated the dietary supplement vincamine to the NTP for genotoxicity, subchronic toxicity, and mechanistic studies due to a lack of information on its potential toxicity following long-term administration (*http://ntp.niehs.nih.gov/go/1123*). Currently, vincamine appears to be infrequently marketed in the United States, while vinpocetine, a semi-synthetic derivative of vincamine, is widely available as a dietary supplement. In a review of the available literature, the NTP found that published data on genotoxicity, carcinogenicity, and reproductive and developmental toxicity for vinpocetine are very limited (*http://ntp.niehs.nih.gov/ntp/htdocs/Chem_Background/ExSumPdf/Vinpocetine091613_508.pdf*). To address the lack of data and potential widespread exposure, the NTP is developing a research program for toxicological characterization of vinpocetine.

Request for Information: The NTP seeks to identify relevant information on the use, human exposure, and toxicity of vinpocetine in humans and experimental animal models. In particular, information is sought from unpublished or ongoing research studies or other sources not readily available. Any information provided by respondents will be used to supplement information the NTP has already gathered, and will be considered during the design of one or more types of experimental toxicology studies of vinpocetine. Specifically, the NTP requests the submission of information regarding:

(1) Exposure, pharmacokinetics, toxicity, safety, or efficacy of vinpocetine in humans. (2) Production, use, and consumption patterns of vinpocetine in the United States. (3) Genotoxicity, repeated dose toxicity, prenatal developmental toxicity, reproductive toxicity, chronic toxicity, and carcinogenicity studies of vinpocetine in experimental animals. (4) Any other information relative to the safety or toxicity of vinpocetine not listed above.

Responses are requested from all interested parties, such as the research community, health professionals, educators, policy makers, industry, and the public. Responses to this request for information are voluntary. The NTP does not intend to publish a summary of responses received or any other information provided. Despite this, no proprietary, classified, confidential, or sensitive information should be included in your response. This request for information is for planning purposes only and is not a solicitation for applications or an obligation on the part of the U.S. Government to provide support for any ideas identified in response to it. Please note that the U.S. Government will not pay for the preparation of any information submitted or for its use of that information. Persons submitting information should include their name, affiliation, mailing address, phone, fax, email address, and sponsoring organization (if any) with the submission. The deadline for receipt of the requested information is November 4, 2013.

Background Information on the NTP: The NTP is an interagency program established in 1978 (43 FR 53060) to strengthen the Department's activities in toxicology research and testing, and develop and validate new and better testing methods. Other activities of the program focus on strengthening the science base in toxicology and providing information about potentially toxic chemicals to health regulatory and research agencies, scientific and medical communities, and the public. The NTP is located administratively at the NIEHS. Information about the NTP and NIEHS is found at *http://www.niehs.nih.gov* and *http://ntp.niehs.nih.gov*, respectively.

Dated: September 18, 2013.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. 2013–23212 Filed 9–23–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2013–0025; OMB No. 1660–NW78]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (i.e., the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before October 24, 2013.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or email address *FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: Staffing for Adequate Fire and Emergency Response (SAFER) Grants.

Type of information collection: New Collection.

Form Titles and Numbers: FEMA Form 080–4, Staffing for Adequate Fire and Emergency Response (SAFER) (General Questions All Applicants); FEMA Form 080–4a, Staffing for Adequate Fire and Emergency Response Hiring of Firefighters Application (Questions and Narrative); FEMA Form 080–4b, Staffing for Adequate Fire and Emergency Response Recruitment and Retention of Volunteer Firefighters Application (Questions and Narrative).

Abstract: FEMA uses this information to ensure that FEMA's responsibilities under the legislation can be fulfilled accurately and efficiently. The information will be used to objectively evaluate each of the anticipated applicants to determine which of the applicant's proposalsin each of the activities are the closest to the established program priorities.

Affected Public: State, Local or Tribal Government, and Not-for-Profit Institutions.

Estimated Number of Respondents: 3,200

Estimated Total Annual Burden Hours: 26,190.

Estimated Cost: There are no record keeping, capital, start-up, or maintenance costs associated with this information collection.

Dated: September 18, 2013.

Charlene D. Myrthil,

Director, Records Management Division, Mission Support Bureau, ≤Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2013–23156 Filed 9–23–13; 8:45 am]

BILLING CODE 9111–78–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID BSEE–2013–0001; OMB Control Number 1014–0010; 134E1700D2 EEEE500000 ET1SF0000.DAQ000]

Information Collection Activities: Decommissioning Activities; Submitted for Office of Management and Budget (OMB) Review; Comment Request

ACTION: 30-day Notice.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under Subpart Q, *Decommissioning Activities.* This notice also provides the public a second opportunity to comment on the revised paperwork burden of these regulatory requirements.

DATES: You must submit comments by October 24, 2013.

ADDRESSES: Submit comments by either fax (202) 395–5806 or email *(OIRA_Submission@omb.eop.gov)* directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1014–0010). Please provide a copy of your comments to BSEE by any of the means below.

- *Electronically:* go to *http://www.regulations.gov.* In the Search box, enter BSEE–2013–0001 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.
- Email *nicole.mason@bsee.govmailto:cheryl.blundon@mms.gov,* fax (703) 787–1546, or mail or hand-carry comments to: Department of the Interior; Bureau of Safety and Environmental Enforcement; Regulations and Standards Branch; Attention: Nicole Mason; 381 Elden Street, HE3313; Herndon, Virginia 20170–4817. Please reference 1014–0010 in your comment and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Nicole Mason, Regulations and Standards Branch, (703) 787–1605, to request additional information about this ICR. To see a copy of the entire ICR submitted to OMB, go to *http://www.reginfo.gov* (select Information Collection Review, Currently Under Review).

SUPPLEMENTARY INFORMATION: *Title:* 30 CFR 250, Subpart Q, *Decommissioning Activities.*

OMB Control Number: 1014–0010

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations necessary for the administration of the leasing provisions of that Act related to mineral resources on the OCS. Such rules and regulations will apply to all operations conducted under a lease, right-of-way, or a right-of-use and easement. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

Section 1332(6) states that ''operations in the [O]uter Continental Shelf should be conducted in a safe manner by well trained personnel using technology, precautions, and other techniques sufficient to prevent or

minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstructions to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property or endanger life or health.''

In addition to the general rulemaking authority of the OCSLA at 43 U.S.C. 1334, section 301(a) of the Federal Oil and Gas Royalty Management Act (FOGRMA), 30 U.S.C. 1751(a), grants authority to the Secretary to prescribe such rules and regulations as are reasonably necessary to carry out FOGRMA's provisions. While the majority of FOGRMA is directed to royalty collection and enforcement, some provisions apply to offshore operations. For example, section 108 of FOGRMA, 30 U.S.C. 1718, grants the Secretary broad authority to inspect lease sites for the purpose of determining whether there is compliance with the mineral leasing laws. Section 109(c)(2) and (d)(1), 30 U.S.C. 1719(c)(2) and (d)(1), impose substantial civil penalties for failure to permit lawful inspections and for knowing or willful preparation or submission of false, inaccurate, or misleading reports, records, or other information. Because the Secretary has delegated some of the authority under FOGRMA to BSEE, 30 U.S.C. 1751 is included as additional authority for these requirements.

The Independent Offices Appropriations Act (31 U.S.C. 9701), the Omnibus Appropriations Bill (Pub. L. 104–133, 110 Stat. 1321, April 26, 1996), and OMB Circular A–25, authorize Federal agencies to recover the full cost of services that confer special benefits. Respondents pay cost recovery fees when removing a platform or other facility, or for decommissioning a pipeline least term or a right-of-way.

This authority and responsibility are among those delegated to the Bureau of Safety and Environmental Enforcement (BSEE). The regulations at 30 CFR 250, Subpart Q, concern decommissioning of platforms, wells, and pipelines, as well as site clearance and platform removal and are the subject of this collection. This request also covers the related Notices to Lessees and Operators (NTLs) that BSEE issues to clarify, supplement, or provide additional guidance on some aspects of our regulations.

Regulations at 30 CFR 250, Subpart Q, implement these statutory requirements. We use the information for the following reasons:

- To determine the necessity for allowing a well to be temporarily abandoned, the lessee/operator must demonstrate that there is a reason for not permanently abandoning the well, and the temporary abandonment will not constitute a significant threat to fishing, navigation, or other uses of the seabed. We use the information and documentation to verify that the lessee is diligently pursuing the final disposition of the well, and the lessee has performed the temporary plugging of the wellbore.
- The information submitted in initial decommissioning plans in the Alaska and Pacific OCS Regions will permit BSEE to become involved on the ground floor planning of platform removals anticipated to occur in these OCS regions.
- Site clearance and platform or pipeline removal information ensures that all objects (wellheads, platforms, etc.) installed on the OCS are properly removed using procedures that will protect marine life and the environment during removal operations, and the site cleared so as not to conflict with or harm other uses of the OCS.
- Decommissioning a pipeline in place is needed to ensure that it will not constitute a hazard to navigation and commercial fishing operations, unduly interfere with other uses of the OCS, or have adverse environmental effects.
- The information is necessary to verify that decommissioning activities comply with approved applications and procedures and are satisfactorily completed.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR 250.197, *Data and information to be made available to the public or for limited inspection.* No items of a sensitive nature are collected. Responses are mandatory.

Frequency: On occasion, varies by section, and annual.

Description of Respondents: Potential respondents comprise Federal oil, gas, or sulphur lessees and/or operators.

Estimated Reporting and Recordkeeping Hour Burden: The estimated annual hour burden for this information collection is a total of 29,437 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

BURDEN BREAKDOWN

[L/T = Lease Term Burden Breakdown ROW = Right of Way]

Citation 30 CFR 250 Subpart Q	Reporting requirement	Non-Hour Cost Burdens		
		Hour burden	Average No. of annual responses	Annual burden hours (Rounded)
General				
1700 thru 1754	General departure and alternative compliance requests not specifically covered elsewhere in Subpart Q regulations.	4	175 requests	700
1703; 1704	Request approval for decommissioning	Burden included below.		0

BURDEN BREAKDOWN—Continued

[L/T = Lease Term Burden Breakdown ROW = Right of Way]

Citation 30 CFR 250 Subpart Q	Reporting requirement	Non-Hour Cost Burdens		
		Hour burden	Average No. of annual responses	Annual burden hours (Rounded)
1704(g); 1707(d); 1712; 1715; 1716; 1717; 1721(a), (d), (f), (g); 1722(a), (b), (d); 1723(b); 1743(a).	Submit form BSEE–0124 to plug wells; provide subsequent report; request alternate depth departure; request procedure to protect obstructions above seafloor; report within 30 days, results of trawling; certify area cleared of obstructions; remove casing stub or mud line suspension equipment and subsea protective covering; other departures; and all supporting or additional information required.	Burden covered under 1014-00181		0
1705	Submit a description of your BOP and its components; schematic drawings; independent third party verification and all supporting information (evidence showing appropriate licenses, has expertise/experience necessary to perform required verifications, etc.) with your APM.	29	250 submittals	7,250
1705(e)(2)(ii)	Allow BSEE access to witness testing, inspections, and information verification. Notify District Manager at least 72 hours prior to shearing ram tests.	0.5	10 submittals	5
1706(a)	Request approval of well abandonment operations; procedures indicating how the annular preventer will be utilized and how pressure limitations will be applied during each mode of pressure control, with your APM.	0.5	250 requests	125
1706(f)(4)	Request approval of the District Manager to conduct operations without downhole check values; describe procedures/equipment in APM.	1	20 requests	20
1707(a)(2)	Request approval from District Manager to test all BOP system components to rated working pressure; annular BOP less than 70 percent rated working pressure.	0.5	10 requests	5
1707(b)(2)	State reason for postponing test in operations logs	0.5	30 responses	15
1707(b)(2)	Request approval from District Manager for alternate test frequencies if condition/BOP warrant.	0.75	10 requests	8
1707(f)	Request alternative method to record test pressures	0.5	20 requests	10
1707(f)	Record test pressures during BOP and coiled tubing on a pressure chart or w/digital recorder; certify charts are correct.	1	250 records/certifications	250
1707(g)	Record or reference in operations log all pertinent information listed in this requirement; make all documents pertaining to BOP tests, actuations and inspections available for BSEE review at facility for duration of well abandonment activity; retain all records for 2 years at a location conveniently available for the District Manager.	1	250 records	250
1707(h)(1)	Submit test procedures with your APM for District Manager approval.	1	75 submittals	75
1707(h)(1)(ii)	Document all ROV intervention test results; make available to BSEE upon request.	0.5	75 records	38
1707(h)(2)(ii)	Document all autoshear and deadman function test results; make available to BSEE upon request.	0.5	75 records	38
1708(a), (b)	Document BOP inspection and maintenance procedures used; record results of BOP inspections and maintenance actions; maintain records for 2 years or longer if directed by BSEE; make available to BSEE upon request.	1	75 records	75
1708(a)	Request alternative method to inspect marine risers	0.5	5 requests	3

BURDEN BREAKDOWN—Continued

[L/T = Lease Term Burden Breakdown ROW = Right of Way]

Citation 30 CFR 250 Subpart Q	Reporting requirement	Non-Hour Cost Burdens		
		Hour burden	Average No. of annual responses	Annual burden hours (Rounded)
1709	Request approval from the District Manager to displace kill-weight fluids in an unbalanced state; submit detailed written procedures with your APM.	2.5	40 requests	100
Subtotal			1,620 responses	8,967 hours
Permanently Plugging Wells				
1711	Required data if permanently plugging a well	Requirement not considered Information Collection under 5 CFR 1320.3(h)(9).		0
1712; 1721(h)	Submit with your APM all documentation for this requirement; professional engineer certification.	Burden covered under 1014–0018		0
1712(g); 1721(h)	Submit evidence from the Registered Professional Engineer/firm of the well abandonment design and procedures; plugs in the annuli meet requirements of § 250.1715; 2 independent barriers etc.; has the expertise and experience necessary to perform the verification(s), submit with the APM.	1.5	250	375
1713	Notify BSEE 48 hours before beginning operations to permanently plug a well.	0.5	700 notices	350
Subtotal			950 responses	725 hours
Temporary Abandoned Wells				
1721(e); 1722(e), (h)(1); 1741(c).	Identify and report subsea wellheads, casing stubs, or other obstructions; mark wells protected by a dome; mark location to be cleared as navigation hazard.	U.S. Coast Guard requirements.		0
1722(c), (g)(2)	Notify BSEE within 5 days if trawl does not pass over protective device or causes damages to it; or if inspection reveals casing stub or mud line suspension is no longer protected.	1	10 notices	10
1722(f), (g)(3)	Submit annual report on plans for re-entry to complete or permanently abandon the well and inspection report.	2.5	95 reports	238
1722(h)	Request waiver of trawling test	1.5	5 requests	8
Subtotal			110 responses	256 hours
Removing Platforms and Other Facilities				
1726; 1704(a)	Submit initial decommissioning application in the Pacific and Alaska OCS Regions.	20	2 applications	40
1725; 1727; 1728; 1730; 1704(b).	Submit final application and appropriate data to remove platform or other subsea facility structures (including alternate depth departure) or approval to maintain, to conduct other operations, or to convert to artificial reef.	28	327 applications	9,156
		$4,342 fee x 327 = $1,419,834*		
1725(e)	Notify BSEE 48 hours before beginning removal of platform and other facilities.	0.5	277 notices	139
1729; 1704(c)	Submit post platform or other facility removal report; supporting documentation; signed statements, etc.	9.5	277 reports	2,632
1731(c)	Request deferral of facility removal subject to RUE issued under 30 CFR 556.	1.75	50 request.	88
Subtotal			933 responses	12,055 hours

BURDEN BREAKDOWN—Continued

[L/T = Lease Term Burden Breakdown ROW = Right of Way]

Citation 30 CFR 250 Subpart Q	Reporting requirement	Non-Hour Cost Burdens		
		Hour burden	Average No. of annual responses	Annual burden hours (Rounded)
			$1,419,834 Non-Hour Cost Burdens	
Site Clearance for Wells, Platforms, and Other Facilities				
1740; 1741(g)	Request approval to use alternative methods of well site, platform, or other facility clearance; contact pipeline owner/operator before trawling to determine its condition.	12.75	75 requests/contact	956
1743(b); 1704(f)	Verify permanently plugged well, platform, or other facility removal site cleared of obstructions; supporting documentation; and submit certification letter.	5	299 verifications	1,495
Subtotal			374 responses	2,451 hours
Pipeline Decommissioning				
1750; 1751; 1752; 1754; 1704(d).	Submit application to decommission pipeline in place or remove pipeline (L/T or ROW).	7.75	530 applications	4,108
		$1,059 L/T decommission fee x 350 = $370,650*		
		$2,012 ROW decommission fee x 180 = $362,160*		
1753; 1704(e)	Submit post pipeline decommissioning report	2.5	350 reports	875
Subtotal			880 responses	4,983 hours
			$732,810 non-hour cost burdens	
Total Burden			4,867 Responses	29,437 hours
			$2,152,644 Non-Hour Cost Burdens	

* Cost recovery monies collected are based on actual submittals through Pay.gov for FY 2012.

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: We have identified three non-hour paperwork cost burdens for this collection. We estimate a total reporting non-hour cost burden of $2,152,644 for this collection. Respondents pay cost recovery fees when removing a platform or other facility under § 250.1727 for $4,342, or for decommissioning a pipeline under § 250.1751(a)—L/T for $1,059 or a ROW for $2,012. The fees are required to recover the Federal Government's processing costs. We have not identified any other non-hour cost burdens.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.,)* provides 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.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.,*) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *" Agencies must specifically solicit comments to: (a) evaluate whether the collection is necessary or useful; (b) evaluate the accuracy of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of technology.

To comply with the public consultation process, on May 21, 2013, we published a **Federal Register** notice (78 FR 29772) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 provides the OMB control number for the information collection requirements imposed by the 30 CFR 250 regulations. The regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We have received one comment in response to these efforts, but it was not germane to the paperwork burden associated with this information collection.

Public Availability of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

BSSE Information Collection Clearance Officer: Cheryl Blundon (703) 787–1607.

Dated: August 26, 2013.m

Robert W. Middleton,

Deputy Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2013–23149 Filed 9–23–13; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[FXRS126108DEST0 134F1611MD FF08RDSC00; N–54955]

Notice of Application for Withdrawal Extension, and Notification of a Public Meeting, Desert National Wildlife Range; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Assistant Secretary of the Interior for Policy, Management and Budget proposes to extend the duration of Public Land Order (PLO) No. 7070 for an additional 20-year term. PLO No. 7070 withdrew approximately 769,543 acres of public mineral estate from location and entry under the United States mining laws, to protect the wildlife habitat and unique values within the Desert National Wildlife Range in Clark and Lincoln Counties, Nevada. The proposed extension would apply to 768,997 acres as determined from an updated land description review. This notice gives an opportunity for the public to comment on the proposed withdrawal extension and announces the date, time, and location of a public meeting.

DATES: For a period until December 23, 2013, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal extension may do so in writing. A public meeting will be held on October 29, 2013, from 12 noon to 2 p.m. at the Bureau of Land Management, Southern Nevada District Office, 4701 Torrey Pines Drive, Las Vegas, Nevada. A notice of the time and place will also be published in at least one local newspaper of general circulation no less than 30 days before the scheduled meeting date.

ADDRESSES: Written comments should be sent to the Bureau of Land Management, Attn: District Manager, Southern Nevada District Office, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130.

FOR FURTHER INFORMATION CONTACT: Cheryl G. Cote, Bureau of Land Management at 702–515–5104, email: *ccote@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual. 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 withdrawal created by PLO 7070 (59 FR 39701), will expire on August 4, 2014, unless extended. The United States Fish and Wildlife Service (FWS) has filed a petition/application to extend the withdrawal created by PLO No. 7070 for an additional 20-year term with respect to the following described Federal lands:

Mount Diablo Meridian

T. 15 S., R. 54 E., unsurveyed,
Sec. 1;
Sec. 2, E½ and E½W½;
Sec. 11, E½ and E½W½;
Secs. 12 and 13;
Sec. 14, E½ and E½W½;
Sec. 23, E½ and E½W½;
Secs. 24 and 25;
Sec. 26, E½ and E½W½;
Sec. 35, E½ and E½W½;
Sec. 36.
T. 15 S., R. 55 E., unsurveyed.
T. 16 S., R. 57 E., partially surveyed,
Sec. 7, NW¼ and S½.
T. 16 S., R. 58 E., unsurveyed,
Secs. 11 thru 14, inclusive;
Secs. 23 thru 26, inclusive;
Secs. 35 and 36.
T. 15 S., R. 59 E., unsurveyed,
Secs. 2 thru 11, inclusive;
Secs. 14 thru 23, inclusive;
Secs. 26 thru 35, inclusive.
T. 16 S., R. 59 E., unsurveyed,
Secs. 2 thru 11, inclusive;
Secs. 14 thru 23, inclusive;
Secs. 26 thru 35, inclusive.
T. 17 S., R. 59 E.,
Secs. 1thru 5, inclusive;
Sec. 7, lots 3 and 4, NE¼, and S½;
Secs. 8 thru 18, inclusive;
Secs. 21 thru 26, inclusive;
Sec. 27, N½;
Secs. 28 and 33;
Sec. 34, S½S½ and NE¼SE¼;
Secs. 35 and 36.
Tps. 9, 10, 11, 12, 12½, 13, 14, 15, and 16 S., R. 60 E., unsurveyed.
T. 17 S., R. 60 E.
T. 18 S., R. 60 E.,
Secs. 1 thru 18, inclusive;
Secs. 22 thru 24, inclusive;
Sec. 25, N½;
Sec. 26, N½;
Sec. 27, N½.
Tps. 9, 10, 11, 12, 12½, 13, 14, 15, and 16 S., R. 61 E., unsurveyed.
Tps. 17 and 18 S., R. 61 E.
T. 9 S., R. 62 E.,
Sec. 4, S½S½;
Sec. 5, NW¼SW¼ and S½S½;
Sec. 6, lots 2 to 7, inclusive, and S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Secs. 7, 8, and 9;
Sec. 10, W½E½ and W½;
Sec. 15, W½E½ and W½;
Secs. 16 thru 21, inclusive;
Sec. 22, W½E½ and W½;
Sec. 27, W½E½ and W½;
Secs. 28 thru 33, inclusive;
Sec. 34, lots 1, 2, and 3, W½NE¼, NW¼, N½SW¼, and NW¼SE¼.
T. 10 S., R. 62 E.,
Secs. 3 thru 10, inclusive;
Sec. 14, SE¼NW¼, W½W½, and E½SW¼;
Secs. 15 thru 22, inclusive;
Sec. 23, W½ and W½SE¼;
Secs. 26 thru 35, inclusive;
Sec. 36, W½W½.
T. 11 S., R. 62 E., partially surveyed,
Sec. 1, W½W½;
Secs. 2 thru 12, inclusive;
Sec. 13, E½, NE¼NW¼, W½W½, and E½SW¼;
Secs. 14 thru 36, inclusive.
T. 12 S., R. 62 E., partially surveyed.
Tps. 12½, 13, 14, 15, and 16 S., R. 62 E., unsurveyed.
Tps. 17 and 18 S., R. 62 E.

The areas described above aggregate approximately 768,997 acres in Clark and Lincoln Counties. The legal descriptions of the unsurveyed lands are based on what normal survey subdivision units would be when surveyed.

The lands withdrawn by PLO No. 7070 are located about 20 miles northwest of Las Vegas, Nevada. The purpose of the withdrawal extension is to protect, enhance, and maintain wildlife resources, including bighorn sheep on one of the largest and last reasonably intact examples of Mojave Desert landscape habitats.

The use of a right-of-way, interagency agreement, or cooperative agreement would not provide adequate protection for the wildlife habitat and unique resource values within the Desert National Wildlife Range.

No additional water rights would be needed to fulfill the purpose of the requested withdrawal extension.

There are no suitable alternative sites since the lands described herein contain the natural and biological resources of interest for protection.

All persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal extension may present their views in writing to the BLM Southern Nevada District Office, at the address indicated above. Comments, including names and street addresses of respondents, will be available for public review at the address stated above, during regular business hours, 7:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

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.

Notice is hereby given that a public meeting will be held in connection with

the proposed withdrawal extension. Information on the meeting is listed under the ''DATES'' heading of this notice. Interested parties may file written statements at the meeting. All statements received will be considered before any recommendation concerning the proposed extension is submitted to the Assistant Secretary of the Interior for final action.

This application will be processed in accordance with the regulations set forth in 43 CFR 2310.4.

Marci L. Todd,

Associate State Director, Nevada.

[FR Doc. 2013–23155 Filed 9–23–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[SDM 99842]

Public Land Order No. 7821; Withdrawal of National Forest System Land for Steamboat Rock Picnic Grounds; South Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws on behalf of the United States Forest Service, 50 acres of National Forest System land from location and entry under the United States mining laws for a period of 20 years to protect the recreational uses and improvements at the Steamboat Rock Picnic Grounds within the Black Hills National Forest in South Dakota.

DATES: *Effective Date:* September 24, 2013.

FOR FURTHER INFORMATION CONTACT: Valerie Hunt, United States Forest Service, Region 2, 740 Simms Street, Golden, Colorado, 303–275–5071, *vbhunt@fs.fed.us*, or Tami Lorenz, Bureau of Land Management, Montana State Office, 5001 Southgate Drive, Billings, Montana 59101–4669, 406–896–5053, *tlorenz@mt.blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact either of the above individuals. 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: This order replaces expired Public Land Order No. 6689 (53 FR 47955) which withdrew the same land to the United States Forest Service to protect the recreational uses and improvements within the Steamboat Rock Picnic Grounds.

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. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from location and entry under the United States mining laws, but not from leasing under the mineral leasing laws, to protect the recreational uses and improvements within the Steamboat Rock Picnic Grounds:

Black Hills National Forest

Black Hills Meridian

T. 2 N., R. 5 E.,
sec. 1, S½NW¼SW¼, N½SW¼SW¼, and NW¼SE¼SW¼.

The area described contains 50 acres in Lawrence County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of National Forest System land under lease, license, or permit, or governing the disposal of the mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order, unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: September 9, 2013.

Rhea S. Suh,

Assistant Secretary—Policy, Management and Budget.

[FR Doc. 2013–23152 Filed 9–23–13; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAD0900, L51010000.LVRWB09B2380.FX0000; CACA–048669]

Notice of Segregation of Public Lands for the Proposed Stateline Solar Farm, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice serves to segregate the identified public lands located in the State of California for 2 years from appropriation pursuant to public land laws, including location pursuant to the General Mining Act, but not the Mineral Leasing Act or the Materials Act of 1947. The segregation is needed to continue processing the proposed Stateline Solar Energy right-of-way (ROW) application and provide for the orderly administration of public lands and avoid conflicts between renewable energy generation and mining claims. The public land contained in this segregation totals 6,223.25 acres.

DATES: This segregation is effective on September 24, 2013.

FOR FURTHER INFORMATION CONTACT: Greg Miller, Project Manager; Telephone: 951–697–5216; Address: BLM California Desert District Office, 22835 Calle San Juan de Los Lagos, Moreno Valley, CA 92553–9046, or email: *gmiller@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Desert Stateline, LLC, submitted a ROW application to construct, operate, maintain and decommission a solar energy project on a portion of its ROW-application area. The BLM is segregating the following described public lands (6,223.25 acres in San Bernardino County, California) subject to valid existing rights:

San Bernardino Meridian,

T. 16 N., R. 14 E.,
Sec. 1, W½ lot 1 in NW¼, W½ lot 2 in NW¼, and W½SW¼;
Sec. 2, Lot 1 in NE¼, excluding that portion of the parcel shown on the Exhibit ''A'' map accompanying the legal description of the Ivanpah-3 BLM right-of-way lease/grant CACA–49504, dated October 7, 2010, on file at the BLM field office in Needles, CA., Lot 2 in NE¼, excluding that portion of the parcel shown on the Exhibit ''A'' map accompanying the legal description of the Ivanpah-3 BLM right- of-way lease/grant CACA–49504, dated October 7, 2010, on file at the BLM field office in Needles, CA., Lot 2 in NW¼, excluding that portion of the parcel shown on the Exhibit ''A'' map accompanying the legal description of the Ivanpah-3 BLM right-of-way lease/grant CACA–49504, dated October 7, 2010, on

file at the BLM field office in Needles, CA., SE¼, excluding that portion of the parcel shown on the Exhibit ''A'' map accompanying the legal description of the Ivanpah-3 BLM right-of-way lease/grant CACA–49504, dated October 7, 2010, on file at the BLM field office in Needles, CA.;

Sec. 3, lot 1;

Sec. 11, N½ NE¼, excluding that portion of the parcel shown on the Exhibit ''A'' map accompanying the legal description of the Ivanpah-3 BLM right-of-way lease/grant CACA–49504, dated October 7, 2010, on file at the BLM field office in Needles, CA.;

Sec. 12, W½NW¼NW¼.

T. 17 N., R. 14 E.,

Sec. 13, W½ and SE¼;

Sec. 14;

Sec. 15;

Sec. 22, excluding that portion of the parcel shown on the Exhibit ''A'' map accompanying the legal description of the Ivanpah-3 BLM right-of-way lease/grant CACA–49503, dated October 7, 2010, on file at the BLM field office in Needles, CA.;

Sec. 23;

Sec. 24, N½, SW¼, NW¼NE¼SE¼, and W½SE¼;

Sec. 25;

Sec. 26;

Sec. 34, SE¼;SE¼;

Sec. 35.

The area described aggregates 6,223.25 acres, more or less, in San Bernardino County.

In order to process the ROW application filed on the lands described above and to maintain the status quo, the BLM originally published a notice in the **Federal Register** on August 4, 2011 (76 FR 47235) to segregate the lands described above for a period of 2 years, which expired on August 4, 2013. The BLM has determined that an additional segregation of the public lands identified above is needed for the orderly administration of public lands while the BLM considers a revised proposal for the project area. The BLM is segregating the lands under the authority contained in 43 CFR2091.3–1(e) and 43 CFR 2804.25(e), which permits a segregation period of 2 years, subject to valid existing rights, not to exceed a total period of 4 years. This additional 2-year segregation period is consistent with the applicable regulations and will commence on September 24, 2013. As explained below, this additional segregation cannot be extended. The public lands involved in this closure will be segregated from appropriation under the public land and mining laws, but not the mineral leasing or material sale laws.

The segregation period will terminate and the lands will automatically reopen to appropriation under the public land laws, including the mining laws, if one of the following events occurs: (1) The authorized officer issues a decision granting, granting with modifications, or denying the application for a ROW; (2) The BLM publishes a **Federal Register** notice terminating the segregation; or (3) The BLM takes no further administrative action at the end of the segregation provided for in the **Federal Register** notice initiating the segregation, whichever occurs first. Since the lands identified above have already been segregated for an initial 2-year period in connection with the Desert Stateline, LLC's application, the BLM will not be able to extend this segregation for an additional period after the expiration of this 2-year segregation period.

Upon termination or expiration of the segregation of these lands, all lands subject to this segregation will automatically reopen to appropriation under the public land laws, including the United States mining laws.

Authority: 43 CFR parts 2800 and 2090.

Thomas Pogacnik,

Deputy State Director, Natural Resources.

[FR Doc. 2013–23154 Filed 9–23–13; 8:45 am]

BILLING CODE 4310–40–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–929–931 (Second Review)]

Silicomanganese From India, Kazakhstan, and Venezuela

Determination

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty orders on imports of silicomanganese from India, Kazakhstan, and Venezuela would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2]

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Commissioner Pearson dissenting with respect to Venezuela.

Background

The Commission instituted these reviews on October 1, 2012 (77 FR 59970) and determined on January 4, 2013 that it would conduct full reviews (78 FR 4437, January 22, 2013). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on February 21, 2013 (78 FR 13380). The hearing was held in Washington, DC, on July 18, 2013, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission completed and filed its determinations in these reviews on September 18, 2013. The views of the Commission are contained in USITC Publication 4424 (September 2013), entitled *Silicomanganese from India, Kazakhstan, and Venezuela: Investigation Nos. 731–TA–929–931 (Second Review).*

Issued: September 18, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–23118 Filed 9–23–13; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0025]

Agency Information Collection Activities; Extension of a Currently Approved Collection; Comments Requested: Semi-Annual Progress Report for the Services to Advocate for and Respond to Youth Program

ACTION: 30-Day Notice.

The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 78, page 43918 on July 22, 2013, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until October 24, 2013. This

process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) 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;

(2) 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;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of Currently Approved Collection

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grantees from the Services to Advocate for and Respond to Youth Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0025. U.S. Department of Justice, Office on Violence Against Women

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the approximately 45 grantees of the Services to Advocate for and Respond to Youth Program. This is the first Federal funding stream solely dedicated to the provision of direct intervention and related assistance for youth victims of sexual assault, domestic violence, dating violence and stalking. Overall, the purpose of the Youth Services Program is to provide direct counseling, advocacy, legal advocacy, and mental health services for youth victims of sexual assault, domestic violence, dating violence, and stalking, as well as linguistically, culturally, or community relevant services for underserved populations.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 45 respondents (grantees from the Services to Advocate for and Respond to Youth Program) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A Services to Advocate for and Respond to Youth Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 90 hours, that is 45 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Washington, DC 20530.

Dated: September 19, 2013.

Jerri Murray,

Department Clearance Officer for PRA, United States Department of Justice.

[FR Doc. 2013–23160 Filed 9–23–13; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0024]

Agency Information Collection Activities; Extension of a Currently Approved Collection; Comments Requested: Semi-Annual Progress Report for the Tribal Sexual Assault Services Program

ACTION: 30-Day Notice.

The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 78, page 43918 on July 22, 2013, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until October 24, 2013. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) 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;

(2) 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;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a Currently Approved Collection

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grantees from the Tribal Sexual Assault Services Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the*

collection: Form Number: 1122–0024. U.S. Department of Justice, Office on Violence Against Women

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the approximately 15 grantees of the Tribal Sexual Assault Services Program. The Sexual Assault Services Program (SASP), created by the Violence Against Women Act of 2005 (VAWA 2005), is the first federal funding stream solely dedicated to the provision of direct intervention and related assistance for victims of sexual assault. The SASP encompasses four different funding streams for States and Territories, Tribes, State Sexual Assault Coalitions, Tribal Coalitions, and culturally specific organizations. Overall, the purpose of SASP is to provide intervention, advocacy, accompaniment, support services, and related assistance for adult, youth, and child victims of sexual assault, family and household members of victims, and those collaterally affected by the sexual assault.

The Tribal SASP supports efforts to help survivors heal from sexual assault trauma through direct intervention and related assistance from social service organizations such as rape crisis centers through 24-hour sexual assault hotlines, crisis intervention, and medical and criminal justice accompaniment. The Tribal SASP will support such services through the establishment, maintenance, and expansion of rape crisis centers and other programs and projects to assist those victimized by sexual assault.

(5) *An estimate of the total number of respondents and the amount of time estimated*

for an average respondent to respond/reply: It is estimated that it will take the approximately 15 respondents (grantees from the Tribal Sexual Assault Services Program) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A Tribal SASP grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 30 hours, that is 15 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Washington, DC 20530.

Dated: September 19, 2013.

Jerri Murray,

Department Clearance Officer for PRA, United States Department of Justice.

[FR Doc. 2013–23159 Filed 9–23–13; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—American Society of Mechanical Engineers

Notice is hereby given that, on August 20, 2013, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the American Society of Mechanical Engineers (''ASME'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, since March 1, 2013, ASME has published four new standards, initiated one new standard activity, and withdrawn one published standard within the general nature and scope of ASME's standards development activities, as specified in its original notification. More detail regarding these changes can be found at *www.asme.org.*

On September 15, 2004, ASME filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 13, 2004 (69 FR 60895).

The last notification was filed with the Department on March 5, 2013. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 3, 2013 (78 FR 20141).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2013–23195 Filed 9–23–13; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Sematech, Inc. d/b/a International Sematech

Notice is hereby given that, on August 20, 2013, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Sematech, Inc. d/b/a International Sematech (''SEMATECH'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Cimetrix, Inc., Hingham, MA; Toray Industries, New York, NY; Silvaco, Inc., Santa Clara, CA; Qcept Technologies, Atlanta, GA; DISCO Corporation, Tokyo, JAPAN; and ACM Research, Inc., Fremont, CA, have been added as parties to this venture.

Also, Micron Technologies, Boise, ID, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and SEMATECH intends to file additional written notifications disclosing all changes in membership.

On April 22, 1988, SEMATECH filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 19, 1988 (53 FR 17987).

The last notification was filed with the Department on May 21, 2013. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 21, 2013 (78 FR 37572).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2013–23197 Filed 9–23–13; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—U.S. Photovoltaic Manufacturing Consortium, Inc.

Notice is hereby given that, on August 20, 2013, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), U.S. Photovoltaic Manufacturing Consortium, Inc. (''USPVMC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Ultrasonic Technologies, Wesley Chapel, FL; Polaritek Systems, Inc., Atlanta, GA; Spire Solar, Bedford, MA; Process Research, Trenton, NJ; and Sinton Instruments, Boulder, CO, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and USPVMC intends to file additional written notifications disclosing all changes in membership.

On November 14, 2011, USPVMC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 21, 2011 (76 FR 79218).

The last notification was filed with the Department on

May 21, 2013. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 21, 2013 (78 FR 37572).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2013–23162 Filed 9–23–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cable Television Laboratories, Inc.

Notice is hereby given that, on August 26, 2013, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Cable Television Laboratories, Inc. (''CableLabs'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Cablevision S.A., Buenos Aires, ARGENTINA, has been added as a party to this venture.

Also, Buford Media Group, Tyler, TX, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CableLabs intends to file additional written notifications disclosing all changes in membership.

On August 8, 1988, CableLabs filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 7, 1988 (53 FR 34593).

The last notification was filed with the Department on August 1, 2013. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 3, 2013 (78 FR 54277).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2013–23161 Filed 9–23–13; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. *Anheuser-Busch Inbev SA/NV, et al.* Public Comments and Response on Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States hereby publishes below the United States's Response to Public Comments on the proposed Final Judgment in *United States* v. *Anheuser-Busch InBev SA/NV, et al.,* Civil Action No. 1:13–cv–00127–RWR, which was filed in the United States District Court for the District of Columbia on September 13, 2013. Copies of the five comments received by the United States from the public were also filed with the court.

Copies of the comments and the response are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street NW., Suite 1010, Washington, DC 20530 (telephone: (202) 514–2481), on the Department of Justice's Web site at *http://www.justice.gov/atr/cases/abimodelo.html*, and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of any of these materials may also be obtained upon request and payment of a copying fee.

Patricia A. Brink,

Director of Civil Enforcement.

United States District Court for the District of Columbia

United States of America, *Plaintiff,* v. Anheuser-Busch InBev SA/NV, et al., *Defendants.*
Civil Action No. 13–127 (RWR)

Plaintiff United States's Response To Public Comments

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) (''APPA'' or ''Tunney Act''), the United States hereby files the public comments concerning the proposed Final Judgment in this case and the United States's response to those comments. After careful consideration of the comments, the United States continues to believe that the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violations alleged in the Complaint. The United States will move the Court, pursuant to 15 U.S.C. 16(b)–(h), to enter the proposed Final Judgment after the United States has posted all public comments and this response on the Antitrust Division Web site and published in the **Federal Register** this response and the Web site address at which the public comments may be viewed and downloaded, as set forth in the Court's order dated August 2, 2013.[1] (Doc. 42).

[1] Commenter Steven Uhr has submitted 18 exhibits in support of his Tunney Act comment. Two of those exhibits are videos for which he provided only written internet links. Another two are videos which he provided on a DVD and for which he also provided internet links. The Tunney Act requires the Department to ''receive and consider any *written* comments relating to the proposal for the consent judgment,'' 15 U.S.C 16(d) (emphasis added). However, the Department considered the entirety of Mr. Uhr's submission and will publish the written links he provided. It has informed Mr. Uhr that it does not intend to post the videos themselves on the Department's public Web site, and publication in the **Federal Register** would be impossible.

I. Procedural History

On January 31, 2013, the United States filed a Complaint in this matter, alleging that Defendant Anheuser-Busch InBev SA/NV's (''ABI'') proposed purchase of the remaining equity interest in Defendant Grupo Modelo, S.A.B. de C.V. (''Modelo'') would lessen competition substantially for the sale of beer in the United States and specifically in 26 local markets in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

On April 19, 2013, the United States filed a Competitive Impact Statement (''CIS''), a proposed Final Judgment, and a Stipulation and Order signed by the parties consenting to entry of the proposed Final Judgment after compliance with the requirements of the APPA. Under the terms of the Stipulation and Order, Constellation Brands, Inc. (''Constellation'') was added as a Defendant for purposes of settlement. Pursuant to the requirements of the APPA, the United States published the proposed Final Judgment and CIS in the **Federal Register** on May 22, 2013, *see* 78 FR 30399–30660, and had summaries of the terms of the proposed Final Judgment and CIS, together with directions for the submission of written comments relating to the proposed Final Judgment, published in *The Washington Post* for seven days beginning on April 28, 2013, and ending on May 4, 2013. The Defendants filed the statement required by 15 U.S.C. 16(g) on May 3, 2013. The 60-day period for public comments ended on July 22, 2013. The United States received five comments, as described below and attached hereto.

II. The Investigation and the Proposed Resolution

A. Investigation

As of June 28, 2012, ABI held a 35.3% direct interest in Modelo, and a 23.3% direct interest in Modelo's operating subsidiary Diblo S.A. de C.V. That ownership interest gave ABI certain minority voting rights and the right to appoint nine members of Modelo's 19-member Board of Directors. On June 28, 2012, ABI agreed to purchase the remaining equity interest from Modelo's owners, thereby obtaining full ownership and control of Modelo, for approximately $20.1 billion (the ''ABI/Modelo transaction''). At the time, Defendants ABI and Modelo also proposed to sell Modelo's stake in Crown Imports, LLC (''Crown'') to Constellation. Crown was the joint venture established by Modelo and Constellation to import, market, and sell certain Modelo beers into the United States. In an attempt to address harm to competition that the ABI/Modelo transaction likely would cause, ABI also proposed to enter into a ten-year supply agreement to provide Constellation with Modelo beer to import into the United States.

The Antitrust Division of the United States Department of Justice (''Department'') investigated the likely effect of the ABI/Modelo transaction and the vertical ''fix'' proposed by the parties. As part of its investigation, the Department conducted dozens of interviews with the parties' distributor customers, beer brewer competitors, and other interested third parties. The Department obtained testimony from the Defendants' officers and employees and required the Defendants to respond to interrogatories and produce large quantities of documents. The Department carefully analyzed the information obtained and thoroughly considered all of the relevant issues.

As a result of the investigation, the Department filed a Complaint on January 31, 2013, alleging that ABI's acquisition of the remainder of Modelo likely would substantially lessen competition for the sale of beer in the United States market as a whole and specifically in 26 local markets in violation of Section 7 of Clayton Act, 15 U.S.C. 18. This loss of competition would likely result in higher beer prices and less innovation. Defendants' proposed sale of Modelo's interest in Crown and ten-year supply agreement would not have alleviated the potential harm to competition that the proposed ABI/Modelo transaction created: it did not create an independent, fully-integrated brewer with permanent control of Modelo brand beer in the United States. On April 19, 2013, the Department filed a proposed Final Judgment that, if entered by the Court, would resolve the litigation by remedying the violation alleged in the Complaint.

B. The Proposed Final Judgment

The proposed Final Judgment is designed to preserve competition in the United States and 26 local beer markets. As explained more fully in the CIS, the beer industry in the United States is highly concentrated and would become more so if ABI acquired all of the remaining Modelo assets, as the ABI/Modelo transaction originally proposed.

The Department determined through its investigation that large brewers engage in significant levels of tacit coordination, and that coordination has reduced competition and increased prices. In most regions of the United States, ABI and MillerCoors LLC, the second largest beer brewer in the United States, do not substantially constrain each other's annual price increases. The third largest brewer, Modelo, had increasingly constrained ABI's and MillerCoors's ability to raise prices. Therefore, ABI's acquisition of Modelo, as originally proposed, likely would have led to higher beer prices in the United States by eliminating a competitor that resisted coordinated price increases initiated by the market share leader, ABI.

Further, competition from Modelo had spurred significant product innovation and price concessions from ABI. The merger of the two firms, as originally proposed, likely would have reduced ABI's incentive to innovate, bring new products to market, make price concessions, and otherwise invest in attracting consumers away from the unique Modelo brands.

The proposed Final Judgment will accomplish the complete divestiture of Modelo's U.S. business to Constellation.[2] This structural fix will maintain Modelo Brand Beers[3] as independent competitors to ABI's flagship brands in the United States. Specifically, the proposed Final Judgment required ABI and Modelo[4] to divest and/or license to Constellation certain tangible and intangible assets, including: a perpetual and exclusive license to ten Modelo Brand Beers, including Corona Extra, this country's bestselling imported beer and fifth-bestselling brand overall; Modelo's newest, most technologically advanced brewery (the ''Piedras Negras Brewery''), which is located in Mexico near the Texas border, and the assets and companies associated with it; Modelo's limited liability membership interest in Crown; and other assets, rights, and interests necessary to ensure that Constellation is able to compete in the beer market in the United States using the Modelo Brand Beers, independent of a relationship with ABI.

To guarantee that Constellation will be able to supply Modelo Brand Beer to the United States market independent of ABI, Section V.A of the proposed Final Judgment requires Constellation to

[2] The proposed Final Judgment required ABI, if the divestiture to Constellation failed to close, to divest Modelo's U.S. business to another acquirer capable of replacing the competition that Modelo brought to the United States market. But the divestiture to Constellation closed on June 7, 2013. Accordingly, this response refers only to Constellation, not to another potential acquirer.

[3] Capitalized terms not defined in this response are defined in the proposed Final Judgment.

[4] On June 4, 2013, ABI completed its acquisition of Modelo. Accordingly, this response refers to ABI's and Modelo's obligations under the proposed Final Judgment as ABI's obligations.

expand the Piedras Negras Brewery to be able to produce 20 million hectoliters of packaged beer annually by December 31, 2016. Such expansion will allow Constellation to produce, independently from ABI, enough Modelo Brand Beer to replicate Modelo's competitive role in the United States. This expansion assures Constellation's future independence as a self-supplied brewer and seller in the United States beer market.

Sections IV.G–I of the proposed Final Judgment also require ABI and Constellation to enter into transition services and interim supply agreements. The Transition Services Agreement (Section IV.G) requires ABI to provide consulting services with respect to topics such as the management of the Piedras Negras Brewery, logistics, material resource planning, and other general administrative services that Modelo had provided to the Piedras Negras Brewery. It also requires ABI to supply certain key inputs (such as aluminum cans, glass, malt, yeast, and corn starch) to Constellation for a limited time. The Interim Supply Agreement (Section IV.H–I) requires ABI to supply Constellation with sufficient Modelo Brand Beer each year to make up for any difference between the demand for such beers in the United States and the Piedras Negras Brewery's capacity to fulfill that demand. The transition services and interim supply agreements are necessary to allow Constellation to continue to compete in the United States during the time it takes to expand the Piedras Negras Brewery's capacity to brew and bottle beer, but are time-limited to assure that Constellation will become a fully independent competitor to ABI as soon as practicable.

The proposed Final Judgment imposes two requirements on ABI regarding its distribution network that are designed to limit ABI's ability to interfere with Constellation's effective distribution of Modelo Brand Beer. First, Section V.C of the proposed Final Judgment provides that, for ABI's majority-owned distributors (''ABI-Owned Distributors'') that distribute Modelo Brand Beer, Constellation will have a window of opportunity to terminate that distribution relationship and direct the ABI-Owned Distributor to sell the distribution rights to another distributor. Similarly, should ABI subsequently acquire any distributors that have contractual rights to distribute Modelo Brand Beer, Constellation may require ABI to sell those rights. Second, Section V.B of the proposed Final Judgment prevents ABI for 36 months from downgrading a distributor's ranking in any ABI distributor incentive program by virtue of the distributor's decision to carry Modelo Brand Beer. The 36-month time period tracks the initial term of the transition service and interim supply agreements, and thus allows Constellation to maintain a status quo position for the Modelo Brand Beer in ABI's distribution incentive programs until Constellation can operate independently of ABI.

Finally, Section XIII of the proposed Final Judgment requires ABI to implement firewall procedures to prevent Constellation's confidential business information from being used within ABI for any purpose that could harm competition or provide an unfair competitive advantage to ABI based on its role as a temporary supplier to Constellation under either the transition services or interim supply agreements.

III. Standard of Judicial Review

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see also United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public-interest standard under the Tunney Act); *United States* v. *InBev N.V./S.A.,* 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, No. 08–1965 (JR), at *3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanisms to enforce the final judgment are clear and manageable.'').

As the United States Court of Appeals for the District of Columbia has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the United States's Complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001). Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[5] In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC*

[5] *Cf. BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States v. Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''); *see generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest''').

Commc'ns, 489 F. Supp. 2d at 17; *see also Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States's ''prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case'').

As courts have noted, ''a proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.''' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *see also InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60. As the United States District Court for the District of Columbia confirmed in *SBC Communications,* courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' *SBC Commc'ns,* 489 F. Supp. 2d at 15.

In its 2004 amendments to the Tunney Act,[6] Congress made clear its intent to preserve the practical benefits of using consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). This language effectuates what Congress intended when it enacted the Tunney Act in 1974. As Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public-interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11.[7]

IV. Summary of Public Comments and the United States's Response

During the 60-day public comment period, the United States received comments from the following individuals and entities:

- Steven Uhr, a Minnesota resident;
- Joseph M. Alioto, an attorney practicing in California who represents a group of private plaintiffs challenging the ABI/Modelo transaction;
- National Beer Wholesalers Association, a trade association representing more than 3,300 licensed, independent U.S. beer distributors;
- Food & Water Watch, a non-profit consumer advocacy organization; and
- Alcohol Justice, a self-described alcohol ''industry watchdog.''

This section summarizes the issues raised by the commenters and provides the United States's responses to those issues. Part A addresses issues raised by more than one commenter; Part B addresses issues raised by individual commenters.

A. Response to Issues Raised by Multiple Commenters

1. Comments Concerning the Effectiveness of Constellation as a Competitor

a. Summary of Comments

Two commenters argue that Constellation will not be an effective competitor. Commenter Food & Water Watch argues that it ''has little confidence'' that requiring ABI to grant a perpetual license to Modelo Brand Beer and divest the Piedras Negras Brewery and Modelo's interest in Crown to Constellation will maintain Modelo's role as a price competitor with ABI and MillerCoors LLC. Food & Water Watch Comment at 1. Specifically, Food & Water Watch argues that Constellation lacks experience in the brewery industry and will depend on ABI for essential inputs and 40 percent of its beer production until Constellation expands the Piedras Negras Brewery, and that Constellation likely will not be a dynamic price competitor because it is a ''novice market entrant'' that ''depends on the benevolence'' of ABI. *Id.* at 2. Similarly, commenter Joseph M. Alioto argues that Constellation will source its total supply of beer products from ABI, and that ''it is naïve to believe that Crown will not be controlled by ABI'' because ''Constellation has neither the experience, the money nor the will to compete vigorously against ABI.'' Alioto Comment at 2.

b. Response: The Proposed Final Judgment and Constellation's Experience and Assets Will Enable Constellation to Compete Effectively

As described in section II.B of this response and in the CIS, the proposed Final Judgment contains multiple provisions that will enable Constellation to compete effectively with Modelo Brand Beer in the United States. Most significantly, the proposed Final Judgment required ABI to divest Modelo's entire U.S. business. Furthermore, the proposed Final Judgment has provided Constellation with Modelo's newest and most advanced brewery, the Piedras Negras Brewery. With the required expansion of this facility, Constellation will

[6] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for courts to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), *with* 15 U.S.C. 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

[7] *See United States v. Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); *United States v. Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.''); S. Rep. No. 93–298 at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

become a fully independent and self-supplied beer brewer.

The proposed Final Judgment also gives Constellation the incentive and ability to price Modelo Brand Beer independently of ABI. Prior to acquiring Modelo's U.S. business, Constellation, through its 50-percent interest in Crown, shared with Modelo the responsibility for importing, marketing, and selling Modelo-brand beers in the United States. The divestiture of Modelo's U.S. business has given Constellation full and permanent control of Modelo Brand Beer in the United States and made Constellation an independent beer brewer. These changes give Constellation an incentive to resist following ABI's price leadership in order to expand Constellation's market share.

Before approving Constellation as the purchaser of Modelo's U.S. beer business, the Department conducted an extensive two-month investigation into the proposed transaction and Constellation's suitability as the buyer. As part of this investigation, the Department considered Constellation's financial resources and business plans to ensure that Constellation will maintain Modelo's U.S. beer business as a long-term independent competitive force in the U.S. beer market. The Department carefully reviewed the proposed transactional and transitional agreements between ABI and Constellation, which agreements have been incorporated into the proposed Final Judgment,[8] and interviewed representatives of the Defendants to ensure that Constellation would receive what it needed to be an effective competitor with Modelo Brand Beer in the United States.

Furthermore, the proposed Final Judgment ensures that Constellation will have a reliable source of beer supply that does not depend on ABI's ''benevolence'' and that is not subject to ABI's control. The proposed Final Judgment has already resulted in Constellation's owning the Piedras Negras Brewery, which produces 60 percent of Modelo Brand Beer's U.S. sales. Furthermore, while Constellation expands the Piedras Negras Brewery, the proposed Final Judgment requires ABI to meet Constellation's remaining beer demands on pre-established terms that ABI may not change. These agreements are time-limited, however, to assure that Constellation will become a fully independent brewer as soon as practicable.[9]

The proposed Final Judgment also seeks to minimize the potential competitive risks of Constellation's interactions with ABI by including time limits on the expansion of the Piedras Negras Brewery (Section V) and by requiring ABI to implement firewall procedures to prevent Constellation's confidential business information from being used within ABI for any purpose that could harm competition or provide an unfair competitive advantage to ABI (Section XIII).

Finally, the proposed Final Judgment provides Constellation with the assets necessary to be a successful beer brewer. In addition to acquiring the Piedras Negras Brewery, Constellation has acquired Servicios Modelo de Coahuila, S.A. de C.V. (''Servicios Modelo''), a Modelo entity that employed Piedras Negras Brewery employees. Constellation's counsel has informed the Department that all individuals employed by Servicios Modelo on the closing date of the ABI/Constellation transaction remain Constellation employees as of the filing of this response. Together with the transition services provided by ABI and monitored by the Monitoring Trustee, these employees provide Constellation with the specific knowledge necessary to operate the Piedras Negras Brewery.

In addition, from 1993 to 2002, Constellation owned and operated a beer brewery in Stevens Point, Wisconsin.[10] While it owned the brewery, Constellation expanded brewing and warehousing capacity, added new beer products to its portfolio, and acted as a contract brewer for third parties.[11] Thus, Constellation has experience owning and expanding a brewery in the U.S. beer market, and creating innovative beer products. Constellation additionally has significant experience in the production of alcoholic beverages through its past and present ownership of cider breweries, wineries, and spirits distilleries around the world.[12]

2. Arguments Concerning ABI's Market Power

a. Summary of Comments

Two commenters argue that the proposed Final Judgment does not adequately address ABI's market power in the beer industry. Commenter Food & Water Watch argues that the proposed settlement is inadequate to ''address the increased and overwhelming market power'' of ABI and ''to prevent the growing consolidation and increased market power inside the supermarket.'' Similarly, Commenter Alcohol Justice argues that the proposed settlement increases ABI's market share and profits in the United States, thus increasing ABI's political and marketing influence in the United States.

b. Response: The Proposed Final Judgment Prevents ABI From Obtaining Additional Market Power in the United States

The proposed Final Judgment requires ABI to divest Modelo's entire U.S. beer business, which ABI did on June 7, 2013. Accordingly, the proposed Final Judgment prevents ABI from obtaining any additional market power or market share in the United States, and prevents the U.S. beer market from becoming further consolidated, as a result of the ABI/Modelo transaction.

B. Responses to Comments Made by Individual Commenters

1. Comments from Joseph M. Alioto

a. Summary of Comments

Commenter Joseph M. Alioto argues that the Court should reject the proposed Final Judgment because it embodies a ''sham,'' and that the effect of the ABI/Modelo transaction ''will be the very same as what it would have been'' absent the remedies contained therein. Specifically, Mr. Alioto argues

[8] Section IV.G of the proposed Final Judgment requires the Department to approve any amendments or modifications to the agreements incorporated into the proposed Final Judgment. The proposed Final Judgment subjects these agreements, including any extensions, to monitoring by a Monitoring Trustee, whose appointment by the Department was approved by the Court on June 24, 2013. (Doc. 40).

[9] ABI and Constellation have informed the Department that Constellation already has ceased purchasing certain transitional services from ABI under the Transitional Services Agreement.

[10] *See* Constellation Brands, Inc., Annual Report (Form 10–K) at 15 (Nov. 29, 1994) (Barton acquired the Stevens Point Brewery in September 1992); Constellation Brands, Inc., Annual Report (Form 10–K) at 47 (May 21, 2002) (Constellation sold the Stevens Point Brewery in March 2002).

[11] *See* Constellation Brands, Inc., Annual Report (Form 10–K) at 16 (May 29, 1997) (at the Stevens Point Brewery, Constellation brews and packages beer on a contract basis for third parties); Eric Decker, *Point Beverage sale part of brand strategy,* BizTimes.com (Mar. 15, 2002), *http://www.biztimes.com/article/20020315/MAGAZINE03/303159984/0/SEARCH* (describing introduction of Point Classic Amber in 1994, Point Pale Ale in 1995, a Maple Wheat brew in 1996, and a light beer in 1997); Stevens Point Brewery, *http://www.pointbeer.com/history/* (describing 40 percent expansion of Steven Point Brewery in 1994 and construction of a 15,000 square foot warehouse for finished goods in 1997).

[12] According to its 2013 Annual Report, Constellation operates 18 wineries in the United States, nine in Canada, four in New Zealand, and five in Italy. It also operates a whisky distillery in Canada. *See* Constellation Brands, Inc., Annual Report (Form 10–K) at 6 (Apr. 29, 2013). According to earlier SE.C. filings, Constellation previously owned and operated the second-largest cider brewery in the United Kingdom. *See* Constellation Brands, Inc., Annual Report (Form 10–K) at 5 (Apr. 29, 2009). Constellation sold its U.K. cider business in January 2010. *See* Constellation Brands, Inc., Annual Report (Form 10–K) at 2 (Apr. 29, 2010).

that the proposed Final Judgment ''is not sufficient to prevent Constellation from opening the floodgates and allowing ABI to collect profits that it would not otherwise receive because of the former competition on Crown.'' Alioto Comment at 2.

b. Response: The Proposed Final Judgment Is Not a Sham But Rather Requires ABI to Divest Modelo's Entire U.S. Beer Business

The proposed Final Judgment is not a sham because it creates an independent competitor to ABI. Constellation has paid approximately $4.75 billion to purchase Modelo's entire U.S. beer business, and it has announced plans to invest an additional $500-$600 million during the next three years to expand the Piedras Negras Brewery.[13] Pursuant to the proposed Final Judgment, Constellation will become an independent and economically viable brewer that replaces Modelo as a competitor in the United States.

ABI's divestiture to Constellation of the Piedras Negras Brewery, Modelo's interest in Crown, and the perpetual brand licenses required by the proposed Final Judgment, have vested in Constellation the brewing capacity, assets, and other rights needed to produce, market, and sell Modelo Brand Beer in a manner similar to that of Modelo before ABI acquired Modelo.

2. Comments from Food & Water Watch

a. Comments Regarding Markets Outside of the United States

Commenter Food & Water Watch argues that the proposed settlement should be rejected because it does not prevent ABI from acquiring Modelo's business outside of the United States. Food & Water Watch argues that the proposed settlement effectively gives ABI greater control over the world's beer markets, especially the Latin American marketplace, and ensures that ABI ''keeps the Modelo brands outside of the U.S. market.''

b. Response: The Harms Alleged in the Complaint Do Not Justify Food & Water Watch's Desired Remedies Outside of the United States

Food & Water Watch's desire for remedies outside of the United States is not a valid basis for the Court to reject a proposed remedy during a Tunney Act review. As discussed above, in a Tunney Act proceeding, the task before the court ''is to compare the complaint filed by the United States with the proposed consent decree and determine whether the proposed decree clearly and effectively addresses the anticompetitive harms initially identified.'' *United States* v. *Thomson Corp.,* 949 F. Supp. 907, 913 (D.D.C. 1996); *accord Microsoft,* 56 F.3d at 1459 (in APPA proceeding, ''district court is not empowered to review the actions or behavior of the Department of Justice; the court is only authorized to review the decree itself''); *BNS,* 858 F.2d at 462–63 (''the APPA does not authorize a district court to base its public interest determination on antitrust concerns in markets other than those alleged in the government's complaint.'') This Court has held that ''a district court is not permitted to 'reach beyond the complaint to evaluate claims that the government did *not* make and to inquire as to why they were not made.''' *SBC Commc'ns,* 489 F. Supp. 2d at 14 (quoting *Microsoft,* 56 F.3d at 1459); *see also InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged'').

In this case, the Department did not allege that ABI's acquisition of the remainder of Modelo would result in anticompetitive harm outside of the United States. Absent such allegation, there is no justification for a remedy relating to non-U.S. beer markets. Furthermore, if the ABI-Modelo transaction were to result in anticompetitive harm outside of the United States, it would be up to the competition authority in the relevant jurisdiction—not the Department—to remedy such harm.

c. Comments Regarding Distribution and Retail Issues

Commenter Food & Water Watch also argues that the proposed settlement should be rejected because (1) it ''does nothing to constrain the collusive vertical control'' that ABI exerts through its beer distribution networks, and (2) ABI prevents new market entrants from obtaining retail space and constrains consumer choice.

d. Response: Additional Remedies Concerning Distribution and Retail Issues Are Not Justified Based on the Harms Alleged in the Complaint

The Department alleged in the Complaint that the proposed ABI/Modelo transaction would likely substantially lessen competition in the relevant markets, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and that it would have the following anticompetitive effects:

(a) eliminate Modelo as a substantial, independent, and competitive force in the relevant markets;

(b) raise beer prices to levels above those that would prevail absent the transaction;

(c) lower quality and innovation to less than levels that would prevail absent the transaction;

(d) promote and facilitate pricing coordination in the relevant markets; and

(e) provide ABI with a greater incentive and ability to increase its pricing unilaterally.

See Complaint ¶86.

As described in Section II.B above, the proposed Final Judgment requires ABI to divest Modelo's entire U.S. business. ABI must divest and/or license to Constellation tangible and intangible assets, including: a perpetual and exclusive license to ten Modelo Brand Beers, the Piedras Negras Brewery and the assets and companies associated with it; Modelo's limited liability membership interest in Crown; and other assets, rights, and interests necessary to ensure that Constellation is able to compete in the beer market in the United States using the Modelo Brand Beers, independent of a relationship with ABI. The proposed Final Judgment thus eliminates the anticompetitive effects of the ABI/Modelo transaction and positions Constellation to compete vigorously as a brewer of beer sold in the United States.

In addition, Sections V.B and V.C of the proposed Final Judgment limit ABI's ability to interfere with Constellation's distribution of Modelo Brand Beer to improve Constellation's ability to compete with ABI and other brewers. Section V.C provides that, for ABI-Owned Distributors that distribute Modelo Brand Beer, Constellation will have a window of opportunity to terminate that distribution relationship and direct the ABI-Owned Distributor to sell the distribution rights to another distributor. Similarly, should ABI subsequently acquire any distributors that have contractual rights to distribute Modelo Brand Beer, Constellation may require ABI to sell those rights. Section V.B of the proposed Final Judgment prevents ABI for 36 months from downgrading a distributor's ranking in any ABI distributor incentive program by virtue of the distributor's decision to carry Modelo Brand Beer. The 36-month time period allows Constellation to maintain a status quo position for the Modelo Brand Beer in ABI's distribution incentive programs until Constellation can operate independently of ABI.

Commenter Food & Water Watch's desire for additional remedies relating to beer distribution and retail sales is

[13] *See* June 7, 2013, Constellation press release, available at http://www.cbrands.com/news-media/constellation-brands-completes-acquisition-grupo-modelos-us-beer-business.

not a valid basis for rejecting the proposed Final Judgment because those additional remedies are not needed to remedy the antitrust violations alleged in the Complaint. Rather, the proposed Final Judgment is in the public interest because it is properly designed to eliminate the anticompetitive effects alleged in the Complaint. As discussed in Section III of this response, the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *Microsoft,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see also SBC Commc'ns,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public-interest standard under the Tunney Act); *InBev,* 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, No. 08–1965 (JR), at *3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanisms to enforce the final judgment are clear and manageable.'').

In short, the additional remedies Food & Water Watch proposes concerning distribution and allocation of retail shelf space are not needed to remedy the violations alleged in the Complaint, and thus are not needed to preserve the public interest. The Department has determined that the remedies in the proposed Final Judgment are sufficient to allow Constellation to be an effective competitor and maintain competition in the U.S. beer market and the local markets alleged in the Complaint.

3. Comments from Steven Uhr

a. Summary of Comments

Commenter Steven Uhr argues that ''there is an ongoing conspiracy to fix retail alcohol prices in scores of communities in North America and elsewhere,'' in which ABI and its beer distributors are ''active conspirators.'' Uhr Comment at 1. Mr. Uhr argues that the proposed Final Judgment is contrary to the interest of U.S. beer consumers because allowing ABI to acquire Modelo's beer business outside of the United States enhances the conspiracy's efficiency by substantially increasing concentration in the world beer market. *Id.* at 3. Finally, Mr. Uhr states that the impartiality of the Department is in question,[14] and urges the Court to ''carefully scrutinize the [Department's] claims that the [U.S. beer] market presently is competitive, the proposed fix is in the public interest, and further litigation is a waste of resources.'' *Id.* In essence, Mr. Uhr asserts that the Department should have pleaded and remedied anticompetitive effects related to an alleged worldwide alcohol price-fixing conspiracy.

b. Response: The Harms Alleged in the Complaint Do Not Justify Mr. Uhr's Desired Remedies Outside of the United States

Mr. Uhr's assertion that the Department should have alleged a worldwide alcohol price-fixing conspiracy concerns matters that are outside the scope of this APPA proceeding because the harm that he claims—making the conspiracy more efficient—does not relate to the harms alleged in the Department's Complaint. Because the United States did not allege the existence of a worldwide alcohol price-fixing conspiracy, the Court need not and should not examine the effect of the proposed Final Judgment on such an alleged conspiracy. Moreover, the Department does not have evidence of a world-wide conspiracy to fix alcohol prices. If the Department had evidence that such a conspiracy existed and affected consumers in the United States, it would take appropriate action.

4. Comments from Alcohol Justice

a. Comment Concerning Lower Beer Prices

Commenter Alcohol Justice acknowledges that the proposed Final Judgment is ''intended to protect consumers by maintaining competitiveness in the U.S. beer market and ensuring lower prices,'' but argues that low beer prices are ''contrary to the public interest'' because beer is a drug that is widely used and commonly abused. Alcohol Justice Comment at 1. Alcohol Justice argues that a ''deal to keep beer prices low may address anti-competitive concerns, but will likely make excessive consumption and related harm even worse.'' *Id.*

b. Response: The Effect of Lower Beer Prices on Beer Consumption Is Not A Valid Basis For Rejecting the Proposed Final Judgment

Alcohol Justice's argument against lower beer prices is not a valid basis for rejecting the proposed Final Judgment. The Tunney Act requires the Court to evaluate the effect of the proposed Final Judgment ''upon competition'' as alleged in the Complaint. Alcohol Justice's argument does not criticize the efficacy of the relief contained in the proposed Final Judgment to remedy the competitive harm alleged in the Complaint. Accordingly, Alcohol Justice's comment does not provide an appropriate rationale for rejecting the proposed Final Judgment.

c. Comment Concerning the Distribution Tier

Commenter Alcohol Justice also argues that ''the divestiture of the Piedras Negras brewery and Crown Imports eliminates Modelo and concentrates the distribution of Modelo brands solely in the hands of'' Constellation, that the proposed Final Judgment ''requires'' the elimination of the distribution tier, and that under the proposed Final Judgment, ''Constellation will produce and distribute Modelo brands.'' Alcohol Justice Comment at 2.

d. Response: The Proposed Final Judgment Does Not Eliminate the Beer Distribution Tier in the United States

Contrary to Alcohol Justice's assertions, the proposed Final Judgment does not eliminate the beer distribution tier in the United States, and Constellation will not distribute Modelo Brand Beer directly to retailers. Constellation will sell Modelo Brand Beer to distributors in the U.S. beer market just as Crown, Constellation's prior joint venture with Modelo, sold Modelo brands of beer to U.S. distributors pre-divestiture.

5. National Beer Wholesalers Association's Request for Clarification

a. Summary of Request

Commenter National Beer Wholesalers Association has requested clarification that the 60-day notification requirements of Section XII.A of the proposed Final Judgment apply when ABI acquires, directly or indirectly, a beer distributor (1) that is licensed to distribute a non-ABI beer brand from a brewer, importer, or brand owner—other than ABI—that derives more than $7.5 million in annual gross revenue from beer sales in the United States, and (2) whose license to distribute the non-ABI beer brand generates at least $3 million in actual gross revenue in the United States.

b. Response: The Notice Provision Contained in Section XII.A of the Proposed Final Judgment Applies to Certain Acquisitions by ABI of Beer Distributors

The Department confirms Commenter National Beer Wholesalers Association's reading of Section XII.A, which is clear when Section XII.A is read in conjunction with the defined terms Covered Interest and Covered Entity.

[14] The Department disagrees with Mr. Uhr's assertion that the Department ''contends that unambiguous per se price fixing agreements'' ''raise no antitrust issues.'' *See* Uhr Comment at 3.

Section XII.A of the proposed Final Judgment states:

> Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the ''HSR Act''), ABI, without providing at least sixty (60) calendar days advance notification to the United States, shall not directly or indirectly acquire or license a Covered Interest in or from a Covered Entity; provided, however, that advance notification shall not be required for acquisitions of the type addressed in 16 CFR 802.1 and 802.9.

As defined in Section II.I of the proposed Final Judgment, a Covered Interest ''means any non-ABI Beer brewing assets or any non-ABI Beer brand assets of, or any interest in (including any financial, security, loan, equity, intellectual property, or management interest), a Covered Entity; except that a Covered Interest shall not include (i) a Beer brewery or Beer brand located outside the United States that does not generate at least $7.5 million in annual gross revenue from Beer sold for resale in the United States; or (ii) a license to distribute a non-ABI Beer brand where said distribution license does not generate at least $3 million in annual gross revenue in the United States.'' As defined in Section II.H of the proposed Final Judgment, a Covered Entity ''means any Beer brewer, importer, or brand owner (other than ABI) that derives more than $7.5 million in annual gross revenue from Beer sold for further resale in the United States, or from license fees generated by such Beer sales.''

Accordingly, if by acquiring a beer distributor, (1) ABI were to acquire a license to distribute a non-ABI beer brand from a brewer, importer, or brand owner that derives more than $7.5 million in annual gross revenue from beer sales (sold for further resale) in the United States, and (2) the license to distribute the non-ABI beer brand generates at least $3 million in actual gross revenue in the United States, ABI will have acquired a Covered Interest in a Covered Entity, thus triggering the notice provisions of Section XII.

The Department notes that Commenter National Beer Wholesalers Association has requested that the Department provide its requested clarification in this response to public comments and has not requested that the proposed Final Judgment be modified in any respect. The Department agrees that modification of the proposed Final Judgment is unnecessary.

V. Conclusion

After reviewing the public comments, the United States continues to believe that the proposed Final Judgment, as drafted, provides an effective and appropriate remedy for the antitrust violations alleged in the Complaint, and is therefore in the public interest. The United States will move this Court to enter the proposed Final Judgment after it has posted all public comments and this response on the Antitrust Division Web site and published in the **Federal Register** this response and the Web site address at which the public comments will be posted.

Dated: September 13, 2013

Respectfully submitted,
/s/Michelle R. Seltzer
Michelle R. Seltzer (D.C. Bar No. 475482), U.S. Department of Justice, Antitrust Division, Litigation I Section, 450 Fifth Street, NW., Suite 4100, Washington, DC 20530, Telephone: (202) 353–3865, Facsimile: (202) 307–5802, Email: *michelle.seltzer@usdoj.gov*

Certificate of Service

I, Michelle R. Seltzer, hereby certify that on September 13, 2013, I caused a copy of Plaintiff United States's Response to Public Comments to be filed and served upon all counsel of record by operation of the CM/ECF system for the United States District Court for the District of Columbia. Additionally, a copy of the foregoing was delivered via email to the duly authorized legal representatives of the defendants, as follows:

Counsel for Defendant Anheuser-Busch InBev SA/NV and Grupo Modelo, S.A.B. de C.V.:

Steven C. Sunshine, Esq., Skadden, Arps, Slate, Meagher & Flom LLP, 1440 New York Avenue NW., Washington, DC 20005, Telephone: 202–371–7860, Fax: 202–661–0560, Email: *steve.sunshine@skadden.com*.

Counsel for Defendant Constellation Brands, Inc.:

Raymond A. Jacobsen, Jr., Esq., McDermott Will & Emery, The McDermott Building, 500 North Capitol Street, NW., Washington, DC 20001, Telephone: 202–756–8028, Fax: 202–756–8087, Email: *rayjacobsen@mwe.com*.

/s/Michelle R. Seltzer
Michelle R. Seltzer (D.C. Bar No. 475482), U.S. Department of Justice, Antitrust Division, Litigation I Section, 450 Fifth Street, NW., Suite 4100, Washington, DC 20530, Telephone: (202) 353–3865, Facsimile: (202) 307–5802, Email: *michelle.seltzer@usdoj.gov*.

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DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Securing Financial Obligations Under the Longshore and Harbor Workers' Compensation Act and its Extensions

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Office of Workers' Compensation Programs (OWCP) sponsored information collection request (ICR) titled, ''Securing Financial Obligations Under the Longshore and Harbor Workers' Compensation Act and its Extensions,'' 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 October 24, 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=201306-1240-003* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OWCP, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Information Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210, email: *DOL_PRA_PUBLIC@dol.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: The Longshore and Harbor Workers' Compensation Act requires a covered employer to secure the payment of compensation under the Act and its extensions by purchasing insurance from a carrier authorized by the Secretary of Labor to write Longshore Act insurance, or by becoming an authorized self-insured employer. *See* 33 U.S.C. 932. Each authorized insurance carrier or carrier seeking authorization is required to establish annually that its Longshore Act obligations are fully secured through an applicable state guaranty or analogous fund, a deposit of security with the Division of Longshore and Harbor Workers' Compensation (DLHWC), or a combination of both. Similarly, each authorized self-insurer or employer seeking authorization is required fully to secure its Longshore Act obligations by depositing security with the DLHWC. These requirements are designed to assure the prompt and continued payment of compensation and other benefits by the responsible carrier or self-insurer to injured workers and their survivors. Forms associated with this information collection (Forms LS–275 IC, Agreement and Undertaking (Insurance Carrier); LS–275 SI, Agreement and Undertaking (Self-Insured Employer); and LS–276, Application for Security Deposit Determination) obtain information used to determine appropriate security deposit amounts and to insure compliance with the security deposit requirements.

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 1240–0005.

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 November 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. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on June 12, 2013 (78 FR 35326).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1240–0005. 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: Securing Financial Obligations Under the Longshore and Harbor Workers' Compensation Act and its Extensions.

OMB Control Number: 1240–0005.

Affected Public: Private Sector—businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 476.

Total Estimated Number of Responses: 668.

Total Estimated Annual Burden Hours: 454.

Total Estimated Annual Other Costs Burden: $344.

Dated: September 18, 2013.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2013–23187 Filed 9–23–13; 8:45 am]

BILLING CODE 4510–CF–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket Number MSHA–2013–0037]

Criteria to Certify Coal Mine Rescue Teams

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of availability; request for comments.

SUMMARY: The Mine Safety and Health Administration (MSHA) is requesting comments on revised instruction guides for coal mine rescue team training. MSHA prescribes training materials through the issuance of instruction guides. Existing standards for coal mine rescue teams include criteria for mine operators to certify the qualifications of these teams. The Mine Improvement and New Emergency Response (MINER) Act of 2006 requires MSHA to update these criteria every 5 years; this requirement applies only to coal mine rescue teams. The revised instruction guides update existing mine rescue training materials referenced in the criteria to certify coal mine rescue team qualifications. The revised instruction guides provide improved advanced mine rescue training for coal mine rescue teams by including additional exercises to provide more hands-on skills training to enhance team performance when responding to an actual mine emergency.

DATES: Comments must be received by midnight Eastern Standard Time on November 25, 2013.

ADDRESSES: Submit comments and supporting documents by any of the following methods:

- *Federal E-Rulemaking Portal:http://www.regulations.gov.* Follow the on-line instructions for submitting comments for Docket Number MSHA–2013–0037.
- *Mail:* Send comments to MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209–3939.
- *Hand Delivery or Courier:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, VA between 9:00 a.m. and 5:00 p.m. Monday through Friday, except Federal holidays. Sign in at the receptionist's desk on the 21st floor.

Instructions: Because comments will not be edited to remove any identifying or contact information, MSHA cautions the commenter against including any information in the submission that should not be publicly disclosed.

FOR FURTHER INFORMATION CONTACT: George F. Triebsch, Director, Office of

Standards, Regulations, and Variances, MSHA, at *triebsch.george@dol.gov* (email); 202–693–9440 (voice); or 202–693–9441 (facsimile). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Underground coal mine operators must designate at least two mine rescue teams to provide mine rescue coverage at an underground coal mine at all times when miners are underground. The MINER Act requires coal mine operators to annually certify the qualifications of these designated teams. MSHA provides the criteria for certifying the qualifications of coal mine rescue teams under 30 CFR 49.50. The MINER Act requires MSHA to update these criteria every 5 years. The revised instruction guides do not change these criteria.

Initial criteria to certify the qualifications of mine rescue teams include: (1) Team is available at all times when miners are underground; (2) Except where alternative compliance is permitted, team has five members and one alternate; (3) Members have experience working in an underground coal mine; (4) Team is available within 1 hour ground travel time from the mine rescue station to the mine; (5) Appropriate mine rescue equipment is provided, inspected, tested, and maintained; (6) Members are physically fit; and (7) Members have completed initial training.

Annual criteria to maintain mine rescue team certification include: (1) Members are properly trained annually; (2) Members are familiar with the operations of each covered mine; (3) Members participate in at least two local mine rescue contests annually; (4) Members participate in mine rescue training at each covered mine; and 5) Members are knowledgeable about the operations and ventilation of each covered mine.

Existing § 49.18(b)(4) requires advanced mine rescue training and procedures as prescribed by MSHA's Office of Educational Policy and Development (EPD). Under this section, EPD prescribes Instruction Guide IG7, ''Advanced Mine Rescue Training—Coal Mines'', which includes best practices, handouts, visuals, and text materials for the classroom and activities or exercises for practice using equipment and developing teamwork. MSHA revised this instruction guide to add realistic hands-on exercises for skills training on equipment.

The existing lessons and exercises from the current Instruction Guide IG7 were reorganized. The materials for classroom training are retained as Instruction Guide IG7, ''Advanced Mine Rescue Training—Coal Mines'', and the practice exercises are moved to new Instruction Guide IG7a, ''Advanced Skills Training—Activities for Coal Mine Rescue Teams''. These revised instruction guides will assist coal mine rescue team trainers in providing team members with the necessary knowledge and skills to respond effectively in the event of an emergency.

MSHA is requesting comments on revised Instruction Guides IG7 and IG7a to improve the quality and effectiveness of instruction and skills training for mine rescue teams. The revised instruction guides are posted on *www.regulations.gov* and on the Agency's Web site at *http://www.msha.gov/MineRescue/Training/TeamTraining.asp.*

Authority: 30 U.S.C. 811, 825(e).

Dated: September 16, 2013.

Joseph A. Main,

Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 2013–22804 Filed 9–23–13; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Adrian Dahood, ACA Permit Officer, Division of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Or by email: *ACApermits@nsf.gov*

SUPPLEMENTARY INFORMATION: On August 7, 2013 the National Science Foundation published a notice in the **Federal Register** of a permit application received. After carefully considering all comments received and responses from the applicant, the permit was issued on September 18, 2013 to: Eric Stangeland, Quark Expeditions Permit No. 2014–006

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2013–23178 Filed 9–23–13; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Adrian Dahood, ACA Permit Officer, Division of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Or by email: *ACApermits@nsf.gov*

SUPPLEMENTARY INFORMATION: On July 12, 2013 the National Science Foundation published a notice in the **Federal Register** of a permit application received. After carefully considering all comments received and responses from the applicant, the permit was issued on September 18, 2013 to: Ted Cheeseman, Permit No. 2014–004.

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2013–23179 Filed 9–23–13; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 24, 2013. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Division of Polar Programs, National

Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Adrian Dahood, ACA Permit Officer, at the above address or *ACApermits@nsf.gov* or (703) 292–7149.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

1. *Applicant:* Allyson Comstock, Opelika, AL. *Permit Application:* 2014–019

Activity for Which Permit is Requested:

ASPA Entry and Take (salvage); The applicant is an artist funded by the National Science Foundation's Antarctic Artist & Writer's program. The applicant is seeking a permit to be able to enter ASPA 149 Cape Shirreff to take photos to inspire future artwork. If approved, the applicant would be accompanied in by experienced field staff who are familiar with the environmental sensitivities of the Area and would ensure that the applicant acts in accordance with the management plan for the Area.

The applicant also seeks permission to salvage shed bird feathers while at Cape Shirreff ASPA 149. The salvaged feathers would be used as reference materials for drawings that would be publicly displayed. All materials collected would be salvaged; the applicant would not interact with live animals to collect feathers.

None of the activities described above would disturb native birds and mammals

Location: ASPA 149 Cape Shirreff

Dates: October 26, 2013 to December 20, 2013

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2013–23177 Filed 9–23–13; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Meeting; NSF Synchrotron Subcommittee of the Advisory Committee for Mathematical and Physical Sciences

The National Science Foundation (NSF) announces the following meeting.

NAME: NSF Synchrotron Subcommittee Workshop (66)

DATE AND TIME: October 8, 2013 8:00 a.m.—5:00 p.m.; October 9, 2013 8:00 a.m.—11:30 a.m.

PLACE: Residence Inn, 650 N. Quincy St., Arlington, VA 22203.

TYPE OF MEETING: Open.

CONTACT PERSON: Dr. Mary Galvin, Division Director, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 292–8562.

PURPOSE OF MEETING: To gather information needed to advise the Division of Materials Research on its facilities portfolio including the role it and NSF should play in synchrotron science.

AGENDA:

Tuesday, October 8, 2013

8:45 a.m.—10:15 a.m.: Overview

1. Summary of NSF Mat 2022 report findings—Murray Gibson, Northeastern University
2. Importance of materials research facilities for US research and economy, including the Department of Energy (DOE) role in materials facilities—Patricia Dehmer, DOE
3. Biology/biomaterials talk—importance of materials research facilities—Pupa Gilbert, University of Wisconsin
4. Nanoscience/technology talk—importance of materials research facilities—Stephen Campbell, University of Minnesota

10:15 a.m.—10:30 a.m.: Coffee break

10:30 a.m.—12:00 p.m.: DMR facilities and materials research needs, funded major facilities past and present

5. NSF DMR funded materials facilities, past accomplishments and future potential*

a. Cornell High Energy Synchrotron Source (CHESS)—Joel Brock, Cornell University

b. National High Magnetic Field Laboratory (NHFML)—Gregory Boebinger, Florida State University

12:00—1:00 p.m.: Lunch

1:00 p.m.—2:30 p.m.: DMR funded major facilities past and present

6. NSF DMR funded materials facilities, past accomplishments and future potential

a. National Institute of Standards and Technology (NIST) partnership—Rob Dimeo, NIST

b. Synchrotron Radiation Center (SRC) at University of Wisconsin-Madison—Tai Chiang, University of Illinois at Urbana-Champaign General discussion

2:30 p.m.—3:00 p.m.: Coffee Break

3:00 p.m.—5:00 p.m.: Novel materials facilities concepts and opportunities and how they are currently funded in the US

7. Future of higher harmonic light sources and their applications in materials science—Margaret Murnane, Joint Institute for Laboratory Astrophysics (JILA)
8. Potential new light sources—overview of field, especially mid-scale accelerator based light sources and compact light sources—Chan Joshi, University of California at Los Angeles
9. Theory and Simulation of materials—what facilities or infrastructure is needed to advance the field faster—Peter Voorhees, Northwestern University

5:00 p.m.—5:45 p.m.: Community input and general open discussion

Wednesday, October 9, 2013

8:00 a.m.—10:30 a.m.: International materials facilities developments

10. International picture—new developments in light sources—Yves Petroff, Brazilian Synchrotron Light Laboratory (LNLS)
11. International picture—new developments in Transmission Electron Microscope (TEM) facilities—Dorte Jensen, Riso and Nigel Browning, Pacific Northwest National Laboratory (PNNL)
12. International picture—materials synthesis and characterization—Hard Materials—Charles Ahn, Yale University
13. International picture—materials synthesis and characterization—Soft Materials—TBD

10:30—11:30 a.m.: Community input and general open discussion

Dated: September 19, 2013.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2013–23139 Filed 9–23–13; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–155, and 72–43; NRC–2013–0218]

Environmental Assessment; Entergy Nuclear Operations, Inc., Big Rock Point

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption to Entergy Nuclear Operations, Inc. (ENO) (the applicant or the licensee), for the Big Rock Point (BRP) Independent Spent Fuel Storage Installation (ISFSI).

ADDRESSES: Please refer to Docket ID NRC–2013–0218 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0218. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; 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 document (if that document is available in ADAMS) is provided the first time that a document is referenced. The applicant submitted its exemption request by letter dated June 20, 2012, under ADAMS Accession No. ML12173A066.
- 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: Pamela Longmire, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–287–0829; email: *pamela.longmire@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering issuance of an exemption to Entergy Nuclear Operations, Inc. (ENO) (the applicant or the licensee), pursuant to section 50.12 of Title 10 of the *Code of Federal Regulations* (10 CFR), ''Specific exemptions,'' from specific portions of the requirements of 10 CFR 50.47, ''Emergency plans,'' and 10 CFR part 50, appendix E, ''Emergency Planning and Preparedness for Production and Utilization Facilities,'' for the Big Rock Point (BRP) Independent Spent Fuel Storage Installation (ISFSI).

II. Environmental Assessment (EA)

Background

ENO is the holder of Facility Operating License DPR–6 for the BRP facility. The license, issued pursuant to the Atomic Energy Act of 1954, as amended, and 10 CFR part 50, allows ENO to possess and store spent nuclear fuel at the permanently shutdown and decommissioned facility under the provision of 10 CFR part 72, subpart K, ''General License for Storage of Spent Fuel at Power Reactor Sites.'' In a letter dated June 26, 1997 (ADAMS Legacy Accession No. 9707030167), Consumers Energy Company (CEC), then holder of DPR–6, informed the NRC that the BRP facility had permanently ceased power operations. In a letter dated September 23, 1997 (ADAMS Legacy Accession No. 9709300363), CEC informed the NRC that it had permanently moved the fuel from the reactor to the spent fuel pool.

After ceasing operations at the reactor, CEC began transferring spent nuclear fuel from the spent fuel pool to the BRP ISFSI for long term dry storage. As discussed in letters dated September 8, 2005, and November 16, 2006 (ADAMS Accession Nos. ML052550366 and ML063260085, respectively), these activities were completed in 2003 and final decommissioning of the reactor site was completed in 2006. The BRP ISFSI is a stand-alone ISFSI located on approximately 30 acres in Charlevoix County, on the northern shore of Michigan's Lower Peninsula. In a letter dated July 30, 2007 (ADAMS Accession No. ML072220219), ENO applied for an order approving indirect transfer of control of licenses for BRP. By letter dated July 28, 2008 (ADAMS Accession No. ML080940528), the NRC consented to the proposal.

On November 23, 2011, the NRC issued a Final Rule modifying or adding emergency planning (EP) requirements in §§ 50.47 and 50.54, and Aapendix E of 10 CFR part 50 (76 FR 72560; November 23, 2011) (EP Final Rule). The EP Final Rule was effective on December 23, 2011, with specific implementation dates for each of the rule changes.

ENO states that this exemption request and its impact on the corresponding emergency plan: (1) Is authorized by law; (2) will not present an undue risk to the public health and safety; and (3) is consistent with the common defense and security in accordance with 10 CFR 50.12. ENO states that its intent in submitting this exemption request is to maintain the regulatory structure in place prior to the issuance of the EP Final Rule and, therefore, does not propose any changes to its emergency plan or implementing procedures other than simple regulatory reference changes that can be implemented under 10 CFR 50.54(q).

Identification of Proposed Action

By letter dated June 20, 2012, ENO submitted an exemption request in accordance with 10 CFR 50.12 from specific EP requirements in 10 CFR 50.47 and appendix E to 10 CFR part 50 for the BRP ISFSI. Specifically, ENO explained that the exemption would eliminate requirements associated with offsite consequences, protective actions, hostile action and emergency facilities that are unnecessary due to the current status of the BRP ISFSI.

Need for the Proposed Action

ENO states that, in accordance with 10 CFR 50.82, the 10 CFR part 50 licensed area for BRP has been reduced to a small area surrounding the ISFSI. In this condition, ENO maintains that BRP poses a significantly reduced risk to public health and safety from design basis accidents or credible beyond design basis accidents because these types of accidents cannot result in radioactive releases which exceed the U.S. Environmental Protection Agency (EPA) Protective Action Guides (PAGs) at the site boundary. Because of this reduced risk, compliance with all the requirements in 10 CFR 50.47 and 10 CFR part 50, appendix E is not appropriate. ENO explains that the requested exemption from portions of 10 CFR 50.47 and 10 CFR part 50, appendix E is needed to continue implementation of the BRP ISFSI Emergency Plan that is appropriate for a stand-alone ISFSI and is commensurate with the reduced risk posed by the facility. In addition, the

requested exemption would allow spent fuel storage to continue without imposing burdensome and costly new requirements that provide no increased safety benefit.

Environmental Impacts of the Proposed Action

The NRC has determined that no credible events at the BRP ISFSI would result in doses to the public beyond the owner controlled area boundary that would exceed the EPA PAGs. Additionally, the staff has concluded that the BRP Emergency Plan with the exemptions described in its safety evaluation (ADAMS Accession No. ML13254A002), provides for an acceptable level of emergency preparedness at the BRP facility in its shutdown and defueled condition, and also provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at the BRP facility. Based on these findings, the NRC concludes that there are no radiological environmental impacts due to granting the approval of the exemption. The proposed action will not increase the probability or consequences of accidents. No changes are being made in the types or quantities of effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action. The proposed action does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological impacts associated with the proposed action. Based on the assessment above, the proposed action will not have a significant effect on the quality of the human environment.

Alternative to the Proposed Action

Since there is no significant environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact are not evaluated. The alternative to the proposed action would be to deny approval of the exemption. This alternative would have the same environmental impact.

Agencies and Persons Consulted

The environmental assessment associated with the exemption request was sent to Mr. Ken Yale, Section Chief of the Radiological Protection Section in the Office of Waste Management and Radiological Protection at the Michigan Department of Environmental Quality (DEQ) by email dated August 22, 2013 (ADAMS Accession No. ML13238A158). The state response was received by email dated August 23, 2013 (ADAMS Accession No. ML13238A109). The email states that DEQ reviewed the draft environmental assessment and has no comments. The NRC staff has determined that a consultation under Section 7 of the Endangered Species Act is not required because the proposed action will not affect listed species or critical habitat. The NRC staff has also determined that the proposed action is not a type of activity that has the potential to impact historic properties because the proposed action would occur within the established BRP site boundary. Therefore, no consultation is required under Section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR part 51. Based upon the environmental assessment, the NRC finds that the proposed action of granting the exemption from specific EP requirements in 10 CFR 50.47 and 10 CFR part 50, appendix E will not significantly impact the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed exemption and that a finding of no significant impact is appropriate.

IV. Further Information

In accordance with 10 CFR 2.390 of NRC's ''Rules of Practice,'' final NRC records and documents regarding this proposed action are publicly available in the records component of NRC's Agencywide Documents Access and Management System (ADAMS). The request for exemption dated June 20, 2012 (ADAMS Accession No. ML12173A066), was docketed under 10 CFR Part 50, Docket 50–155 and under 10 CFR Part 72, Docket 72–43. These documents may be inspected at NRC'S Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or (301) 415–4737, or by email to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 17th day of September, 2013.

For the Nuclear Regulatory Commission.

Michele Sampson,

Chief, Licensing Branch, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety, and Safeguards.

[FR Doc. 2013–23181 Filed 9–23–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–029, 50–213, 50–309, 72–030, 72–031, and 72–039; NRC–2013–0217]

Maine Yankee Atomic Power Company, Connecticut Yankee Atomic Power Company, and The Yankee Atomic Electric Company

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to a May 16, 2011, request from Maine Yankee Atomic Power Company (Maine Yankee), Connecticut Yankee Atomic Power Company (Connecticut Yankee), and the Yankee Atomic Electric Company (Yankee Atomic) (together, ''licensees'' or ''the Yankee Companies'') from the foreign ownership, control, or domination (FOCD) requirements.

ADDRESSES: Please refer to Docket ID NRC–2013–0217 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0217. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; 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 document (if that document is available in ADAMS) is provided the first time that a document is referenced.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: John Goshen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–287–9250; email: *john.goshen@nrc.gov*.

1.0 Background

Maine Yankee Atomic Power Company (Maine Yankee), Connecticut Yankee Atomic Power Company (Connecticut Yankee), and the Yankee Atomic Electric Company (Yankee Atomic) (together, ''licensees'' or ''the Yankee Companies'') hold part 50 of Title10 of the *Code of Federal Regulations* (10 CFR) possession only licenses for the following facilities: Haddam Neck Plant (Connecticut Yankee); Maine Yankee Atomic Power Station (Maine Yankee); and, Yankee Nuclear Power Station (Yankee Atomic), (together, ''the facilities''). The facilities ceased power operations between 1991 and 1997, and all have completed the decommissioning process. All reactor plant facilities have been dismantled and removed, and only the independent spent fuel storage installations (ISFSIs) remain at the stations.

2.0 Request/Action

On May 16, 2011, the Yankee Companies submitted a request for exemption from the FOCD requirements of 10 CFR 50.38 in accordance with 10 CFR 50.12.

Pursuant to 10 CFR 50.12(a)(1), the Commission may grant exemptions from the requirements of 10 CFR part 50 which:

Are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security.

Sections [103d.and] 104d. of the Atomic Energy Act of 1954, as amended, (AEA, the Act) state that:

be issued to [an alien or] any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation or a foreign government. In any event, no license may be issued to any person within the United States if, in the opinion of the Commission, the issuance of a license to such person would be inimical to the common defense and security or to the health and safety of the public.

Section 50.38 implements Sections 103d. and 104d. of the AEA.

In the exemption application, the licensees stated that Sections 103d. and 104d. of the AEA, apply only to a license for a production or utilization facility as defined in the AEA. The licensees stated that regardless of their 10 CFR part 50 licenses, the possession only conditions of the licenses do not allow their use as a production or utilization facility, and they are therefore not subject to Sections 103d. or 104d. of the AEA.

Due to the complete decommissioning and dismantlement of the reactor facilities, the 10 CFR part 50 licenses for operation of the stations held by the Yankees have been amended to allow for only the possession of spent nuclear fuel (SNF). Under 10 CFR 72, Subpart K, ''General License for Storage of Spent Fuel at Power Reactor Sites,'' the Yankee Companies are authorized to store spent fuel. Specifically, under 10 CFR 72.210, the Yankees have a general license to store spent fuel in an ISFSI at each site by virtue of their Part 50 licenses to possess nuclear power reactors.

Each Yankee company is partially indirectly owned by foreign entities. The remaining owner is a U.S. entity.

3 Discussion

3.1 Exemption is Authorized by Law

The NRC staff concluded that Section 103d. of the AEA does not apply to ISFSIs. The plain language of the statute demonstrates that it applies to commercial licenses for production and utilization facilities.[1] The section, which refers to ''license[s] under this section'' and therefore, applies solely to licenses for production or utilization facilities, states that ''[n]o license may be issued to an alien or any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government.'' The AEA definitions of ''production facility'' (Section 11.v) and ''utilization facility'' (Section 11.cc) do not include ISFSIs. Therefore, Section 103d. does not preclude the NRC from granting the Yankee Companies an exemption from 10 CFR 50.38.

Additionally, the Commission's regulations at 10 CFR 50.2 defines ''production facility'' as a facility designed or used for the formation or processing of nuclear material, and ''utilization facility'' as ''any nuclear reactor other than one designed or used primarily for the formation of plutonium or U–233.''

As an ISFSI is neither ''capable of the production of special nuclear material'' nor ''capable of making use of special nuclear material,'' it is neither a production facility nor a utilization facility under the AEA. Furthermore, an ISFSI is not designed or used for the formation or processing of nuclear material and is not a nuclear reactor. Accordingly, an ISFSI is neither a production facility nor a utilization facility under 10 CFR part 50. As such, the Section 103d. prohibition on FOCD entities does not apply to an ISFSI, regardless of whether it is licensed under 10 CFR part 50 or 10 CFR part 72, and therefore does not preclude the NRC from granting the Yankee Companies an exemption from the FOCD requirements of 10 CFR 50.38.

3.2 The Exemption Presents no Undue Risk to Public Health and Safety

The staff finds the requirements of 10 CFR 50.38 are intended to prevent the FOCD of production and utilization facilities. The Yankee facilities are neither production nor utilization facilities as defined in the AEA. Additionally, since FOCD restrictions are financial ownership restrictions and are neither technical nor operational requirements, granting the exemption has no bearing on the risk to public health and safety.

3.3 The Exemption is Consistent With the Common Defense and Security

The Yankees are restricted by their licenses to storing SNF in ISFSIs approved under 10 CFR 72.214. The underlying purpose of the 10 CFR 50.38 FOCD prohibition is to prevent foreign ownership, control or domination of production and utilization facilities as defined by the AEA. The Yankee facilities are neither production nor utilization facilities as defined in the AEA. In addition, there are no FOCD restrictions placed on similarly situated 10 CFR part 72 ISFSIs with specific licenses to store SNF. Such licensees have similar security and common defense concerns, and similar considerations apply. The staff finds, therefore, that granting the exemption is consistent with the common defense and security.

3.4 Special Circumstances Evaluation

The Commission cannot grant an exemption unless special circumstances apply per 10 CFR 50.12(a)(2), and application of the regulation would not serve the underlying purpose of the rule or is not necessary to achieve the

[1] AEA §§ 101, 103.

underlying purpose of the rule per 10 CFR 50.12(a)(2)(ii).

The Yankees are restricted to by their licenses to store SNF in ISFSIs approved by 10 CFR 72.214. The underlying purpose of 10 CFR 50.38 is to implement the FOCD restrictions of Sections 103d. and 104d. of the AEA and to prevent foreign ownership, control or domination of production and utilization facilities as defined by the AEA. The Yankee Companies are not production or utilization facilities as defined in the AEA. The NRC staff determined that there are no 10 CFR 50.38 FOCD restrictions placed on 10 CFR part 72 ISFSIs with specific licenses that are similarly situated to the Yankee facilities and similar considerations apply. The NRC staff finds, therefore, that applying the 10 CFR 50.38 FOCD requirement clearly does not serve the underlying purpose of the rule, and granting the exemption is consistent with the special circumstances as defined in 10 CFR 50.12(a)(2)(ii).

3.5 Environmental Evaluation

The staff has determined that this action meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(25)(vi)(I), ''Other requirements of an administrative, managerial, or organizational nature.'' Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with this action, and granting the exemption, therefore, does not present an undue risk to the public health and safety.

4 Conclusions

The staff finds granting the licensee's exemption request from 10 CFR 50.38 FOCD requirements acceptable for the reasons provided in the letter from Mark Lombard to Wayne Norton dated July 15, 2013 (ADAMS Accession No. ML13086A010).

5 Additional Information

Documents related to this action, including the application for renewal, supporting documentation, and the staff's safety evaluation are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr.resource@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's PDR, O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland, this 13th day of September, 2013.

For the Nuclear Regulatory Commission

John M. Goshen,

Project Manager, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety, and Safeguard.

[FR Doc. 2013–23243 Filed 9–23–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on October 2, 2013, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b (c)(2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, October 2, 2013—12:00 p.m. until 1:00 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Quynh Nguyen (Telephone 301–415–5844 or Email: *Quynh.Nguyen@nrc.gov)* five days prior to the meeting, if possible, so that arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 18, 2012, (77 FR 64146–64147).

Information regarding changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the DFO if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (240–888–9835) to be escorted to the meeting room.

Dated: September 17, 2013.

Cayetano Santos,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2013–23201 Filed 9–23–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0001]

Sunshine Act Meetings Notice

DATES: Weeks of September 23, 30, October 7, 14, 21, 28, 2013.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of September 23, 2013

There are no meetings scheduled for the week of September 23, 2013.

Week of September 30, 2013—Tentative

There are no meetings scheduled for the week of September 30, 2013.

Week of October 7, 2013—Tentative

There are no meetings scheduled for the week of October 7, 2013.

Week of October 14, 2013—Tentative

Wednesday, October 16, 2013

1:00 p.m. Briefing on Flooding and Other Extreme Weather Events (Public

Meeting) (Contact: George Wilson, 301–415–1711)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Friday, October 18, 2013

9:00 a.m. Meeting with the Advisory Committee on the Medical Uses of Isotopes (Public Meeting) (Contact: Sophie Holiday, 301–415–7865)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

1:00 p.m. Briefing on Proposed Rulemaking Concerning the Medical Use of Byproduct Material (Public Meeting) (Contact: Ashley Cockerham, 240–888–7129)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of October 21, 2013—Tentative

There are no meetings scheduled for the week of October 21, 2013.

Week of October 28, 2013—Tentative

Thursday, October 31, 2013

10:00 a.m. NRC All Employees Meeting (Public Meeting) Marriott Bethesda North Hotel 5701 Marinelli Road, Rockville, MD 20852

* * * * *

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—301–415–1292. Contact person for more information: Rochelle Bavol, 301–415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0727, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *Darlene.Wright@nrc.gov.*

September 19, 2013.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2013–23310 Filed 9–20–13; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0048]

Maintenance, Testing, and Replacement of Vented Lead-Acid Storage Batteries for Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Revision 3 of Regulatory Guide (RG) 1.129, ''Maintenance, Testing, and Replacement of Vented Lead-Acid Storage Batteries for Nuclear Power Plants.'' The guide describes methods that the NRC staff considers acceptable for use in complying with the agency's regulations with regard to the maintenance, testing, and replacement of vented lead-acid storage batteries in nuclear power plants.

ADDRESSES: Please refer to Docket ID NRC–2013–0048 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0048. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. Revision 3 of Regulatory Guide 1.129 is available in ADAMS under Accession No. ML13170A112. The regulatory analysis may be found in ADAMS under Accession No. ML13170A116.
- *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.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

FOR FURTHER INFORMATION CONTACT: Liliana Ramadan, telephone: 301–251–7642; email: *Liliana.Ramadan@nrc.gov*; or Edward O'Donnell, telephone: 301–251–7455; email: *Edward.Odonnell@nrc.gov.* Both of the Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is issuing a revision to an existing guide in the NRC's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The NRC developed RG 1.129 to describe a method that the NRC staff considers acceptable for use in complying with the agency's regulations with regard to the maintenance, testing, and replacement of vented lead-acid storage batteries in nuclear power plants. Specifically, the method described in this regulatory guide relates to General Design Criteria (GDC) 1, 17, and 18 as set forth in appendix A, ''General Design Criteria for Nuclear Power Plants,'' to part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR), ''Domestic Licensing of Production and Utilization Facilities.''

The NRC issued Revision 3 of RG 1.129 with a temporary identification as Draft Regulatory Guide, DG–1269, in the **Federal Register** on March 12, 2013 (78 FR 15753), for a 60-day public comment period. The public comment period closed on May 13, 2013, and the NRC staff's response to the comments can be found in ADAMS under Accession No. ML13170A114.

RG 1.129, Revision 3 endorses (with certain clarifying regulatory positions) the Institute of Electrical and Electronics Engineers (IEEE) Std 450–

2010, ''IEEE Recommended Practice for Maintenance, Testing, and Replacement of Vented Lead-Acid Batteries for Stationary Applications.'' That standard is an update of IEEE Std 450–2002, which formed the basis for RG 1.129, Revision 2. The revised IEEE Std 450–2010 refines the condition monitoring guidance and the use of rate-adjusted test methods for acceptance testing to ensure consistent performance of vented lead-acid batteries. Among the changes in RG 1.129, Revision 3 from the prior version is the deletion of clarifying regulatory positions 6 and 8. The former is addressed by IEEE 450–2010 and is not needed. The latter provides information on optional test methods and, unless otherwise stated in a regulatory position, this endorsement of IEEE–450–2010 does not apply to them. Therefore it is superfluous.

Revision 3 of RG 1.129 represents the NRC staff's current guidance for future users and applications. Earlier versions of this regulatory guide, however, continue to be acceptable for those licensees whose licensing basis includes earlier versions of this regulatory guide, absent a licensee-initiated change to its licensing basis. Additional information on the NRC staff's use of this revised regulatory guide with respect to both current and future users and applications is set forth in the ''Implementation'' section of the revised regulatory guide.

II. Congressional Review Act

This regulatory guide is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

III. Backfitting and Issue Finality

Regulatory Guide 1.129, Revision 3, does not constitute backfitting as defined in 10 CFR 50.109 (the Backfit Rule) and is not otherwise inconsistent with the issue finality provisions in 10 CFR part 52, ''Licenses, Certifications and Approvals for Nuclear Power Plants.'' Revision 3 of this regulatory guide provides guidance on one possible means for meeting NRC's regulatory requirements with regard to the maintenance, testing, and replacement of vented lead-acid storage batteries in nuclear power plants in GDCs 1, 17 and 18, and the qualification testing requirements of Criterion III of 10 CFR Part 50, Appendix B. Existing licensees and applicants of final design certification rules will not be required to comply with the positions set forth in Revision 3 of this regulatory guide, unless the licensee or design certification rule applicant seeks a voluntary change to its licensing basis with respect to safety-related power operated valve actuators, and where the NRC determines that the safety review must include consideration of the qualification of the valve actuators. Further information on the staff's use of the Regulatory Guide 1.129, Revision 3, is contained in the regulatory guide under section D. Implementation.

Dated at Rockville, Maryland, this 16th day of September, 2013.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2013–23250 Filed 9–23–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0219]

Review of Experiments for Research Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; withdrawal.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is withdrawing Regulatory Guide (RG) 2.4, ''Review of Experiments for Research Reactors.'' The guide is being withdrawn because the industry standard which it referred to has been withdrawn, and corresponding information is available in other NRC guidance. ADDRESSES: Please refer to Docket ID NRC–2013–0219 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin 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, or 301–415–4737, or by email at *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. The review for the withdrawal of RG 2.4 is available in ADAMS under Accession No. ML13143A453.
- *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, MD 20852.

The documents are not copyrighted and NRC approval is not required to reproduce them. FOR FURTHER INFORMATION CONTACT: Alexander Adams Jr., telephone: 301–415–1127, by email at *Alexander.Adams@nrc.gov,* Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; or Richard Jervey, telephone: 301–251–7404, by email at *Richard.Jervey@nrc.gov,* Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is withdrawing RG 2.4, ''Review of Experiments for Research Reactors,'' (ADAMS Accession No. ML003740131) because its guidance no longer provides useful information. RG 2.4 was published in July 1976 to provide clarification on meeting the requirements in part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR), ''Domestic Licensing of Production and Utilization Facilities,'' for procedures acceptable to the NRC staff for a licensee's review and approval of experiments performed at research reactor facilities. The NRC published RG 2.4 to endorse American National Standards Institute (ANSI) N401–1974 (American Nuclear Society (ANS) 15.6), ''Review of Experiments for Research Reactors,'' with exceptions and additional considerations, concerning performance of experiments which could be undertaken without affecting conditions of the facility license and thus could be performed without prior NRC approval. In 1982, ANS replaced the N401 (ANS 15.6) standard with ANS 15.1, ''American National Standard for the Development of Technical Specifications for Research Reactors.''

ANS 15.6 is no longer supported by ANS or available in print. RG 2.4 was written using the text of ANS 15.6 for reference, and because the standard no longer exists, the text within the RG no longer provides useful information.

II. Further Information

The withdrawal of RG 2.4 does not alter any prior or existing licensing commitments based on its use. Regulatory guides may be withdrawn when their guidance no longer provides useful information, or is superseded by technological innovations,

congressional actions, or other events. Currently, guidance applicable to experiments at research reactors can be found In RG 2.2, ''Development of Technical Specifications for Experiments in Research Reactors'' (ADAMS ML003740125) and also in NUREG–1537, ''Guidelines for Preparing and Reviewing Applications for the Licensing of Non-Power Reactors'' (ADAMS ML12251A353).

Regulatory guides are revised for a variety of reasons and the withdrawal of an RG should be thought of as the final revision of the guide. Although an RG is withdrawn, current licensees may continue to use it, and withdrawal does not affect any existing licenses or agreements. Withdrawal of a guide means that the guide should not be used for future NRC licensing activities. However, although a regulatory guide is withdrawn, changes to existing licenses can be accomplished using other regulatory products.

Dated at Rockville, Maryland, this 11th day of September, 2013.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Branch Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2013–23228 Filed 9–23–13; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70444; File No. SR–ICEEU–2013–12]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Clear Contracts Traded on ICE Endex

September 18, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 18, 2013, ICE Clear Europe Limited (''ICE Clear Europe'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II and III below, which Items have been prepared primarily by ICE Clear Europe. ICE Clear Europe filed the proposal pursuant to Section 19(b)(3)(A)(iii) [3] of the Act and Rule 19b–4(f)(4)(ii) [4] thereunder so that the proposal was effective upon filing with the Commission. 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

ICE Clear Europe has agreed to act as the clearing organization for futures and option contracts traded on the ICE Endex derivatives market. IntercontinentalExchange, Inc. together with Gasunie NV Nederlandse, a European gas infrastructure company, launched the ICE Endex market in March 2013. ICE Endex Derivatives B.V., which operates the relevant derivatives market, is based in Amsterdam, Netherlands and provides markets for trading continental European energy products, including natural gas and power derivatives, gas balancing markets and gas storage services. ICE Endex Derivatives B.V. holds a license to operate a regulated market in the Netherlands.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The ICE Endex contracts that are proposed to be cleared by ICE Clear Europe (the ''ICE Endex Contracts'') consist of energy futures and options, including futures and option contracts involving natural gas and power in the Dutch, Belgian and German markets. The clearing of ICE Endex Contracts will be supported by the F&O Guaranty Fund (and in particular the energy clearing segment of the F&O Guaranty Fund). ICE Clear Europe anticipates that the clearing of the ICE Endex contracts will initially require a de minimis change in the size of the F&O Guaranty Fund or the energy segment thereof, if indeed any change is actually required. In making this determination, ICE Clear Europe has considered and will continue to review a number of factors, including the anticipated volume and open interest in ICE Endex Contracts based on historical trading volume and open interest, expected market conditions in the relevant natural gas and power markets, the fact that clearing of ICE Endex Contracts is expected to be conducted by existing ICE Clear Europe Clearing Members, and the identity of such members, and the initial margin expected to be required in connection with the ICE Endex Contracts. In ICE Clear Europe's view, these factors, considered in light of ICE Clear Europe's overall energy clearing activities and Guaranty Fund methodology, indicate that the ICE Endex clearing activity will not require more than a de minimis change in the F&O Guaranty Fund. ICE Endex Contracts will be executed on or subject to the rules of the ICE Endex electronic trading system. ICE Clear Europe intends to commence clearing for the ICE Endex Contracts on 7 October, 2013.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The principal purpose of the changes is to implement a clearing relationship in which ICE Clear Europe will provide clearing services for energy futures and options contracts traded on the ICE Endex market. ICE Clear Europe submits revised Parts 1, 2, 4, 12 and new Part 20 of its Rules (along with other conforming and clarifying Rule amendments) and further amendments to the Delivery Procedures to reflect the operational delivery arrangements in relation to the referenced markets.

In Part 1 of the Rules, Rule 101 is modified to add new defined terms and revise existing definitions in connection with the ICE Endex clearing relationship, including designation of ICE Endex as a Market for which ICE Clear Europe provides clearing services and the addition of defined terms and other revisions to integrate ICE Endex Contracts into the existing ICE Clear Europe clearing framework for energy futures and options.

Part 2 of the Rules has been revised to require generally that a Clearing Member must be a member of ICE Endex in order to clear ICE Endex Contracts at ICE Clear Europe. In the case of FCM/BD Clearing Members, however, ICE Clear Europe will waive compliance with that requirement pursuant to Rule 110, in order to ensure that FCM/BD Clearing Members do not breach certain restrictions under the U.S. Commodity Exchange Act on direct access by U.S. persons to the ICE Endex market.[5] Although FCM/BD Clearing Members would be permitted to clear ICE Endex Contracts, they would be required to access the ICE Endex market itself through a non-U.S. ICE Endex member.

Changes to Part 4 of the Rules incorporate ICE Endex Contracts into the procedures for submission of contracts for clearing and creation of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(4)(ii).

[5] ICE Endex intends to apply for registration with the Commodity Futures Trading Commission as a Foreign Board of Trade. If such application is approved, direct access to ICE Endex by certain U.S. persons would be permitted, and FCM/BD Clearing Members would be expected to become members of ICE Endex at that time.

cleared contracts, as well as other relevant conforming changes.

The amendments also revise Part 12 of the Rules, which addresses UK Settlement Finality Regulations and the Companies Act 1989, to incorporate ICE Endex Contracts in the provisions addressing various categories of transfer orders under those regulations.

The amendments include a new Part 20 of the Rules, which adopts transitional provisions concerning the novation of open contracts with European Commodity Clearing A.G., which currently clears ICE Endex contracts, to ICE Clear Europe, under the new clearing relationship. New Part 20 also allows ICE Clear Europe to redesignate certain existing ICE Futures Europe Contracts as ICE Endex Contracts for purposes of the Rules, consistent with the plan of those markets to move trading in those contracts to ICE Endex.

The changes to the General Contract Terms and ICE OTC Contract Standard Contract Terms and Eligibility Criteria consist of conforming changes that reflect the addition of ICE Endex Contracts.

ICE Clear Europe also proposes to amend its Delivery Procedures to reflect the ICE Endex Contracts. The Delivery Procedures amendments will set forth specifications for delivery, including delivery standards and timing for delivery, documentation for delivery, security for delivery, and related matters.

2. Statutory Basis

ICE Clear Europe believes that the proposed rule changes are consistent with the requirements of Section 17A of the Act [6] and the regulations thereunder applicable to it, including the standards under Rule 17Ad–22.[7] The amendments will provide for clearing of ICE Endex Contracts by ICE Clear Europe, consistent with ICE Clear Europe's existing clearing arrangements and related financial safeguards, protections and risk management procedures, as discussed herein. The ICE Endex Contracts that will be cleared are energy futures and options contracts substantially similar to those currently traded on ICE Futures Europe and cleared by ICE Clear Europe. Acceptance of ICE Endex Contracts for clearing, on the terms and conditions set out in these rule amendments, will promote the prompt and accurate clearance of and settlement of securities transactions and derivative agreements, contracts and transactions cleared by ICE Clear Europe, the safeguarding of securities and funds in the custody or control of ICE Clear Europe and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.[8] Clearing of the ICE Endex Contracts will also satisfy the relevant requirements of Rule 17Ad–22,[9] as discussed below.

Financial Resources. ICE Clear Europe will apply its existing margin methodology for energy contracts to the new ICE Endex Contracts. ICE Clear Europe believes that this model will provide sufficient margin to cover the risks from clearing such contracts. In addition, ICE Clear Europe believes the F&O Guaranty Fund will provide sufficient additional financial resources to support the clearing of ICE Endex Contracts consistent with the requirements of Rule 17Ad–22(b)(2)–(3).[10] (ICE Clear Europe anticipates that clearing of the ICE Endex Contracts will initially require a de minimis change in the size of the F&O Guaranty Fund or the energy clearing segment thereof, if indeed any change is actually required.) The proposed amendments do not impact ICE Clear Europe's financial resources devoted to its security-based swap related (i.e., credit default swap) clearing business. ICE Clear Europe does not propose to alter the segment of the F&O Guaranty Fund that primarily supports the LIFFE contracts cleared by ICE Clear Europe.

Operational Resources. ICE Clear Europe will have the operational and managerial capacity to clear the ICE Endex Contracts as of the commencement of clearing, consistent with the requirements of Rule 17Ad–22(d)(4).[11] ICE Clear Europe believes that its existing systems are appropriately scalable to handle the additional ICE Endex Contracts, which are generally similar to the energy contracts currently cleared by ICE Clear Europe.

Participant Requirements. ICE Clear Europe believes that the rule amendments are consistent with the requirements of Rule 17Ad–22(d)(2) [12] to provide fair and open access through participation requirements that are objective and publicly disclosed. The amendments establish fair and objective criteria for the eligibility to clear ICE Endex Contracts. ICE Clear Europe clearing membership is available to participants that meet such criteria. ICE Clear Europe clearing members that wish to clear ICE Endex Contracts will have to satisfy the financial resources requirements to clear these products and continue to do so in order to preserve their eligibility to clear ICE Endex Contracts. Clearing member compliance with the requirements to clear ICE Endex Contracts will be monitored by ICE Clear Europe.

Settlement. ICE Clear Europe believes that the rule changes will be consistent with the requirements of Rule 17Ad–22(d)(5), (12) and (15) [13] as to the finality and accuracy of its daily settlement process and avoidance of the risk to ICE Clear Europe of settlement failures. ICE Clear Europe will use its existing settlement procedures, account structures and approved financial institutions as used in energy clearing for the ICE Endex Contracts. ICE Clear Europe believes that its Rules and procedures related to settlements (including physical settlements), as amended, appropriately identify and manage the risks associated with settlements under ICE Endex Contracts.

Default Procedures. ICE Clear Europe believes that the Rules and its relevant procedures allow for it to take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of clearing member insolvencies or defaults, including in respect of ICE Endex Contracts, in accordance with Rule 17Ad–22(d)(11).[14]

B. Self-Regulatory Organization's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed rule and procedure changes would have any impact, or impose any burden, on competition. ICE Endex is an established market for the ICE Endex Contracts, and ICE Clear Europe does not anticipate that its becoming the clearing house for the ICE Endex Contracts will adversely affect the trading market for those contracts on ICE Endex. Moreover, ICE Clear Europe has established fair and objective criteria for eligibility to clear ICE Endex Contracts, and accordingly ICE Clear Europe does not believe that the proposed rule changes will impose any burden on competition among clearing members.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, CDS Clearing Members or Others

Written comments relating to the proposed amendments have not been

[6] 15 U.S.C. 78q–1.

[7] 17 CFR 240.17Ad–22.

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 17 CFR 240.17Ad–22.

[10] 17 CFR 240.17Ad–22(b)(2)–(3).

[11] 17 CFR 240.17Ad–22(d)(4).

[12] 17 CFR 240.17Ad–22(d)(2).

[13] 17 CFR 240.17Ad–22(d)(5), (12) and (15).

[14] *Id.*

solicited or received. ICE Clear Europe will notify the Commission of any written comments received by ICE Clear Europe.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act [15] and Rule 19b–4(f)(4)(ii) [16] thereunder because it effects a change in an existing service of a registered clearing agency that primarily affects the operations of the clearing agency with respect to products that are not securities, including futures that are not security futures, swaps that are not security-based swaps or mixed swaps, and forwards that are not security forwards, and does not significantly affect any securities clearing operations of the clearing agency or any rights or obligations of the clearing agency with respect to securities clearing or persons using such securities clearing service. 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.

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–ICEEU–2013–12 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–ICEEU–2013–12. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings also will be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's Web site at *https://www.theice.com/notices/Notices.shtml?regulatoryFilings.*

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–ICEEU–2013–12 and should be submitted on or before October 15, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–23128 Filed 9–23–13; 8:45 am]

BILLING CODE 8011–01–P

[15] 15 U.S.C. 78s(b)(3)(A)(iii).

[16] 17 CFR 240.19b–4(f)(4)(ii).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70440; File No. SR–BYX–2013–032]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Eliminate References to Obsolete Functionality

September 18, 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 September 12, 2013, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange filed a proposal to eliminate reference to a Market Maker order functionality in Rule 11.8(e) that has now been retired by the Exchange.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

On August 29, 2012, the Commission approved BYX's proposed rule change to adopt a new Market Maker Peg Order functionality that was designed to replace the automated functionality (commonly referred to as the Market Maker Quoter) provided to Market Makers in Rule 11.8(e).[5] The Exchange originally adopted Rule 11.8(e) as part of an effort to address issues uncovered by the aberrant trading that occurred on

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] Securities Exchange Act Release No. 67755 (Aug. 29, 2012), 77 FR 54630 (Sept. 5, 2012) (SR–BYX–2012–012).

May 6, 2010.[6] The Market Maker Quoter functionality was designed to help Market Makers meet the enhanced obligations imposed on them post May 6, 2010[7] and avoid execution of Market Maker ''stub quotes'' in instances of aberrant trading.[8] Although the Market Maker Quoter was successful in allowing Exchange Market Makers to meet their enhanced obligations and in avoiding the deleterious effect on the markets caused by ''stub quote'' executions, the functionality presented difficulties to Market Makers in meeting their obligations under Rule 15c3–5 under the Act (the ''Market Access Rule'')[9] and Regulation SHO.[10]

The Exchange introduced the Market Maker Peg Order to simplify Market Maker compliance with the requirements of the Market Access Rule and Regulation SHO. The Market Maker Peg Order allows Market Makers to control the origination of their orders, as required by the Market Access Rule, while also allowing Market Makers to make marking and locate determinations prior to order entry, as required by Regulation SHO. As such, Market Makers are fully able to comply with the requirements of the Market Access Rule and Regulation SHO, as they would when placing any order, while also meeting their Exchange market making obligations.

Retirement of the Market Maker Quoter

At the time of Market Maker Peg Order rule filing and in the subsequent filing to amend the Market Maker Peg Order, the Exchange noted its intention to continue offering the Market Maker Quoter functionality for a three-month period after the implementation of the Market Maker Peg Order to afford Market Makers the opportunity to gradually transition away from the previous functionality.[11] Accordingly, the Exchange did not believe it appropriate to eliminate the language authorizing the Market Maker Quoter functionality immediately upon the Market Maker Peg Order's effectiveness. However, as of June 24, 2013, the Exchange decommissioned the Market Maker Quoter functionality pursuant to its transition plan. Thus, the Exchange is now proposing to delete Rule 11.8(e), which authorizes the functionality, and hold the rule number in reserve.≤

Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[12] Specifically, the proposal is consistent with Section 6(b)(5) of the Act,[13] which requires exchange rules to promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest. The Exchange believes that the proposed rule change fulfills these requirements because it deletes reference to a functionality that is now retired, thereby eliminating any investor uncertainty related to the status of this functionality. As noted in the Exchange's Market Maker Peg Order filing, the transition period during which both the Market Maker Quoter functionality and the Market Maker Peg Order were operational was designed to minimize the potential market impact caused by the implementation of the new order type.[14] The Exchange believes that deleting reference to the Market Maker Quoter functionality is now appropriate and in furtherance of the public interest given the passage of time since the Market Maker Peg Order became effective and the Market Maker Quoter was decommissioned.[15]

B. Self-Regulatory Organization's Statement on Burden on Competition

BYX believes the proposal is consistent with Section 6(b)(8) of the Act[16] in that it does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change will remove reference to a functionality that has already been retired. Moreover, given the fact that the Market Maker Quoter's replacement, the Market Maker Peg Order, has been effective and operational for many months, the Exchange does not believe removing reference to the retired functionality will have any impact on the current competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[17] and Rule 19b-4(f)(6) thereunder.[18]

The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the operative delay will allow the Exchange to quickly remove language in its rules that is not supported by any

[6] Securities Exchange Act Release No. 63342 (Nov. 18, 2010), 75 FR 71768 (Nov. 24, 2010) (SR–BYX–2010–001).

[7] *Id.*

[8] For each issue in which a market maker was registered, the Market Maker Quoter functionality optionally created a quotation for display to comply with market making obligations. Compliant displayed quotations were thereafter allowed to rest and were not adjusted unless the relationship between the quotation and its related national best bid or national best offer, as appropriate, either: (a) shrank to a specified number of percentage points away from the Designated Percentage towards the then current national best bid or national best offer, which number of percentage points was determined and published in a circular distributed to Members from time to time; or (b) expanded to within 0.5% of the applicable percentage necessary to trigger an individual stock trading pause, whereupon such bid or offer was cancelled and re-entered at the Designated Percentage away from the then current national best bid and national best offer, or if no national best bid or national best offer, at the Designated Percentage away from the last reported sale from the responsible single plan processor. Quotations independently entered by market makers were allowed to move freely towards the national best bid or national best offer, as appropriate, for potential execution. In the event of an execution against a quote generated pursuant to the Market Maker Quoter functionality, the Market Maker's quote was refreshed on the executed side of the market at the applicable Designated Percentage away from the then national best bid (offer), or if no national best bid (offer), the last reported sale. *See* Rule 11.8(e).

[9] 17 CFR 240.15c3–5.

[10] 17 CFR 242.200–242.204.

[11] *See* Securities Exchange Act Release No. 67382 (July 10, 2012), 77 FR 41842, 41843 (July 16, 2012) (SR–BYX–2012–012); Securities Exchange Act Release No. 69309 (Apr. 4, 2013), 78 FR 21455 (Apr. 10, 2013) (SR–BYX–2013–011).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] *See* Securities Exchange Act Release No. 67382 (July 10, 2012), 77 FR 41842 (July 16, 2012) (SR–BYX–2012–012).

[15] *See id.; see also* Securities Exchange Act Release No. 69309 (Apr. 4, 2013), 78 FR 21455 (Apr. 10, 2013) (SR–BYX–2013–011).

[16] 15 U.S.C. 78f(b)(8).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

functionality on the Exchange. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as doing so will allow the Exchange's rule text to reflect the its existing functionality, thereby helping to avoid any potential investor confusion. For this reason, the Commission designates the proposed rule change to be operative upon filing.[19]

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.

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–BYX–2013–032 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–BYX–2013–032. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal 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–BYX–2013–032, and should be submitted on or before October 15, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–23125 Filed 9–23–13; 8:45 am]

BILLING CODE 8011–01–P

[19] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70442; File No. SR–FINRA–2013–023]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change Relating to Amendments to the Code of Arbitration Procedure for Customer Disputes Concerning Panel Composition

September 18, 2013.

I. Introduction

On February 1, 2013, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change amending the Code of Arbitration Procedure for Customer Disputes (''Customer Code'') to simplify arbitration panel selection in cases with three arbitrators. Under the proposed rule change, FINRA would no longer require a customer to elect one of the two existing panel-selection methods. Instead, parties in all customer cases with three arbitrators would use the same selection method. Specifically, FINRA would provide all parties with lists of ten chair-qualified public arbitrators, ten public arbitrators, and ten non-public arbitrators. FINRA would permit the parties to strike four arbitrators on the chair-qualified public list and four arbitrators on the public list. However, any party could select an all-public arbitration panel by striking all of the arbitrators on the non-public list.

The proposed rule change was published for comment in the **Federal Register** on June 20, 2013.[3] The Commission received fifteen comment letters on the proposed rule change,[4] and, on August 7, 2013, received FINRA's response to the comments.[5] The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA, on the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room.

This order approves the proposed rule change.

II. Description of the Proposed Rule Change

A. Current Panel Composition Methods at the Forum

Under the Customer Code, parties in arbitration participate in selecting the arbitrators who serve on their cases. Until January 31, 2011, the Customer

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 69762 (June 13, 2013), 78 FR 37267 (June 20, 2013), (''Notice'').

[4] *See* Letters from Philip M. Aidikoff, Partner, Aidikoff, Uhl and Bakhtiari, dated July 10, 2013 (''Aidikoff Letter''); Ryan K. Bakhtiari, Aidikoff, Uhl and Bakhtiari, dated July 10, 2013 (''Bakhtiari Letter''); David T. Bellaire, Esq., Executive Vice President and General Counsel, Financial Services Institute, dated July 11, 2013 (''FSI Letter''); Steve A. Buchwalter, Attorney, dated July 10, 2013 (''Buchwalter Letter''); Steven B. Caruso, Esquire, Maddox Hargett Caruso, P.C., dated June 18, 2013 (''Caruso Letter''); George Friedman, Esq., dated June 25, 2013 (''Friedman Letter''); Glenn S. Gitomer, McCausland Keen & Buckman, dated July 11, 2013 (''Gitomer Letter''); Jill I. Gross, Investor Rights Clinic, Pace University School of Law, dated July 11, 2013 (''Pace Law Letter''); Scott C. Ilgenfritz, President, Public Investors Arbitration Bar Association, dated July 11, 2013 (''PIABA Letter''); Christine Lazaro, Esq., Acting Director, and Pamela M. Albanese, Legal Intern, St. John's University School of Law Securities Arbitration Clinic, dated July 9, 2013 (''St. John's Law Letter''); Seth E. Lipner, Professor of Law, Zicklin School of Business and Deutsch & Lipner, dated July 2, 2013 (''Lipner Letter''); David P. Neuman, Stoltmann Law Offices, dated July 2, 2013 (''Neuman Letter''); Mark E. Sanders, Attorney, dated July 11, 2013 (''Sanders Letter''); Debra G. Speyer, Esq., Law Offices of Debra G. Speyer, dated July 10, 2013 (''Speyer Letter''); and Leonard Steiner, Attorney, dated July 10, 2013 (''Steiner Letter'').

[5] Letter from Margo A. Hassan, Assistant Chief Counsel, FINRA Dispute Resolution, to Elizabeth M. Murphy, Secretary, Commission, dated August 7, 2013 (''FINRA Letter'').

Although the Speyer Letter was dated July 10, 2013, it was submitted on September 13, 2013. Since it supports the proposal, we have not asked FINRA for an additional response.

Code contained one panel composition method for cases with three arbitrators (generally cases with claims of more than $100,000).[6] This method provided for a panel composed of one chair-qualified public arbitrator, one public arbitrator, and one non-public arbitrator (the ''Majority Public Panel Option''). To begin the selection process, FINRA used its computerized Neutral List Selection System (''NLSS'') to generate random lists of ten arbitrators in each of the three categories. The parties selected their panel through a process of striking and ranking the arbitrators on the lists generated by NLSS. The Customer Code permitted the parties to strike the names of up to four arbitrators from each list. The parties then ranked the arbitrators remaining on the lists in order of preference. FINRA appointed the panel from among the names remaining on the lists that the parties returned.[7]

FINRA states that customer advocates argued that the mandatory inclusion of a non-public arbitrator in a three-arbitrator case raised a perception that FINRA Dispute Resolution's forum was not fair to customers. In order to address this perception, FINRA amended the panel composition rule (old FINRA Rule 12402), and related rules, of the Customer Code to, among other things, implement a new panel composition rule (current FINRA Rule 12403) for customer cases with three arbitrators.[8] Under FINRA Rule 12403, customers may choose between two panel composition methods: (1) The Majority Public Panel Option and (2) the all public panel option (the ''All Public Panel Option''), which allows any party to select an arbitration panel consisting of three public arbitrators.

If a customer choses the All Public Panel Option, FINRA sends the parties the same three lists of randomly generated arbitrators that they would have received under the Majority Public Panel Option (*i.e.,* ten chair-qualified public arbitrators, ten public arbitrators, and ten non-public arbitrators). However, Rule 12403 allows either or both parties to strike any or all of the arbitrators on the non-public arbitrator list. FINRA will not appoint a non-public arbitrator if either party individually or both parties collectively strike all the arbitrators appearing on the non-public list or if all remaining arbitrators on the non-public list are unable or unwilling to serve for any reason. In these situations, FINRA will select the next highest-ranked public arbitrator to complete the panel. In other words, if a customer chooses the All Public Panel Option, any party can ensure that the panel will have three public arbitrators by striking all the arbitrators on the non-public list.

FINRA Rule 12403 provides that a customer may choose a panel composition method in the statement of claim (or accompanying documentation) or at any time up to 35 days from service of the statement of claim. To make the customer aware of his or her available options, FINRA states that it generally notifies the customer in writing that he or she may elect the All Public Panel Option within 35 days from service of the statement of claim. In the absence of an affirmative choice by the customer, the Majority Public Panel Option is the default composition method.

B. Proposal to Use One Panel Composition Method at the Forum

Based on its experience with the two panel composition methods, FINRA is proposing to amend Rule 12403 to use one panel composition method in all customer cases.[9] That method would mirror the All Public Panel Option, with one clarifying change relating to striking and ranking arbitrators. Currently, Rule 12403(d)(3)(B)(i) provides that ''[e]ach separately represented party may strike up to four of the arbitrators from the chairperson and public arbitrator lists for any reason by crossing through the names of the arbitrators.'' FINRA is proposing to clarify that provision by amending it to state that ''[e]ach separately represented party may strike up to four of the arbitrators from the chairperson list and up to four of the arbitrators from the public arbitrator list for any reason by crossing through the names of the arbitrators.''

III. Discussion of Comment Letters and FINRA's Response

As noted above, the Commission received fifteen comment letters on the proposed rule change. Thirteen comment letters expressed support for the proposal, although two of these thirteen also raised specific concerns.[10] Two commenters opposed the proposal in part.[11] The comment letters and FINRA's response are summarized below.

Eleven commenters expressed support for the proposal.[12] In particular, one commenter expressed wholehearted support for the proposal.[13] Other commenters noted their support for making the All Public Panel Option the default option. For example, several commenters stated that making this method the default would relieve customers of the burden associated with affirmatively selecting an all public panel;[14] while others stated that making this method the default would protect investors with arbitration claims.[15] Other commenters expressly noted their support for implementing a single method of panel selection. For example, one commenter stated that implementing a single panel-selection method would benefit public investors and the integrity of the arbitration forum.[16] Another commenter stated that a single method would benefit public investors, particularly pro se claimants.[17]

One commenter generally supported the proposed rule change, but expressed concern that, if it was approved, FINRA would stop tracking the disparity in results between all public panels and those that include non-public arbitrators.[18] This commenter also suggested that FINRA amend the definition of ''public arbitrator'' to exclude attorneys who spend a

[6] *See* FINRA Rule 12401 which provides that if the amount of a claim is more than $100,000, exclusive of interest and expenses, or is unspecified, or if the claim does not request money damages, the panel will consist of three arbitrators, unless the parties agree in writing to one arbitrator.

[7] Under the Majority Public Panel Option, a customer can ensure the participation of a non-public arbitrator.

[8] *See* Exchange Act Rel. No. 63799 (Jan. 31, 2011), 76 FR 6500 (Feb. 4, 2011) (''2011 Order'') and Regulatory Notice 11–05 (Feb. 2011).

[9] In the Notice, FINRA represented that from February 1, 2011 (the date the current panel composition rule went into effect) through March 31, 2013, customers in approximately three-quarters of eligible cases have chosen the All Public Panel Option. Of the customers using the Majority Public Panel Option, 77 percent have done so by default rather than by making an affirmative choice (*i.e.,* these customers did not make an election in their statement of claim or accompanying documentation, and did not respond to the follow-up letter FINRA sent). FINRA also represented that over the same time period customers selecting the All Public Panel Option have chosen to strike all of the non-public arbitrators in 66 percent of the cases during the ranking process. Customers have ranked one or more non-public arbitrators in 34 percent of cases and four or more in 13 percent of cases proceeding under the All Public Panel Option. Industry parties have ranked one or more non-public arbitrators in 97 percent of cases and have ranked four or more non-public arbitrators in 90 percent of cases.

[10] *See* FSI Letter and PIABA Letter.

[11] *See* Friedman Letter and Pace Law Letter.

[12] *See* Aidikoff Letter, Bakhtiari Letter, Buchwalter Letter, Caruso Letter, Gitomer Letter, Lipner Letter, Neuman Letter, Sanders Letter, Speyer Letter, St. John's Law Letter, and Steiner Letter.

[13] *See* Buchwalter Letter.

[14] *See* Gitomore Letter, Lipner Letter, Neuman Letter, Speyer Letter, St. John's Law Letter, and Steiner Letter. *See also* Pace Law Letter.

[15] *See* Bakhtiari Letter and Sanders Letter.

[16] *See* Caruso Letter.

[17] *See* Aidikoff Letter.

[18] *See* FSI Letter (stating that ''all public panels deliver more favorable outcomes for investors than those panels with non-public arbitrators that understand the financial industry.'').

significant portion of their time representing investors and claimants in FINRA arbitrations. This commenter's suggestion would effectively prevent those attorneys from serving as ''public arbitrators'' on arbitration panels.[19]

FINRA responded that it will continue tracking award results separately for all public panels and majority public panels and will consider the cause for any disparity if the data suggest the need to do so. FINRA also stated that it is not proposing to amend its arbitrator definitions, and therefore believes that the commenter's suggestion is outside the scope of the proposed rule change. FINRA noted, however, that it is separately reviewing its non-public and public arbitrator definitions for potential changes, including whether to exclude attorneys who spend a significant portion of their time representing investors and claimants in FINRA arbitrations.

Another commenter also generally supported the proposed rule change.[20] This commenter also suggested that FINRA emphasize in its transmittal letter accompanying the arbitrator ranking form and the arbitrator disclosure reports that each party has the ability and right to have the case heard by an arbitration panel comprised of only public arbitrators. This commenter expressed the view that emphasizing the two alternative types of panels available under the revised rule and the ability and right of the parties to have their cases heard by an all-public panel would be appropriate and beneficial to investors.[21]

FINRA responded that it will revise the transmittal letter accompanying the arbitrator ranking form and the arbitrator disclosure reports to clarify earlier in the letter that any party has the option of selecting an all public panel.

Two commenters opposed the proposal, in part, because it would eliminate a customer's ability to ensure that a non-public arbitrator is empaneled.[22] Both commenters suggested that there may be circumstances in which a customer may want a non-public arbitrator on his or her panel. For example, one commenter noted that a customer may believe that a non-public arbitrator would be a better arbiter of the professional norms of the broker-dealer activity at issue in an arbitration.[23] Both commenters stated, however, that under the proposal a broker-dealer counterparty could frustrate a customer's objective by striking all ten names on the non-public arbitrators list. Alternatively, these commenters recommended (1) that FINRA retain the two current panel composition methods and (2) if the customer does not affirmatively opt out of the All Public Panel Option within 35 days, the default would be the All Public Panel Option instead of the current Majority Public Panel Option. The commenters expressed the belief that this method would preserve a customer's right to ensure the presence of a non-public arbitrator on his or her panel while addressing FINRA's concern about inexperienced parties inadvertently failing to exercise their right to elect the All Public Panel Option.[24]

FINRA acknowledged the commenters' concern that parties would no longer be guaranteed the option of having a non-public arbitrator on their panel.[25] FINRA noted, however, that forum users have not generally raised this concern with FINRA. In addition, FINRA stated that if either party or both parties strike all the names on the non-public arbitrators list, or if the non-public arbitrator they select is not available to serve, the parties can still agree to empanel a non-public arbitrator. In this situation, the parties could ask FINRA to send a supplemental list of non-public arbitrators for the parties' review. FINRA indicated that it would generally accommodate such requests.

FINRA agreed with commenters that the non-public arbitrators on its roster are capable of identifying and judging poor broker conduct.[26] However, FINRA stated that the public arbitrators on its roster are also capable of doing so. FINRA explained that both customer and firm representatives frequently use expert witnesses at a hearing. Accordingly, in FINRA's view, if a customer is concerned about whether an all public panel can properly identify poor broker conduct, he or she will generally already have access to an expert witness to testify about industry practices. FINRA stated that customers will rarely have to incur additional expenses related to the use of expert witnesses because of the proposed rule change. FINRA further indicated that the benefits of simplifying the panel selection method outweigh this potential for additional costs.

In sum, FINRA stated that based on its experience using the two panel selection methods, it believes that a simpler approach to panel selection would benefit all parties using its forum and would improve the efficiency of case administration. Therefore, FINRA declined to amend its proposal as suggested by the commenters.

IV. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change, the comments received, and FINRA's response. Based on its review, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities association.[27] In particular, the Commission finds that the proposed rule change is consistent with the provisions of Exchange Act Section 15A(b)(6),[28] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

More specifically, the Commission believes that the proposal is consistent with the provisions of Exchange Act Section 15A(b)(6) because it would (a) simplify the arbitrator selection process for all parties and FINRA staff while leaving in place the method used by customers in approximately three-quarters of customer cases since the method became effective; and (b) ensure that customers would not inadvertently miss the opportunity to select an all public panel because it would be the default option. In the 2011 Order, we noted commenter concerns that customers without attorneys, or attorneys new to the practice of securities arbitration, might not elect the All Public Panel Option within the prescribed deadline, or might not appreciate the significance of making such an election.[29] In light of those comments, FINRA implemented the notification procedure discussed earlier. As stated above, the proposed rule change would further ameliorate these concerns by making the All Public Panel Option the default option.

[19] *Id.*

[20] *See* PIABA Letter.

[21] *Id.*

[22] *See* Friedman Letter and Pace Law Letter.

[23] *See* Pace Law Letter.

[24] *Id.*

[25] *See* FINRA Letter. As stated above, under the All Public Panel Option, any party can ensure that the panel will have three public arbitrators by striking all the arbitrators on the non-public list.

[26] *See* Friedman Letter and Pace Law Letter.

[27] In approving the proposed rule change, the Commission has considered the impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[28] 15 U.S.C. 78o-3(b)(6).

[29] *Supra* note 8.

In addition, the Commission believes that the proposed rule change would not increase, and could decrease, the burden parties incur in panel selection. FINRA would continue to send the parties the same three lists of arbitrators. While the parties could choose to continue to review all three lists, they could also choose to strike all of the non-public arbitrators and only review the remaining two lists.

We appreciate the concerns of some commenters, and recognize that some customers may want to empanel a non-public arbitrator in a particular matter. Therefore, we are requesting FINRA to gather statistics for a period of one year from the effective date of this rule change and report to the Commission on the number of cases in which a customer ranking a non-public arbitrator nonetheless receives an all public panel.

For the reasons stated above, the Commission finds that the rule change is consistent with the Exchange Act and the rules and regulations thereunder.

V. Conclusion

It is therefore ordered, pursuant to Exchange Act Section 19(b)(2),[30] that the proposed rule change (SR–FINRA–2013–023) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–23127 Filed 9–23–13; 8:45 am]

BILLING CODE 8011–01–P

[30] 15 U.S.C. 78s(b)(2).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70441; File No. SR–BATS–2013–050]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Eliminate References to Obsolete Functionality

September 18, 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 September 12, 2013, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange filed a proposal to eliminate reference to a Market Maker order functionality in Rule 11.8(e) that has now been retired by the Exchange. The Exchange is also proposing to eliminate reference to BATS' TCP FAST PITCH, which is a data product that has also been discontinued by the Exchange.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Proposed Change to Rule 11.8

Background

On August 29, 2012, the Commission approved the Exchange's proposed rule change to adopt a new Market Maker Peg Order functionality that was designed to replace the automated functionality (commonly referred to as the Market Maker Quoter) provided to Market Makers in Rule 11.8(e).[5] The Exchange originally adopted Rule 11.8(e) as part of an effort to address issues uncovered by the aberrant trading that occurred on May 6, 2010.[6] The Market Maker Quoter functionality was designed to help Market Makers meet the enhanced obligations imposed on them post May 6, 2010 [7] and avoid execution of Market Maker ''stub quotes'' in instances of aberrant trading.[8] Although the Market Maker Quoter was successful in allowing Exchange Market Makers to meet their enhanced obligations and in avoiding the deleterious effect on the markets caused by ''stub quote'' executions, the functionality presented difficulties to Market Makers in meeting their obligations under Rule 15c3–5 under the Act (the ''Market Access Rule'') [9] and Regulation SHO.[10]

The Exchange introduced the Market Maker Peg Order to simplify Market Maker compliance with the requirements of the Market Access Rule and Regulation SHO. The Market Maker Peg Order allows Market Makers to control the origination of their orders, as required by the Market Access Rule, while also allowing Market Makers to make marking and locate determinations prior to order entry, as required by Regulation SHO. As such, Market Makers are fully able to comply with the requirements of the Market Access Rule and Regulation SHO, as they would when placing any order,

[5] Securities Exchange Act Release No. 67756 (Aug. 29, 2012), 77 FR 54633 (Sept. 5, 2012) (SR–BATS–2012–026).

[6] Securities Exchange Act Release No. 63255 (Nov. 5, 2010), 75 FR 69484 (Nov. 12, 2010) (SR–BATS–2010–025).

[7] *Id.*

[8] For each issue in which a market maker was registered, the Market Maker Quoter functionality optionally created a quotation for display to comply with market making obligations. Compliant displayed quotations were thereafter allowed to rest and were not adjusted unless the relationship between the quotation and its related national best bid or national best offer, as appropriate, either: (a) Shrank to a specified number of percentage points away from the Designated Percentage towards the then current national best bid or national best offer, which number of percentage points was determined and published in a circular distributed to Members from time to time; or (b) expanded to within 0.5% of the applicable percentage necessary to trigger an individual stock trading pause, whereupon such bid or offer was cancelled and re-entered at the Designated Percentage away from the then current national best bid and national best offer, or if no national best bid or national best offer, at the Designated Percentage away from the last reported sale from the responsible single plan processor. Quotations independently entered by market makers were allowed to move freely towards the national best bid or national best offer, as appropriate, for potential execution. In the event of an execution against a quote generated pursuant to the Market Maker Quoter functionality, the Market Maker's quote was refreshed on the executed side of the market at the applicable Designated Percentage away from the then national best bid (offer), or if no national best bid (offer), the last reported sale. *See* Rule 11.8(e).

[9] 17 CFR 240.15c3–5.

[10] 17 CFR 242.200–242.204.

while also meeting their Exchange market making obligations.

Retirement of the Market Maker Quoter

At the time of Market Maker Peg Order rule filing and in the subsequent filing to amend the Market Maker Peg Order, the Exchange noted its intention to continue offering the Market Maker Quoter functionality for a three-month period after the implementation of the Market Maker Peg Order to afford Market Makers the opportunity to gradually transition away from the previous functionality.[11] Accordingly, the Exchange did not believe it appropriate to eliminate the language authorizing the Market Maker Quoter functionality immediately upon the Market Maker Peg Order's effectiveness. However, as of June 24, 2013, the Exchange decommissioned the Market Maker Quoter functionality pursuant to its transition plan. Thus, the Exchange is now proposing to delete Rule 11.8(e), which authorizes the functionality, and hold the rule number in reserve.

Proposed Change to Rule 11.22

The Exchange is also proposing to delete reference to TCP FAST PITCH in Rule 11.22(b) because, as is made clear in the rule text of Rule 11.22, this data product was discontinued on August 1, 2011. Therefore, reference to the product within Exchange rules no longer serves any legitimate purpose.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[12] Specifically, the proposal is consistent with Section 6(b)(5) of the Act,[13] which requires exchange rules to promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest. The Exchange believes that the proposed rule changes fulfill these requirements because they delete references to a functionality and a data product that are now retired, thereby eliminating any investor uncertainty related to the status of this functionality and data product. Moreover, in relation to the elimination of references to the Market Maker Quoter functionality and as noted in the Exchange's Market Maker Peg Order filing, the transition period during which both the Market Maker Quoter functionality and the Market Maker Peg Order were operational was designed to minimize the potential market impact caused by the implementation of the new order type.[14] The Exchange believes that deleting reference to the Market Maker Quoter functionality is now appropriate and in furtherance of the public interest given the passage of time since the Market Maker Peg Order became effective and the Market Maker Quoter was decommissioned.[15]

B. Self-Regulatory Organization's Statement on Burden on Competition

BATS believes the proposal is consistent with Section 6(b)(8) of the Act[16] in that it does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule changes will remove references to a functionality and a data product that have already been retired. Moreover, with regard to deletion of references to the Market Maker Quoter, the Exchange does not believe removing reference to the retired functionality will have any impact on the current competitive environment given the fact that the Market Maker Quoter's replacement, the Market Maker Peg Order, has been effective and operational for many months. The Exchange also notes that deletion of the reference to TCP FAST PITCH will align BATS Exchange Rules with BATS Y-Exchange Rules as the related provision in the BATS Y-Exchange Rule Book has already been deleted.[17] Therefore, the Exchange does not believe these changes will have any effect on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[18] and Rule 19b–4(f)(6) thereunder.[19]

The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the operative delay will allow the Exchange to quickly remove language in its rules that is not supported by any functionality on the Exchange. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as doing so will allow the Exchange's rule text to reflect the its existing functionality, thereby helping to avoid any potential investor confusion. For this reason, the Commission designates the proposed rule change to be operative upon filing.[20]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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:

[11] *See* Securities Exchange Act Release No. 67381 (July 10, 2012), 77 FR 41829, 41843 (July 16, 2012) (SR–BATS–2012–026); Securities Exchange Act Release No. 69310 (Apr. 4, 2013), 78 FR 21447 (Apr. 10, 2013) (SR–BATS–2013–022).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] *See* Securities Exchange Act Release No. 67381 (July 10, 2012), 77 FR 41829 (July 16, 2012) (SR–BATS–2012–026).

[15] *See id.; see also* Securities Exchange Act Release No. 69310 (Apr. 4, 2013), 78 FR 21447 (Apr. 10, 2013) (SR–BATS–2013–022).

[16] 15 U.S.C. 78f(b)(8).

[17] *See* Securities Exchange Act Release No. 69891 (June 28, 2013), 78 FR 40529 (July 5, 2013) (SR–BYX–2013–022).

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[20] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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–BATS–2013–050 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–BATS–2013–050. 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 at 100 F Street NE., Washington, DC 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2013–050, and should be submitted on or before October 15, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–23126 Filed 9–23–13; 8:45 am]

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[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70445; File No. SR–NYSEMKT–2013–75]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Implement a One-Day Temporary Suspension of Those Aspects of Rules 36.20—Equities and 36.21—Equities That Would Not Permit Floor Brokers to Use Personal Portable Phone Devices on the Trading Floor Due to the Unavailability of Exchange-Provided Cell Phones on September 11, 2013

September 18, 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 September 12, 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 and II 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 a one-day temporary suspension of those aspects of Rules 36.20—Equities and 36.21—Equities that would not permit Floor brokers to use personal portable phone devices on the Trading Floor due to the unavailability of Exchange-provided cell phones on September 11, 2013. 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

The Exchange proposes to temporarily suspend on September 11, 2013 those aspects of Rules 36.20—Equities and 36.21—Equities that would not permit Floor brokers to use personal portable phone devices on the Trading Floor.[4] As proposed, all other aspects of Rule 36—Equities remain applicable and the temporary suspensions of the applicable Rule 36—Equities requirements are in effect only for September 11, 2013.[5]

On September 11, 2013, the third-party carrier that provides service for the Exchange-provided cell phones experienced an issue that affected Exchange authorized and provided portable phones for Floor brokers. This outage only impacted the service for Exchange authorized and provided portable phones. As a result, all Exchange authorized and provided cell phones were non-operational before the opening of trading on September 11, 2013. The issue was resolved before the close of trading on September 11, 2013.

Rules 36.20—Equities and 36.21—Equities govern the type of telephone communications that are approved for Floor brokers. Pursuant to Rule 36.20—Equities, Floor brokers may maintain a telephone line on the Trading Floor and use Exchange authorized and provided portable phones while on the Trading Floor. The use of such Exchange authorized and provided portable phones is governed by Rule 36.21—Equities. Because of the issues with the third-party carrier, all Exchange authorized and provided portable phones are not functional and therefore Floor brokers cannot use the Exchange authorized and provided portable phones. However, the personal cell phones of Floor brokers are operational on the Trading Floor. The Exchange believes that because communications with customers is a vital part of a Floor broker's role as agent and therefore contributes to maintaining a fair and orderly market, during the period when Exchange-provided cell phones are non-

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Pursuant to Rule 6A—Equities, the Trading Floor is defined as the restricted-access physical areas designated by the Exchange for the trading of securities.

[5] The Exchange provided Floor brokers with notice of this rule filing, including the applicable recordkeeping and other requirements related to using personal cell phones during the temporary suspension of Rule 36.

operational, Floor brokers should be permitted to use personal portable phone devices in lieu of the non-operational Exchange authorized and provided portable phones.

The Exchange therefore proposes to temporarily suspend the limitations in Rules 36.20—Equities and 36.21—Equities that permit Floor brokers to use only Exchange authorized and provided portable phones so that Floor brokers may also use personal portable phones on the Trading Floor. The Exchange proposes that pursuant to this temporary suspension, Floor brokers must provide the Exchange with the names of all Floor-based personnel who used personal portable phones during this temporary suspension period, together with the phone number and applicable carrier for each number. Floor broker member organizations must maintain in their books and records all cell phone records that show both incoming and outgoing calls that were made during the period that a personal portable phone was used on the Trading Floor. To the extent the records are unavailable from the third-party carrier, the Floor brokers must maintain contemporaneous records of all calls made or received on a personal portable phone while on the Trading Floor. As with all member organization records, such cell phone records must be provided to Exchange regulatory staff, including without limitation staff of the Financial Industry Regulatory Authority (''FINRA''), on request.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

In particular, because of issues experienced by a third-party cell phone carrier, Exchange authorized and provided cell phones are not functional. The Exchange believes that the proposed temporary suspensions from those aspects of Rule 36 that restrict Floor broker's use of personal portable phones on the Trading Floor removes impediments to and perfects the mechanism of a free and open market and national market system because the proposed relief will enable Floor brokers to conduct their regular business, notwithstanding the ongoing issues with telephone service. The Exchange further believes that without the requested relief, Floor brokers would be compromised in their ability to conduct their regular course of business on the Trading Floor. In particular, for Floor brokers, because they operate as agents for customers, their inability to communicate with customers could compromise their ability to represent public orders on the Trading Floor.

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 that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on competition because the proposed change only impacts Floor brokers and has no change in operations for other market participants or other market centers. To the contrary, the Exchange believes that without the proposed relief, Floor brokers would be compromised in their ability to conduct their regular course of business on the Trading Floor, thereby placing a burden on the Floor brokers' ability to compete.

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.

Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6)[12] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Waiver of the operative delay allows the terms of the relief described herein to be available on September 11, 2013, when the Exchange experienced the outage. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[14]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act[15] to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78s(b)(2)(B).

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–2013–75 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–2013–75.* 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–2013–75 and should be submitted on or before October 15, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–23145 Filed 9–23–13; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70446; File No. SR–NYSE–2013–61]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Implement a One-Day Temporary Suspension of Those Aspects of Rules 36.20 and 36.21 That Would Not Permit Floor Brokers To Use Personal Portable Phone Devices on the Trading Floor Due to the Unavailability of Exchange-Provided Cell Phones on September 11, 2013

September 18, 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 September 12, 2013, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to 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 a one-day temporary suspension of those aspects of Rules 36.20 and 36.21 that would not permit Floor brokers to use personal portable phone devices on the Trading Floor due to the unavailability of Exchange-provided cell phones on September 11, 2013. 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

The Exchange proposes to temporarily suspend on September 11, 2013 those aspects of Rules 36.20 and 36.21 that would not permit Floor brokers to use personal portable phone devices on the Trading Floor.[4] As proposed, all other aspects of Rule 36 remain applicable and the temporary suspensions of the applicable Rule 36 requirements are in effect only for September 11, 2013.[5]

On September 11, 2013, the third-party carrier that provides service for the Exchange-provided cell phones experienced an issue that affected Exchange authorized and provided portable phones for Floor brokers. This outage only impacted the service for Exchange authorized and provided portable phones. As a result, all Exchange authorized and provided cell phones were non-operational before the opening of trading on September 11, 2013. The issue was resolved before the close of trading on September 11, 2013.

Rules 36.20 and 36.21 govern the type of telephone communications that are approved for Floor brokers. Pursuant to Rule 36.20, Floor brokers may maintain a telephone line on the Trading Floor and use Exchange authorized and provided portable phones while on the Trading Floor. The use of such Exchange authorized and provided portable phones is governed by Rule 36.21. Because of the issues with the third-party carrier, all Exchange authorized and provided portable phones are not functional and therefore Floor brokers cannot use the Exchange authorized and provided portable phones. However, the personal cell phones of Floor brokers are operational on the Trading Floor. The Exchange believes that because communications with customers is a vital part of a Floor broker's role as agent and therefore contributes to maintaining a fair and orderly market, during the period when Exchange-provided cell phones are non-operational, Floor brokers should be permitted to use personal portable

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Pursuant to Rule 6A, the Trading Floor is defined as the restricted-access physical areas designated by the Exchange for the trading of securities.

[5] The Exchange provided Floor brokers with notice of this rule filing, including the applicable recordkeeping and other requirements related to using personal cell phones during the temporary suspension of Rule 36.

phone devices in lieu of the non-operational Exchange authorized and provided portable phones.

The Exchange therefore proposes to temporarily suspend the limitations in Rules 36.20 and 36. 21 that permit Floor brokers to use only Exchange authorized and provided portable phones so that Floor brokers may also use personal portable phones on the Trading Floor. The Exchange proposes that pursuant to this temporary suspension, Floor brokers must provide the Exchange with the names of all Floor-based personnel who used personal portable phones during this temporary suspension period, together with the phone number and applicable carrier for each number. Floor broker member organizations must maintain in their books and records all cell phone records that show both incoming and outgoing calls that were made during the period that a personal portable phone was used on the Trading Floor. To the extent the records are unavailable from the third-party carrier, the Floor brokers must maintain contemporaneous records of all calls made or received on a personal portable phone while on the Trading Floor. As with all member organization records, such cell phone records must be provided to Exchange regulatory staff, including without limitation staff of the Financial Industry Regulatory Authority (''FINRA''), on request.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

In particular, because of issues experienced by a third-party cell phone carrier, Exchange authorized and provided cell phones are not functional. The Exchange believes that the proposed temporary suspensions from those aspects of Rule 36 that restrict Floor broker's use of personal portable phones on the Trading Floor removes impediments to and perfects the mechanism of a free and open market and national market system because the proposed relief will enable Floor brokers to conduct their regular business, notwithstanding the ongoing issues with telephone service. The Exchange further believes that without the requested relief, Floor brokers would be compromised in their ability to conduct their regular course of business on the Trading Floor. In particular, for Floor brokers, because they operate as agents for customers, their inability to communicate with customers could compromise their ability to represent public orders on the Trading Floor.

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 that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on competition because the proposed change only impacts Floor brokers and has no change in operations for other market participants or other market centers. To the contrary, the Exchange believes that without the proposed relief, Floor brokers would be compromised in their ability to conduct their regular course of business on the Trading Floor, thereby placing a burden on the Floor brokers' ability to compete.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6)[12] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Waiver of the operative delay allows the terms of the relief described herein to be available on September 11, 2013, when the Exchange experienced the outage. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[14]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act[15] to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78s(b)(2)(B).

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–NYSE–2013–61 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–NYSE–2013–61.* 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–NYSE–2013–61 and should be submitted on or before October 15, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–23146 Filed 9–23–13; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SPECIAL INSPECTOR GENERAL FOR IRAQ RECONSTRUCTION

Final Listing of Audit and Other Reports Issued by SIGIR on Reconstruction Spending in Iraq

AGENCY: Special Inspector General for Iraq Reconstruction.

ACTION: Notice.

SUMMARY: Final listing of Audits and other reports issued by the Special Inspector General for Iraq Reconstruction (SIGIR) between 2004 and 2013.

DATES: September 24, 2013.

Authority: 5 U.S.C. app. 8G Note; Sec. 3001 of the Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004 Pub. L. 108–106, as amended by Pub. L. 108–375.

SUPPLEMENTARY INFORMATION: In November 2003, the U.S. Congress passed and the President signed into law the Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004 (Pub. L. 108–106). In addition to providing $18.4 billion for Iraq relief and reconstruction, the law also established the Inspector General of the Coalition Provisional Authority (CPA–IG) to oversee the handling and treatment of these funds. When the CPA–IG began work in early 2004, it was the only IG office within the U.S. government with oversight responsibilities encompassing several federal agencies.

The Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108–375), enacted October 28, 2004, redesignated the CPA–IG as the Special Inspector General for Iraq Reconstruction (SIGIR). Over time, the Congress expanded SIGIR's mission so that, by 2008, its mandate covered all reconstruction funds regardless of provenance. The enabling legislation required SIGIR to independently and objectively:

1. Conduct and supervise audits and investigations relating to the programs and operations funded with amounts appropriated or otherwise made available for the reconstruction of Iraq.
2. Provide advice and recommendations on policies designed to (A) promote economy, efficiency, and effectiveness in the administration of such programs and operations; and (B) prevent and detect waste, fraud, and abuse in such programs and operations.
3. Keep the Secretary of State and the Secretary of Defense fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress for corrective action.

By the end of fiscal year 2012, SIGIR's oversight jurisdiction had grown to more than $60 billion in U.S. funds appropriated or otherwise made available for Iraq relief and reconstruction. These taxpayer dollars flowed to a wide spectrum of initiatives, ranging from training Iraq's army and police to building large electrical, oil, and water projects; from supporting democracy-building efforts to strengthening budget execution by provincial councils; and from funding rule-of-law reforms to ensuring that the Iraqi government sustains what the U.S. program provided.

During most of its almost decade-long lifespan, SIGIR maintained the largest on-the-ground presence of any U.S. auditing or investigative agency operating in Iraq, with nearly 50 personnel working in country during peak operations. Three operational directorates accomplished the oversight work: Audits, Inspections, and Investigations. As of September 2013, SIGIR had issued 220 audit reports, issued 170 project assessments, and initiated 639 criminal investigations. SIGIR also issued 37 Quarterly Reports as well as 9 Lessons Learned reports, 3 special reports, and 1 evaluation report.

SIGIR's audits made 487 recommendations, questioned about $641 million in costs, and identified an additional $974 million in funds to be put to better use—a combined potential financial benefit of $1.61 billion. As of September 2013, the actual savings to the government from renegotiated contracts, refunds, and operational savings resulting from SIGIR findings had reached nearly $645 million.

SIGIR's investigations led to 112 indictments, 90 convictions, and more than $192 million in court-ordered fines, forfeitures, restitution payments, and other monetary penalties. SIGIR's investigative work also led to 139 debarments and 106 suspensions of contractors and government personnel for fraud or other corrupt practices.

Reports Issued by SIGIR

Audit Reports

13–006 Government Agencies Cannot Fully Identify Projects Financed with Iraq Relief and Reconstruction Funds 3/6/2013

13–005 Lessons Learned on the Department of Defense's Commander's Emergency Response Program in Iraq 1/24/2013

13–004 Lessons Learned from U.S. Agencies' Management of Iraqi Funds

for Relief and Reconstruction 1/22/2013
13–003 Development Fund for Iraq: U.S. Army Corps of Engineers Has Missing Receiving Reports and Open Task Orders 10/26/2012
13–002 Final Review of State Department's Management of Quick Response Funds in 2007 and 2008 10/26/2012
13–001 Sustaining the Progress Achieved by U.S. Rule of Law Programs in Iraq Remains Questionable 10/25/2012
12–020 Iraq Police Development Program: Lack of Iraqi Support and Security Problems Raise Questions about the Continued Viability of the Program 7/30/2012
12–019 Gaps in Business System Reviews of Contractors with Generally Less Than $100 Million Annually in Contracts in Iraq Increase U.S. Government Vulnerabilities to Fraud, Waste, and Abuse 7/30/2012
12–018 Status of Fiscal Years 2011–2012 Iraq Security Forces Fund 7/27/2012
12–017 Final Forensic Audit Report of Iraq Reconstruction Funds 7/13/2012
12–016 Interim Review of State Department's Progress in Implementing SIGIR Recommendations Addressing Quick Response Fund Management Controls 4/30/2012
12–013 Development Fund for Iraq: The Coalition Provisional Authority's Financial Controls for Electronic Fund Transfer Payments Diminished over Time 4/30/2012
12–015 Interim Report on Spend Plans for Fiscal Years 2011–2012 Iraq Security Forces Funds 4/26/2012
12–014 USACE Used or Deobligated Residual Funds on Terminated Contracts 4/18/2012
12–011 Few Contracts Terminated by the U.S. Army Corps of Engineers Resulted in Wasted Funds in Iraq 1/29/2012
12–009 The Department of State's Process To Provide Information on Reconstruction Projects to the Government of Iraq 1/29/2012
12–010 Status of Recommendations Made by the Special Inspector General for Iraq Reconstruction to the Department of Defense 1/27/2012
12–008 Development Fund for Iraq: Department of Defense Cannot Fully Account for the Funds It Used after the Coalition Provisional Authority Dissolved 1/27/2012
12–012 Development Funds for Iraq Returned to the Central Bank of Iraq 1/13/2012
12–007 Falluja Waste Water Treatment System: A Case Study in Wartime Contracting 10/30/2011
12–005 U.S. Central Command Contracting Command Had Few Contract Terminations That Resulted in Wasted Funds in Iraq 10/28/2011
12–002 Indirect Costs of Managing Private Security Contracts in Iraq 10/28/2011
12–004 Department of Defense Agencies Have Taken Action on Most Open Audit Recommendations 10/27/2011
12–003 Status of International Narcotics Control and Law Enforcement Funds Allocated for Iraq Reconstruction 10/27/2011
12–001 Development Fund for Iraq: The Coalition Provisional Authority Transferred Control over Most of the Remaining DFI Funds to the Central Bank of Iraq 10/26/2011
12–006 Iraqi Police Development Program: Opportunities for Improved Program Accountability and Budget Transparency 10/24/2011
11–022 Poor Government Oversight of Anham and Its Subcontracting Procedures Allowed Questionable Costs To Go Undetected 7/30/2011
11–023 Department of State Reports It Has Taken Action on Most Open Audit Recommendations, but Documentation Is Needed 7/29/2011
11–021 Management of the Iraq Commander's Emergency Response Program Needs To Be Improved (Interim Report) 7/29/2011
11–020 Commander's Emergency Response Program for 2011 Shows Increased Focus on Capacity Development 7/29/2011
11–019 Monitoring Responsibilities for Serious Incidents Involving Private Security Contractors Once U.S. Military Forces Leave Iraq Have Not Been Determined 7/29/2011
11–018 Control Weaknesses Remain in Oversight of Theater-wide Internal Security Services Contracts 7/28/2011
11–014 The Iraq Community Action Program: USAID's Agreement with CHF Met Goals, but Greater Oversight Is Needed 4/28/2011
11–016 USACE Is Meeting Customer Needs, but Documentation of Project Decisions Could Improve 4/27/2011
11–015 Gulf Region District Is Adjusting Its Aegis Security Contract Requirements for Changes in Reconstruction Activities in Iraq 4/27/2011
11–011 Quick Response Fund: Management Controls Have Improved, but Earlier Projects Need Attention 4/27/2011
11–017 USAID Is Responsive to SIGIR Recommendations 4/22/2011
11–013 Iraq Relief and Reconstruction Fund 2: Report on Apportionments, Expenditures, and Status at End of Fiscal Year 2010 4/22/2011
11–012 Commander's Emergency Response Program Obligations Are Uncertain 1/31/2011
11–008 Interim Report: Action Needed To Address Missing Iraq Transaction Data 1/28/2011
11–009 Iraqi Government Support for the Iraq International Academy 1/26/2011
11–007 Iraq Relief and Reconstruction Fund 1: Report on Apportionments, Expenditures, and Canceled Funds 1/25/2011
11–006 Forensic Audit Methodologies Used To Collect and Analyze Electronic Disbursement of Iraq Reconstruction Funds 10/28/2010
11–005 Iraq Reconstruction Funds: Forensic Audits Identifying Fraud, Waste, and Abuse—Interim Report #5 10/28/2010
11–004 Iraqi Security Forces: Special Operations Force Program Is Achieving Goals, but Iraqi Support Remains Critical to Success 10/25/2010
11–003 Iraqi Security Forces: Police Training Program Developed Sizeable Force, but Capabilities Are Unknown 10/25/2010
11–002 Guidance Needed for Use of Residual Iraqi Vested and Seized Asset Funds 10/15/2010
11–001 National Democratic Institute Grant's Security Costs and Impact Generally Supported, but Department of State Oversight Limited 10/13/2010
10–021 Plans To Preserve Iraq Reconstruction Program and Contract Records Need To Be Improved 7/30/2010
10–022 Improved Oversight Needed for State Department Grant to the International Republican Institute 7/29/2010
10–020 Development Fund for Iraq: Department of Defense Needs To Improve Financial and Management Controls 7/27/2010
10–019 Iraq Reconstruction Funds: Forensic Audits Identifying Fraud, Waste, and Abuse—Interim Report #4 7/26/2010
10–018 Most Iraq Economic Support Fund Appropriations Have Been Obligated and Liquidated 7/21/2010
10–015 Health Center Sustainment Contract Resulted in Some Repairs, but Iraqi Maintenance Capability Was Not Achieved 4/29/2010
10–017 Iraq Reconstruction Funds: Forensic Audits Identifying Fraud, Waste, and Abuse—Interim Report #3 4/28/2010
10–014 Process for Continuing Invoice Payment for the Development Fund for Iraq Needs Attention 4/27/2010
10–013 Commander's Emergency Response Program: Projects at

Baghdad Airport Provided Some Benefits, but Waste and Management Problems Occurred 4/26/2010
10–016 Most Iraq Security Forces Fund Appropriations Have Been Obligated 4/23/2010
10–009 Interim Report on Projects To Develop the Iraqi Special Operations Forces 3/25/2010
10–011 Iraq Reconstruction Funds: Forensic Audits Identifying Fraud, Waste, and Abuse—Interim Report #2 1/28/2010
10–007 Wamar International Successfully Completed Contracts, but Unanticipated Problems Affected Costs and Schedules 1/28/2010
10–012 Department of State Grant Management: Limited Oversight of Costs and Impact of International Republican Institute and National Democratic Institute Democracy Grants 1/26/2010
10–010 Department of State Contract To Study the Iraq Reconstruction Management System 1/26/2010
10–008 Long-Standing Weaknesses in Department of State's Oversight of DynCorp Contract for Support of the Iraqi Police Training Program 1/25/2010
10–005 Iraq Security Forces Fund: Weak Contract Oversight Allowed Potential Overcharges by AECOM To Go Undetected 10/30/2009
10–006 Development Fund for Iraq: Policy Guidance Needed To Enhance Accountability of USAGE-Managed Funds 10/29/2009
10–004 Iraq Reconstruction Funds: Forensic Audits Identifying Fraud, Waste, and Abuse—Interim Report #1 10/28/2009
10–003 Iraq Commanders Emergency Response Program Generally Managed Well, but Project Documentation and Oversight Can Be Improved 10/27/2009
10–002 Data Provided to the Government of Iraq on U.S. Reconstruction Projects Lacked Clarity 10/26/2009
10–001 Iraqi Security Forces Facilities: Environmental Chemical Corporation Projects Achieved Results but With Significant Cost Increases and Schedule Delays 10/22/2009
09–027 Developing a Depot Maintenance Capability at Taji Hampered by Numerous Problems 7/30/2009
09–024 Tikrit Location Command Project Achieving Contract Goals by Using Sound Management Practices 7/30/2009
09–023 Investigation and Remediation Records Concerning Incidents of Weapons Discharges by Private Security Contractors Can Be Improved 7/28/2009
09–022 Field Commanders See Improvements in Controlling and Coordinating Private Security Contractor Missions in Iraq 7/28/2009
09–026 Commanders Emergency Response Program: Hotel Construction Successfully Completed, but Project Management Issues Remain 7/26/2009
09–025 Commander's Emergency Response Program: Muhalla 312 Electrical Distribution Project Largely Successful 7/26/2009
09–021 and AUD/IQO–09–16 Joint Audit of Blackwater Contract and Task Orders for Worldwide Personal Protective Services in Iraq (with DoS OIG) 6/1/2009
09–019 Opportunities To Improve Processes for Reporting, Investigating, and Remediating Serious Incidents Involving Private Security Contractors in Iraq 4/30/2009
09–018 Information on Government of Iraq Contributions to Reconstruction Costs 4/29/2009
09–015 Construction of Primary Healthcare Centers Reported Essentially Complete, but Operational Issues Remain 4/29/2009
09–020 Provincial Reconstruction Teams: Developing a Cost-Tracking Process Will Enhance Decision-making 4/28/2009
09–016 Asset-Transfer Process for Iraq Reconstruction Projects Lacks Unity and Accountability 4/26/2009
09–014 Security Forces Logistics Contract Experienced Certain Cost, Outcome, and Oversight Problems 4/26/2009
09–017 Need To Enhance Oversight of Theater-wide Internal Security Services Contracts 4/24/2009
09–009 Full Impact of Department of Defense Program To Restart State-Owned Enterprises Difficult To Estimate 1/30/2009
09–011 Opportunities To Improve Management of the Quick Response Fund 1/29/2009
09–013 Provincial Reconstruction Teams' Performance Measurement Process Has Improved 1/28/2009
09–012 The U.S. Has Reduced Its Funding for the Iraqi Security Forces, but Continued Support Will Likely Be Necessary 1/26/2009
09–010 Oversight of Aegis's Performance on Security Services Contracts in Iraq With the Department of Defense 1/14/2009
09–008 Cost, Outcome, and Oversight of Iraq Oil Reconstruction Contract With Kellogg Brown & Root Services, Inc. 1/13/2009
09–005 Agencies Need Improved Financial Data Reporting for Private Security Contractors 10/30/2008
09–007 Improvements Needed in Reporting Status of Reconstruction Projects to Chief of Mission 10/29/2008
09–006 Status of Department of State Economic Support Fund Interagency Agreements With the U.S. Army Corps of Engineers in Iraq 10/28/2008
09–004 Iraq Reconstruction Project Terminations Represent a Range of Actions 10/27/2008
09–001 Opportunities To Enhance U.S. Democracy-Building Strategy for Iraq 10/22/2008
09–003 Cost, Outcome, and Oversight of Local Governance Program Contracts With Research Triangle Institute 10/21/2008
09–002 Challenges in Obtaining Reliable and Useful Data on Iraqi Security Forces Continue 10/21/2008
08–024 Information on a Special Department of Defense Program To Foster Economic Recovery in Iraq 7/29/2008
08–023 Anticorruption Efforts in Iraq: U.S. and Iraq Take Actions, but Much Remains To Be Done 7/29/2008
08–019 Outcome, Cost, and Oversight of the Security and Justice Contract With Parsons Delaware, Inc. 7/28/2008
08–020 Key Recurring Management Issues Identified in Audits of Iraq Reconstruction Efforts 7/27/2008
08–022 Government of Iraq Increasingly Funding Iraqi Security Forces Infrastructure Development, but Substantial U.S. Support Remains 7/26/2008
08–021 Comprehensive Plan Needed To Guide the Future of the Iraq Reconstruction Management System 7/25/2008
08–018 Outcome, Cost, and Oversight of Water Sector Reconstruction Contract With FluorAMEC, LLC 7/15/2008
08–011 Outcome, Cost, and Oversight of Electricity-Sector Reconstruction Contract With Perini Corporation 4/29/2008
08–017 Transferring Reconstruction Projects to the Government of Iraq: Some Progress Made but Further Improvements Needed To Avoid Waste 4/28/2008
08–013 Interim Report on Iraq Reconstruction Contract Terminations 4/28/2008
08–015 Interim Analysis of Iraqi Security Force Information Provided by the Department of Defense Report, Measuring Stability and Security in Iraq 4/25/2008
08–016 U.S. Anticorruption Efforts in Iraq: Progress Made in Implementing Revised Management Plan 4/24/2008
08–014 Progress on Recommended Improvements to Contract

Administration for the Iraqi Police Training Program 4/22/2008
08–012 Attestation to Development Fund for Iraq Cash in the Possession of the Joint Area Support Group-Central 3/13/2008
08–005 Differences in Services and Fees for Management and Administration of Iraq Reconstruction Contracts 1/29/2008
08–010 Outcome, Cost, and Oversight of Iraq Reconstruction Contract W914NS–04–D–0006 1/28/2008
08–007 Efforts To Implement a Financial-Management Information System in Iraq 1/25/2008
08–006 Commander's Emergency Response Program in Iraq Funds Many Large-Scale Projects 1/25/2008
08–009 Appropriate Award-Fee Conversion Scales Can Enhance Incentive for Contractor Performance 1/24/2008
08–008 U.S. Anticorruption Efforts in Iraq: Sustained Management Commitment Is Key to Success 1/24/2008
08–004 Outcome, Cost, and Oversight of Reconstruction of Taji Military Base and Baghdad Recruiting Center 1/15/2008
08–002 Logistics Civil Augmentation Program Task Orders 130 and 151: Program Management, Reimbursement, and Transition 10/30/2007
08–003 Review of the Use of Contractors in Managing Iraq Relief and Reconstruction Projects 10/29/2007
08–001 Interim Report on Efforts and Further Actions Needed To Implement a Financial Management Information System in Iraq 10/24/2007
07–010 Agency Management of the Closeout Process for Iraq Relief and Reconstruction Fund Contracts 10/24/2007
07–016 Interim Review of DynCorp International, LLC, Spending Under Its Contract for the Iraqi Police Training Program 10/23/2007
07–011 Controls Over Unliquidated Obligations in the Iraq Relief and Reconstruction Fund 10/23/2007
07–015 Review of the Effectiveness of the Provincial Reconstruction Team Program in Iraq 10/18/2007
07–005 Fact Sheet on Sources and Uses of U.S. Funding Provided in Fiscal Year 2006 for Iraq Relief and Reconstruction 7/27/2007
07–008 Fact Sheet on the Roles and Responsibilities of U.S. Government Organizations Conducting IRRF-Funded Reconstruction Activities 7/26/2007
07–003 Cost-To-Complete Reporting for Iraq Reconstruction Projects 7/26/2007
07–014 Status of the Provincial Reconstruction Team Program Expansion in Iraq 7/25/2007
07–009 Review of Bechtel's Spending under Its Phase II Iraq Reconstruction Contract 7/24/2007
07–007 Status of U.S. Government Anticorruption Efforts in Iraq 7/24/2007
07–001 Logistics Civil Augmentation Program Task Order 130: Requirements Validation, Government Oversight, and Contractor Performance 6/22/2007
07–013 Sustainment of the Advanced First Responder Network (Restricted) 4/27/2007
07–012 Review of Iraq Relief and Reconstruction Fund Unmatched Disbursements at the Department of State 4/26/2007
07–006 Management of the Commander's Emergency Response Program in Iraq for Fiscal Year 2006 4/26/2007
07–002 Status of the Advanced First Responder Network 4/25/2007
06–045 Status of Ministerial Capacity Development in Iraq 1/30/2007
06–044 Fact Sheet on Major U.S. Contractors' Security Costs Related to Iraq Relief and Reconstruction Fund Contracting Activities 1/30/2007
06–043 Review of Iraq Relief and Reconstruction Fund Unmatched Disbursements 1/30/2007
06–042 Fact Sheet on Major U.S. Contractors' Security Costs Related to Iraq Relief and Reconstruction Fund Contracting Activities (Restricted-Limited Distribution) 1/30/2007
06–040 Improper Obligations Using the Iraq Relief and Reconstruction Fund (IRRF 2) 1/30/2007
06–030 Status of Medical Equipment and Other Non-Construction Items Purchased for Primary Healthcare Centers 1/30/2007
06–029 Review of DynCorp International, LLC, Contract Number S–LMAQM–04–C–0030, Task Order 0338, for the Iraqi Police Training Program Support 1/30/2007
06–039 Review of USAID/Bechtel National, Inc., Property Management Controls for Contract SPU–C–00–04–00001–00 1/29/2007
06–036 Follow-Up on SIGIR Recommendations Concerning the Development Fund for Iraq (DFI) 1/29/2007
06–034 Status of the Provincial Reconstruction Team Program in Iraq 10/29/2006
06–033 Iraqi Security Forces: Weapons Provided by the U.S. Department of Defense Using the Iraq Relief and Reconstruction Fund 10/28/2006
06–032 Iraqi Security Forces: Review of Plans To Implement Logistics Capabilities 10/28/2006
06–031 Management of the Iraqi Interim Government Fund 10/27/2006
06–035 Interim Audit Report on Inappropriate Use of Proprietary Data Markings by the Logistics Civil Augmentation Program (LOGCAP) Contractor 10/26/2006
06–028 Review of Administrative Task Orders for Iraq Reconstruction Contracts 10/23/2006
06–038 Unclassified Summary of SIGIR's Review of Efforts To Increase Iraq's Capability To Protect Its Energy Infrastructure 9/27/2006
06–037 Interim Audit Report on Improper Obligations Using the Iraq Relief and Reconstruction Fund (IRRF 2) 9/22/2006
06–026 Review of the U.S. Agency for International Development's Management of the Basrah Children's Hospital Project 7/31/2006
06–025 Review of the Medical Equipment Purchased for the Primary Healthcare Centers Associated with Parsons Global Services, Inc., Contract Number W914NS–04–D–0006 7/28/2006
06–023 Changes in Iraq Relief and Reconstruction Fund Program Activities, January through March 2006 7/28/2006
06–021 Joint Survey of the U.S. Embassy-Iraq's Anticorruption Program 7/28/2006
06–020 Review of the Advanced First Responder Network 7/28/2006
06–019 Review of the Use of Definitization Requirements for Contracts Supporting Reconstruction in Iraq 7/28/2006
06–017 Transition of Iraq Relief and Reconstruction Fund Projects to the Iraqi Government 7/28/2006
06–014 Review of Efforts To Increase Iraq's Capability To Protect Its Energy Infrastructure (Classified) 7/27/2006
06–024 Joint Cash Count: Iraq National Weapons Card Program 7/26/2006
06–018 Survey of the Status of Funding for Iraq Programs Allocated to the Department of State's Bureau of International Narcotics and Law Enforcement Affairs as of December 31, 2005 7/1/2006
06–011 Management of the Primary Healthcare Centers Construction Projects 4/29/2006
06–007 U.S. Agency for International Development: Management of the Transfer of Iraq Relief and Reconstruction Fund Projects to the Iraqi Government 4/29/2006
06–006 Multi-National Security Transition Command-Iraq

Management of the Transfer of Iraq Relief and Reconstruction Fund Projects to the Iraqi Government 4/29/2006
06–015 Iraqi Armed Forces Seized Assets Fund: Review of Contracts and Financial Documents 4/28/2006
06–013 Briefing to the International Advisory and Monitoring Board for Iraq: Management Controls over the Development Fund for Iraq 4/28/2006
06–012 Development Fund for Iraq Cash Accountability Review: Joint Area Support Group-Central/Falluja 4/28/2006
06–010 Review of the Multi-National Security Transition Command-Iraq Reconciliation of the Iraqi Armed Forces Seized Assets Fund 4/28/2006
06–009 Review of Task Force Shield Programs 4/28/2006
06–008 Development Fund for Iraq Cash Accountability Review: Joint Area Support Group-Central 4/28/2006
06–005 Follow-up on Recommendations Made in SIGIR Audit Reports Related to Management and Control of the Development Fund for Iraq 4/28/2006
06–004 Changes in Iraq Relief and Reconstruction Fund Program Activities, October through December 2005 4/28/2006
06–003 Review of Data Entry and General Controls in the Collecting and Reporting of the Iraq Relief and Reconstruction Fund 4/28/2006
06–001 Management of Iraq Relief and Reconstruction Fund Program: The Evolution of the Iraq Reconstruction Management System 4/24/2006
06–016 Interim Audit Report on the Review of the Equipment Purchased for Primary Healthcare Centers Associated with Parsons Global Services, Contract Number W914NS–04–D–0006 4/4/2006
06–002 Prompt Payment Act: Analysis of Expenditures Made from the Iraq Relief and Reconstruction Fund 2/3/2006
05–027 Methodologies for Reporting Cost-To-Complete Estimates 1/27/2006
05–026 Fact Sheet on the Use of the $50 Million Appropriation To Support the Management and Reporting of the Iraq Relief and Reconstruction Fund 1/27/2006
05–029 Challenges Faced in Carrying Out Iraq Relief and Reconstruction Fund Activities 1/26/2006
05–028 GRD–PCO Management of the Transfer of IRRF-funded Assets to the Iraqi Government 1/24/2006
05–025 Management of the Commander's Emergency Response Program for Fiscal Year 2005 1/23/2006
05–024 Management of the Mansuria Electrical Reconstruction Project 1/23/2006
05–023 Management of Rapid Regional Response Program Contracts in South-Central Iraq 1/23/2006
05–020 Management of the Contracts, Grant, and Micro-purchases Used To Rehabilitate the Kerbala Library 10/26/2005
05–016 Management of the Contracts and Grants Used To Construct and Operate the Babylon Police Academy 10/26/2005
05–017 Award Fee Process for Contractors Involved in Iraq Reconstruction 10/25/2005
05–015 Management of Rapid Regional Response Program Grants in South-Central Iraq 10/25/2005
05–022 Managing Sustainment for Iraq Relief and Reconstruction Fund Programs 10/24/2005
05–021 Management of Iraq Relief and Reconstruction Fund Programs: Cost-to-Complete Estimate Reporting 10/24/2005
05–018 Management of Iraq Relief and Reconstruction Fund Program: Acquisition of Armored Vehicles Purchased Through Contract W914NS–05–M–1189 10/21/2005
05–014 Management of Commanders Emergency Response Program for Fiscal Year 2004 10/13/2005
05–019 Attestation Engagement Concerning the Award of Non-Competitive Contract DACA63–03–D–0005 to Kellogg Brown and Root Services, Inc. 9/30/2005
05–013 Controls over Equipment Acquired by Security Contractors 9/9/2005
05–011 Cost-to-Complete Estimates and Financial Reporting for the Management of the Iraq Relief and Reconstruction Fund 7/26/2005
05–010 Interim Briefing to the Project and Contracting Office-Iraq and the Joint Contracting Command-Iraq on the Audit of the Award Fee Process 7/26/2005
05–012 Policies and Procedures Used for Iraq Relief and Reconstruction Fund Project Management-Construction Quality Assurance 7/22/2005
05–009 Reconciliation of Reporting Differences of the Source of Funds Used on Contracts After June 28, 2004 7/8/2005
05–008 Administration of Contracts Funded by the Development Fund for Iraq 4/30/2005
05–007 Administration of Iraq Relief and Reconstruction Fund Contract Files 4/30/2005
05–006 Control of Cash Provided to South-Central Iraq 4/30/2005
05–005 Compliance with Contract No. W911S0–04–C–0003 Awarded to Aegis Defence Services Limited 4/20/2005
05–004 Oversight of Funds Provided to Iraqi Ministries through the National Budget Process 1/30/2005
05–003 Task Order 0044 of the Logistics Civilian Augmentation Program III Contract 11/23/2004
05–002 Accountability and Control of Materiel Assets of the Coalition Provisional Authority in Kuwait 10/25/2004
05–001 Coalition Provisional Authority Control of Appropriated Funds 10/22/2004
04–009 Coalition Provisional Authority Comptroller Cash Management Controls over the Development Fund for Iraq 7/28/2004
04–008 Coalition Provisional Authority Control Over Seized and Vested Assets 7/28/2004
04–004 Task Orders Awarded by the Air Force Center for Environmental Excellence in Support of the Coalition Provisional Authority 7/28/2004
04–013 Coalition Provisional Authority's Contracting Processes Leading Up to and Including Contract Award 7/27/2004
04–011 Audit of the Accountability and Control of Materiel Assets of the Coalition Provisional Authority in Baghdad 7/26/2004
04–007 Oil for Food Cash Controls for the Office of Project Coordination in Erbil, Iraq 7/26/2004
07–004 Transferring Iraq Relief and Reconstruction Fund Capital Projects to the Government of Iraq 7/25/2004
04–005 Award of Sector Design-Build Construction Contracts 7/23/2004
04–006 Corporate Governance for Contractors Performing Iraq Reconstruction Efforts 7/21/2004
04–003 Federal Deployment Center Forward Operations at the Kuwait Hilton 6/25/2004
04–002 Management of Personnel Assigned to the Coalition Provisional Authority in Baghdad, Iraq 6/25/2004
04–001 Coalition Provisional Authority Coordination of Donated Funds 6/25/2004

Inspections Reports

PA–09–189 Basrah Modern Slaughterhouse 4/27/2010
PA–09–190 Al Hadi Permanent Police Station, Basrah 4/21/2010
PA–09–186 Humer Kwer Health Center, Sulaymaniyah 4/20/2010
PA–09–192 Haditha Dam Perimeter Security 4/13/2010
PA–09–191 Al Qaim 33/11kV Electrical Mobile Substation 4/12/2010

PA–09–188 Thi Qar Bee Farm 4/1/2010
PA–09–172 Abu Ghraib Dairy 1/15/2010
PA–09–168 Renovation of the Tomb of the Unknown Soldier, Baghdad 1/14/2010
PA–09–183 Hammam Al Alil Regional Training Center, Mosul 1/13/2010
PA–09–173 Rabeaa Point of Entry Screening Facility 1/11/2010
PA–09–174 Hammam Al Alil Division Training Center, Mosul 1/7/2010
PA–09–177 Renovate and Expand Chamchamal Correctional Facility 10/22/2009
PA–09–178 Orphanage and Senior Citizen Assisted Living Center, Erbil 10/21/2009
PA–08–166 Secure Document Storage Facility, Baghdad 10/20/2009
PA–09–179 Abbatoir (Slaughterhouse) in Qaladze, Sulaymaniyah 10/16/2009
PA–09–182 Al Kasik Location Command 10/16/2009
PA–09–171 Ammana Market Renovation, Majjasim 7/30/2009
PA–08–160 Basrah Children's Hospital 7/28/2009
PA–08–164 4th Brigade, 10th Infantry Division Iraqi Army Headquarters Barracks, Missan 7/20/2009
PA–08–165 & 167 Missan Surgical Hospital, Under the Economic Support Fund, al-Amarah 7/16/2009
PA–09–170 Mujarrah Canal Bridge, Ramadi 7/14/2009
PA–08–162 Roll-On/Roll-Off Berth, Port of Umm Qasr 7/8/2009
PA–08–159 & 169 Basrah Courthouse Construction and Basrah Courthouse Witness Protection Facility 4/22/2009
PA–08–136 Renovation of the Khandek Intermediate School Under the Economic Support Fund Program, Yousefiya 4/21/2009
PA–08–158 Hai Tiseen Primary Healthcare Center, Tameem 4/16/2009
PA–08–140 Rebuilding of the Sagrah School Under the Commander's Emergency Response Program, Anbar 4/15/2009
PA–08–157 Shiqaq Hai MusaIla Primary Healthcare Center, Kirkuk 4/13/2009
PA–08–135 Rehabilitation of the Suroor Elementary School Under the Economic Support Fund, Husseiniya 4/7/2009
PA–08–134 Haditha Primary Health Care Center 1/28/2009
PA–08–153 Ramadi 132-Kilovolt Substation 1/27/2009
PA–08–152 Anbar Rule of Law/Judicial Complex, Ramadi 1/27/2009
PA–08–141 Al lqitadar School, Under the Commander's Emergency Response Program, Anbar 1/26/2009
PA–08–133 Heet Primary Healthcare Center 1/23/2009
PA–08–132 Haditha General Hospital, Under the Economic Support Fund Program 1/23/2009
PA–08–154 to 156 Plumbing Repairs at the Baghdad Police College 1/22/2009
PA–08–143 Sadr City R3 Water Treatment Plant, Baghdad 10/29/2008
PA–08–142 Al Shurhabil School, Under the Commander's Emergency Response Program, Anbar 1/21/2009
PA–08–149 to 151 Al Quds, Al Mualameen, and Al Faoo Schools, Under the Iraq-Commander's Emergency Response Program, Baghdad 10/29/2008
PA–08–144 to 148 Falluja Waste Water Treatment System 10/27/2008
PA–08–138 Kahn Bani Sa'ad Correctional Facility 7/25/2008
PA–08–137 Kirkuk to Baiji Pipeline Exclusion Zone-Phase 3, Kirkuk 7/24/2008
PA–08–139 Summary of Project Assessments Through April 2008 7/24/2008
PA–08–125 Al Kazim Water Supply, Nassiriya 7/23/2008
PA–08–124 Al Shofa Water Facility, Nassiriya 7/23/2008
PA–08–129 Al Ager Water Compact Unit, Nassiriya 7/22/2008
PA–08–127 33-Kilovolt Power Line, Nassiriya 7/22/2008
PA–07–116 Nassriya Water Treatment Plant 4/28/2008
PA–07–118.1 Repair of Al Ghazaliyah G–6 Sewage Lift Station Under the Commander's Emergency Response Program, Baghdad 4/22/2008
PA–08–121 Binaslawa Middle School, Under the Commander's Emergency Response Program, Erbil 4/21/2008
PA–08–120 Sarwaran Primary School, Under the Commander's Emergency Response Program, Erbil 4/21/2008
PA–08–131 Follow-Up on the Nassriya Prison Facility 4/17/2008
PA–08–123 Nassriya Prison Expansion 4/17/2008
PA–08–119 Refurbishment of the Kurdistan Regional Government Ministry of Interior Complex Under the Commander's Emergency Response Program, Erbil 4/17/2008
PA–07–118 Repair of Al Ghazaliyah G–7 Sewage Lift Station Under the Commander's Emergency Response Program, Baghdad 1/25/2008
PA–07–111 Rehabilitation of the Mansour Pump Station Under the Commander's Emergency Response Program, Baghdad 1/24/2008
PA–07–115 Erbil Police Academy, Under the Iraq Security Forces Fund 1/22/2008
PA–07–114 Iraqi Army Facilities, Under the Iraq Security Forces Fund, Diyanah and Debecha 1/17/2008
PA–07–112 Mahalla 824 Sewer Collapse Project, Under the Commander's Emergency Response Program, Baghdad 1/16/2008
PA–07–110 Al Escanddrona School, Under the Commander's Emergency Response Program, Baghdad 1/14/2008
PA–07–105 Relief and Reconstruction Funded Work at Mosul Dam 10/29/2007
PA–07–109 Bartilla Booster Pump Station Repair, Commander's Emergency Response Program, Ninewa 10/23/2007
PA–07–108 Bartilla New Road Paving, Commander's Emergency Response Program, Ninewa 10/23/2007
PA–07–107 Showairrej to Tak Harb Road Paving, Commander's Emergency Response Program, Ninewa 10/22/2007
PA–07–106 Right Bank Drinking Water Treatment Plant Rehabilitation, Commander's Emergency Response Program, Ninewa 10/22/2007
PA–07–101 & 104 Qudas Power Plant Turbine Restoration Project and Qudas Power Plant Expansion Project, Baghdad 10/19/2007
PA–07–099 Iraqi C–130 Base, Baghdad 7/24/2007
PA–07–103 Doura Power Station, Units 5 and 6, Baghdad 7/18/2007
PA–07–102 Ministry of Defense Building, Baghdad 7/17/2007
PA–07–098 Al Rasheed Brigade Set, Baghdad 7/17/2007
PA–07–096 Sadr City Al Qana'at Raw Water Pump Station, Baghdad 7/12/2007
PA–07–097 Baghdad International Airport Power System Enhancement, Baghdad 4/26/2007
PA–06–092 Gaugli-Ashur Police Station, Mosul 4/26/2007
PA–06–090 Iraqi Civil Defense Headquarters, Baghdad 4/26/2007
PA–06–080 Al Basrah Oil Terminal 4/26/2007
PA–06–091 Bab Shams Police Station, Mosul 4/25/2007
PA–06–087 & 088 Tallil Military Base, Camp Ur, Nassiriya 4/25/2007
PA–07–100 West Baghdad International Airport Special Forces Barracks, Baghdad 4/24/2007
PA–06–094 Erbil Maternity and Pediatric Hospital 4/19/2007
PA–06–089 Recruiting (Babil Volunteer) Center, Hilla 4/17/2007
PA–06–078.2 & 079.2 Baghdad Police College 1/29/2007
PA–06–077 402nd Battalion Iraqi Army Headquarters Barracks, Hilla 1/29/2007
PA–06–075 51st Brigade Iraqi Army Barracks, Hilla 1/29/2007
PA–06–074 Waste Water Treatment Plant, Al Kasik Military Training Base 1/29/2007

PA–06–082 to 086 Electrical Substation Sustainment, Basrah 1/10/2007
PA–06–065 Al Alwaiya Children's Hospital, Baghdad 1/10/2007
PA–06–076 Al Hillah Police Firing Range 1/8/2007
PA–06–071 Al Kasik Water Storage Tanks, Al Kasik Military Training Base 1/8/2007
PA–06–070 Dahuk Rehabilitation Center 1/8/2007
PA–06–064 Al Alwaiya Maternity Hospital, Baghdad 1/8/2007
PA–06–059 Thi Qar Village Roads, Segment 3 10/26/2006
PA–06–067 Baghdad Municipal Solid Waste Landfill 10/19/2006
PA–06–069 Al Kut Training Academy 10/18/2006
PA–06–073 Bab Eshtar Substation 11 kV Feeder Cable, Mosul 10/17/2006
PA–06–072 Ninewa Provincial Police Headquarters, Mosul 10/10/2006
PA–06–058 Baghdad Al Karkh Courthouse 10/10/2006
PA–06–078.1 & 079.1 Quick Reaction Report on the Baghdad Police College 9/27/2006
PA–06–066 Critical Care Unit, Ibn Al Bitar Hospital, Baghdad 9/12/2006
PA–06–063 & 05–013 to 05–014 Kirkuk to Baiji Pipeline Project 7/31/2006
PA–06–052 Summary Report-Ground Project Surveys for the Quarter Ended March 31, 2006 7/31/2006
PA–06–057 Baghdad Railway Station Rehabilitation 7/25/2006
PA–06–056 609th Iraqi National Guard Battalion Garrison, Thi Qar 7/25/2006
PA–06–054 Nasiriyah Prison Facility 7/24/2006
PA–06–053 Nasiriyah Fire Station 7/24/2006
PA–06–051 Police Station-Safwan IHP 404, Basrah 7/24/2006
PA–06–049 Basrah International Airport-Terminal and Tower Renovation 7/24/2006
PA–05–028 Umm Qasr Water Scheme 7/24/2006
PA–06–055 Muthanna Village Roads, Segment 4 6/30/2006
PA–06–050 Basrah International Airport-Air Side Power Supply to NAVAIDS and VISAIDS 6/30/2006
PA–06–042 to 046 Primary Health Care Centers Numbered KE–01, KE–02, KE–03, KE–04, and KE–05, Kirkuk 4/25/2006
PA–06–034 Mosul Air Traffic Control Tower and Navigational Aids 4/25/2006
PA–06–041 New 2nd Brigade Base, Kirkuk 4/20/2006
PA–06–048 Summary Report-Ground Project Surveys for the Quarter Ended December 31, 2005 4/13/2006
PA–06–040 Aviation Base Building, Kirkuk 4/12/2006
PA–06–039 Zakho Military Academy 4/12/2006
PA–06–037 Erbil City Transformers 4/12/2006
PA–06–036 Fire Station Construction, Ainkawa 4/12/2006
PA–06–038 Sheile Primary School, Dahuk 4/5/2006
PA–06–035 Ninewa Village Roads, Segment 3 4/5/2006
PA–05–012 Al Fatah River Crossing Tie-Ins 3/15/2006
PA–05–009 Shaft Al Arab Substation, Basrah 3/15/2006
PA–05–004 Al Sumelat Water Network 3/15/2006
PA–05–003 Al Nahrwan Water Supply Project 3/15/2006
PA–05–002 Al Wathba Water Treatment Plant, Baghdad 3/15/2006
PA–05–001 Al Wanda Water Treatment Plant, Baghdad 3/15/2006
PA–05–016 Hilla Maternity and Children's Hospital 3/13/2006
PA–05–020 Seif Sa'ad Police Station, Hilla 3/10/2006
PA–05–019 Babil Railway Station Rehabilitation, Hilla 3/10/2006
PA–05–008 Al Seraji Substation, Basrah 3/10/2006
PA–05–007 Al Kaffat Substation, Basrah 3/10/2006
PA–05–006 Hamdan Substation, Basrah 3/10/2006
PA–05–005 Al Hakamia Substation, Basrah 3/10/2006
PA–05–017 Hai Al Iman Clinic, Hilla 3/7/2006
PA–05–011 Kirkuk Canal Crossing 3/7/2006
PA–05–010 Al Fatah Pipe River Crossing 3/7/2006
PA–05–032 Police Academy, Hilla 1/31/2006
PA–05–029 Project Phoenix, Restore Qudas Gas Turbine Units to Operation, Baghdad 1/31/2006
PA–05–021 to 024 Border Forts Numbered 602, 604, 628, and 634, Sulaymaniyah 1/31/2006
PA–05–033 Kerbala Library 1/30/2006
PA–05–018 Special Weapons and Tactics (SWAT) Police Station, Hilla 1/30/2006
PA–05–027 Security Upgrades for the Port of Umm Qasr 1/27/2006
PA–05–025 Ammunition Supply Point, Umm Qasr 1/27/2006
SA–05–001 Pipeline River Crossing, Al Fatah 1/27/2006
PA–05–015 Al Balda Police Station, Hilla 1/27/2006
PA–05–026 Operation Center & Security Facilities Construction, Umm Qasr 1/26/2006

Lessons Learned Reports

Learning From Iraq: A Final Report From the Special Inspector General for Iraq Reconstruction 3/6/2013
Iraq Reconstruction: Lessons from Auditing U.S.-funded Stabilization and Reconstruction Activities 10/30/2012
Iraq Reconstruction: Lessons Learned from Investigations, 2004–2012 4/30/2012
Iraq Reconstruction: Lessons in Inspections of U.S.-funded Stabilization and Reconstruction Projects 12/21/2011
Applying Iraq's Hard Lessons to the Reform of Stabilization and Reconstruction Operations 2/24/2010
Hard Lessons: The Iraq Reconstruction Experience 1/22/2009
Iraq Reconstruction: Lessons in Program and Project Management 3/21/2007
Iraq Reconstruction: Lessons in Contracting and Procurement 7/21/2006
Iraq Reconstruction: Lessons in Human Capital Management 2/16/2006

Special Reports

Special Report No. 3 Interagency Rebuilding Efforts in Iraq: A Case Study of the Rusafa Political District 2/26/2013
Special Report No. 2 The Human Toll of Reconstruction or Stabilization during Operation Iraqi Freedom 7/27/2012
Special Report No. 1 Reconstruction Leaders' Perceptions of the Commander's Emergency Response Program in Iraq 4/30/2012

Evaluation Report

EV–10–002 Review of Major U.S. Government Infrastructure Projects in Iraq: Nassiriya and Ifraz Water Treatment Plants 10/28/2010

Quarterly Reports

From March 30, 2004, through September 9, 2013, SIGIR issued 37 Quarterly Reports to the United States Congress (including a Final Report) as required under Section 3001 of Public Law 108–106, as amended. The Quarterly Reports published on January 30 and July 30 of each year also satisfied the requirement for a Semiannual Report under the Inspector General Act of 1978, as amended.

Location of SIGIR Records After Closure

SIGIR was established as a temporary oversight agency and will cease operations on September 30, 2013. All of its published reports will continue to be available at *www.sigir.mil*, which will be hosted by the Government Printing Office and the University of

North Texas for an indefinite period. SIGIR's permanent records will be retired to the National Archives and Records Administration (NARA). SIGIR's temporary records will be transferred to the Washington Headquarters Service of the Department of Defense. All FOIA, Privacy Act, or other inquiries should be made to those agencies.

Dated: September 13, 2013.

Stuart W. Bowen, Jr.,

Special Inspection General for Iran Reconstruction.

[FR Doc. 2013–22971 Filed 9–23–13; 8:45 am]

BILLING CODE 3710–8N–M

DEPARTMENT OF STATE

[Public Notice 8481]

Shipping Coordinating Committee; Notice of Committee Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on Wednesday, November 6, 2013, in Room 5L18–01 of the United States Coast Guard Headquarters Building, 2703 Martin Luther King Jr. Ave SE., Washington, DC 20593. The primary purpose of the meeting is to prepare for the 27th Extraordinary Council Session, the 28th Assembly, and the 111th Council Session of the International Maritime Organization (IMO), to be held at the IMO Headquarters, United Kingdom, November 21–22; November 25–December 4; and, December 5, respectively.

The agenda items for C/ES 27, to be considered include:

—Adoption of the agenda
—Report of the Secretary-General on credentials
—Strategy, planning and reform
—Resource management
—Results-based budget for the 2014–2015 biennium
—Report on the 35th Consultative Meeting of Contracting Parties to the London Convention 1972 and the 8th Meeting of Contracting Parties to the 1996 Protocol to the London Convention
—Report of the Council to the Assembly on the work of the Organization since the twenty-seventh regular session of the Assembly
—Protection of vital shipping lanes
—Periodic review of administrative requirements in mandatory IMO instruments
—External relations
—Report on the status of the Convention and membership of the Organization
—Report on the status of conventions and other multilateral instruments in respect of which the Organization performs functions
—Supplementary agenda items, if any

The agenda items for A 28, to be considered include:

—Adoption of the agenda
—Election of the President and the Vice-Presidents of the Assembly
—Consideration of proposed amendments to the Rules of Procedure of the Assembly
—Application of Article 61 of the IMO Convention—Report of the Council to the Assembly on any requests by Members for waiver
—Establishment of committees of the Assembly
—Consideration of the reports of the committees of the Assembly
—Report of the Council to the Assembly on the work of the Organization since the twenty-seventh regular session of the Assembly
—Strategy, planning and reform
—Voluntary IMO Member State Audit Scheme
—Consideration of the reports and recommendations of the Maritime Safety Committee
—Consideration of the reports and recommendations of the Legal Committee
—Consideration of the reports and recommendations of the Marine Environment Protection Committee
—Consideration of the reports and recommendations of the Technical Co-operation Committee
—Consideration of the reports and recommendations of the Facilitation Committee
—Consideration of proposed amendments
—Report on the 2012 International Conference on the Safety of Fishing Vessels
—Progress report to the Assembly in compliance with resolution A.1043(27) on Periodic review of administrative requirements in mandatory IMO instruments
—Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 and the 1996 Protocol thereto: report on the performance of Secretariat functions and other duties
—Resource management
—Global maritime training institutions
—External relations
—Report on the status of the Convention and membership of the Organization
—Report on the status of conventions and other multilateral instruments in respect of which the Organization performs functions
—Election of Members of the Council, as provided for in Articles 16 and 17 of the IMO Convention
—Election of Members of the IMO Staff Pension Committee
—Date and place of the twenty-ninth regular session of the Assembly
—Supplementary agenda items, if any

No agenda has been published for C 111.

Members of the public may attend this meeting up to the seating capacity of the room. To facilitate the building security process, and to request reasonable accommodation, those who plan to attend should contact the meeting coordinator, LCDR Matt Frazee, by email at *matthew.p.frazee@uscg.mil*, or by phone at (202) 372–1376, not later than October 30, 7 days prior to the meeting. Requests made after October 30, 2013 might not be able to be accommodated. Please note that due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to the Headquarters building. The Headquarters building is accessible by taxi and privately owned conveyance (public transportation is not generally available). However, parking in the vicinity of the building is extremely limited. Additional information regarding this and other IMO SHC public meetings may be found at: *www.uscg.mil/imo*.

Dated: September 17, 2013.

Marc Zlomek,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 2013–23190 Filed 9–23–13; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 8479]

Notice of Proposal to Extend the *Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of Honduras Concerning the Imposition of Import Restrictions on Archaeological Material from the Pre-Columbian Cultures of Honduras*

The Government of the Republic of Honduras has informed the Government of the United States of America of its interest in an extension of the *Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of Honduras Concerning the Imposition of Import Restrictions on Archaeological Material from the Pre-Columbian Cultures of Honduras* (''MOU'').

Pursuant to the authority vested in the Deputy Secretary of State, and pursuant to the requirement under 19 U.S.C.

2602(f)(1), an extension of this MOU is hereby proposed.

Pursuant to 19 U.S.C. 2602(f)(2), the views and recommendations of the Cultural Property Advisory Committee regarding this proposal will be requested.

A copy of the MOU, the Designated List of restricted categories of material, and related information can be found at the following Web site: http://eca.state.gov/cultural-heritage-center.

Dated: September 16, 2013.

William J. Burns,

Deputy Secretary of State, Department of State.

[FR Doc. 2013–23191 Filed 9–23–13; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: National Air Tour Safety Standards

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. A final rule published on February 13, 2007 (72 FR 6883) set safety and oversight rules for a broad variety of sightseeing and commercial air tour flights. This final rule improved the overall safety of commercial air tours by requiring all air tour operators to abide by the safety provisions found in 14 CFR part 136.

DATES: Written comments should be submitted by November 25, 2013.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0717

Title: National Air Tour Safety Standards

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: This final rule set safety and oversight rules for a broad variety of sightseeing and commercial air tour flights. The FAA uses the information it collects and reviews to ensure compliance and adherence to regulations and, if necessary, take enforcement action on violators of the regulations.

Respondents: 3,480 pilots and air tour operators.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 10 minutes.

Estimated Total Annual Burden: 30,321 hours.

Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, AES–200, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on September 18, 2013.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2013–23225 Filed 9–23–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Domestic And International Flight Plans

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. Flight plan information is used to govern the flight of aircraft for the protection and identification of aircraft and property and persons on the ground.

DATES: Written comments should be submitted by November 25, 2013.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0026

Title: Domestic And International Flight Plans

Form Numbers: FAA forms 7233–1 and 7233–4.

Type of Review: Renewal of an information collection.

Background: Title 49 USC, paragraph 40103(b) authorizes regulations governing the flight of aircraft. 14 CFR part 91 prescribes requirements for filing domestic and international flight plans. Information is collected to provide services to aircraft inflight and protection of persons/property on the ground.

Respondents: Approximately 300,000 air carriers, operators and pilots.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 1–3 minutes.

Estimated Total Annual Burden: 287,447 hours.

Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, AES–200, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on September 18, 2013.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2013–23226 Filed 9–23–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Physiological Training

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. This report is necessary to establish qualifications of eligibility to receive voluntary physiological training with the US Air Force and will be used as proper evidence of training. The information is collected from pilots and crewmembers for application to receive voluntary training.

DATES: Written comments should be submitted by November 25, 2013.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0101

Title: Physiological Training

Form Numbers: AC Form 3150–7.

Type of Review: Renewal of an information collection.

Background: The submission of this application information is authorized by the Federal Aviation Reauthorization Act 1996. The collection of information is necessary to determine if the applicants meet the qualifications for training under the FAA/USAF training agreement. The information is used by the Aeromedical Education Division (AAM–400) to determine if the applicant is qualified to receive physiological training.

Respondents: An estimated 5,500 pilots and crewmembers.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 8 minutes.

Estimated Total Annual Burden: 733 hours.

Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, AES–200, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on September 18, 2013.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2013–23251 Filed 9–23–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Verification of Authenticity of Foreign License, Rating, and Medical Certification

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The information is used to identify airmen to allow the agency to verify their foreign license being used to qualify for a US certificate. Respondents are holders of foreign licenses wishing to obtain US certificates.

DATES: Written comments should be submitted by November 25, 2013.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0724.

Title: Verification of Authenticity of Foreign License, Rating, and Medical Certification.

Form Numbers: FAA Form 8060–71.

Type of Review: Renewal of an information collection.

Background: The information collected is used to properly identify airmen to allow the agency to verify their foreign license being used to qualify for a U.S. certificate. The respondents are holders of foreign licenses wishing to obtain a U.S. certificate. A person who is applying for a U.S. pilot certificate/rating on the basis of a foreign-pilot license must apply for verification of that license at least 90 days before arriving at the designated FAA FSDO where the applicant intends to receive the U.S. pilot certificate.

Respondents: Approximately 8,700 foreign applicants for U.S. certificates annually.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 10 minutes

Estimated Total Annual Burden: 1,450 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, AES–200, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on September 18, 2013.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2013–23249 Filed 9–23–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Extended Operations (ETOPS) of Multi-Engine Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of

Management and Budget (OMB) approval to renew an information collection. A final rule published on January 16, 2007 (72 FR 1807) codified previous practices that permitted certificated air carriers to operate two-engine airplanes over long-range routes. The FAA uses this information collection to ensure that aircraft for long range flights are equipped to minimize diversions, to preclude and prevent diversions in remote areas, and to ensure that all personnel are trained to minimize any adverse impacts of a diversion.

DATES: Written comments should be submitted by November 25, 2013.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0718

Title: Extended Operations (ETOPS) of Multi-Engine Airplanes

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: The final rule codified the previous practices that permitted certificated air carriers to operate two-engine airplanes over these long-range routes and extended the procedures for extended operations to all passenger-carrying operations on routes beyond 180 minutes from an alternate airport. This option is voluntary for operators and manufacturers. The FAA uses this information collection to ensure that aircraft for long range flights are equipped to minimize diversions, to preclude and prevent diversions in remote areas, and to ensure that all personnel are trained to minimize any adverse impacts of a diversion.

Respondents: 18 operators and manufacturers.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 7 hours.

Estimated Total Annual Burden: 253,384 hours.

Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, AES–200, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on September 18, 2013.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2013–23224 Filed 9–23–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2013–42]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before October 15, 2013.

ADDRESSES: You may send comments identified by Docket Number FAA–2013–0680 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Theresa White, ANM–113, Standardization Branch, Transport Airplane Directorate, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057; email: *theresa.j.white@faa.gov;* (425) 227–2956; Andrea Copeland, ARM–208, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; email: *andrea.copeland@faa.gov;* (202) 267–3664.

This notice is published pursuant to 14 CFR 11.85.

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

Brenda D. Courtney,

Acting Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2013–0680.

Petitioner: Jamco America Inc.

Section of 14 CFR Affected:

25.785(d), 25.807(c)(1), 25.807(c)(5), 25.809(f)(1), 25.813(b), 25.857(e), and 25.1447(c)(1).

Description of Relief Sought:

The petitioner requests relief to allow interior modifications to a Dubai Air Wing Boeing Model 747–412F (Freighter), serial number 28032, to increase the number of persons carried on the upper deck from 8 to a maximum of 19. Fifteen will be qualified as supernumeraries occupying the main deck with access to the main deck cargo compartment in flight and during taxi, takeoff, and landing. The petitioner proposes to use the exit on the main deck of the airplane for emergency evacuation.

[FR Doc. 2013–22999 Filed 9–23–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2013–0028]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under Supplementary Information. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on March 5, 2013. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by October 24, 2013.

ADDRESSES: You may send comments within 30 days to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA–2013–0028.

FOR FURTHER INFORMATION CONTACT: Lafayette Melton, 202–366–2907, Office of Human Resources, Corporate Recruitment and Career Entry Division, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: DOT–FHWA Summer Transportation Internship Program for diverse Groups (STIPDG).

Background: 23 USC 140 (b) Section 5204—Training and Education/Surface Transportation Workforce Development, Training, and Education states that subject to project approval by the Secretary, a State may obligate funds apportioned to the State for five primary core programs (STP, NHS, Bridge, IM, CMAQ), workforce development, training, and education, including student internships; university or community college support; and outreach to develop interest and promote participation in surface transportation careers. The Summer Transportation Internship Program for Diverse Groups (STIPDG) is an important part of U.S. DOT's intermodal effort to promote the entry of women, persons with disabilities, and members of diverse groups into transportation careers where traditionally these groups have been under-represented. Accordingly, The Federal Highway Administrations' Office of Civil rights will continue to actively support the STIPDG by working closely with FHWA's Office of Human Resources, specifically the Student Outreach and Career Entry Group, which has responsibility for administering the program, to include participation and placement of college students, DOT-wide, and for all occupational disciplines, to include summer intern placement DOT-wide and nationwide.

The STIPDG accepts approximately 500 applications each year and as a result, places as few and 60 and as many as 120 undergraduate, graduate, and law students in transportation-related, non-administrative, technical, hands-on assignments with a Federal or State mentor providing on-the- job training. The STIPDG provides college students with an opportunity to work on current transportation-related topics and issues identified in, or directly pertaining to, the current DOT Strategic Plan. The STIPDG is open to all qualified applicants regardless of race, color, religion, sex, national origin, political affiliation, sexual orientation, marital status, disability, age, membership in an employee organization, or other non-merit factor.

The STIPDG is open to all applicants based on the eligibility requirements that follow and based on the merit of the ''Required Documents'' listed in bulleted-format below

1. Applicants must be currently enrolled in degree-granting programs of study at accredited U.S. institutions of higher education recognized by the U.S. Department of Education.

2. Undergraduate applicants must *be juniors or seniors for the fall of 2013.* Undergraduate applicants from Junior, Tribal, or Community Colleges *must have completed their first year*

3. Law Applicants must be *entering their second or third year of law school in the fall of 2013.*

4. Applicants who are scheduled to graduate during the coming spring or summer semesters are not eligible for consideration for the STIPDG *unless:* (1) they have been accepted for graduate school enrollment; (2) they have been accepted for enrollment at an institution of higher education; or (3) their acceptance is pending. *In all instances, the applicant must submit with their completed application packages, documentation (with the school's logo) reflecting their status.* (There will be no exceptions.)

5. Former STIPDG interns may apply but will not receive preferential consideration.

6. Applicants will be evaluated based on the ''completeness of the application and the Required Documents'' listed below. Priority will be given to those with GPA's of 3.0 or better (for the Major and/or cumulatively).

7. Applicants must be available and able to participate in the entire 10-week program.

Respondents: Approximately 500 applicants consisting of undergraduate, graduate and law students. All applicants must be U.S. Citizens.

Frequency: Annually.

Estimated Average Burden per Response: Approximately two hours to complete and submit the application.

Estimated Total Annual Burden Hours: Approximately 1000 hours annually.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49CFR 1.48.

Issued On: September 13, 2013.

Michael Howell,

Information Collection Officer.

[FR Doc. 2013–23215 Filed 9–23–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. 2013–0036]

Notice of Request for the Extension of a Currently Approved Information Collection

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to renew the following information collections: 49 U.S.C. Section 5339—Alternatives Analysis Program; Over-the-Road Bus (OTRB) Accessibility Program.

DATES: Comments must be submitted before November 25, 2013.

ADDRESSES: To ensure that your comments are not entered more than once into the docket, submit comments identified by the docket number by only one of the following methods:

1. *Web site: www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site. (Note: The U.S. Department of Transportation's (DOT's) electronic docket is no longer accepting electronic comments.) All electronic submissions must be made to the U.S. Government electronic docket site at *www.regulations.gov.* Commenters should follow the directions below for mailed and hand-delivered comments.

2. *Fax:* 202–493–2251.

3. *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: You must include the agency name and docket number for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA has received your comments, include a self-addressed stamped postcard. Note that all comments received, including any personal information, will be posted and will be available to Internet users, without change, to *www.regulations.gov.* You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000, (65 FR 19477), or you may visit *www.regulations.gov.* Docket: For access to the docket to read background documents and comments received, go to *www.regulations.gov* at any time. Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: 49 U.S.C. 5339—Alternative Analysis Program—Mr. Eric Hu, FTA Office of Program Management (202) 366–0870, or email: *Eric.hu@dot.gov.*

Over the Road Bus (OTRB) Accessibility Program—Élan Flippin, FTA Office of Program Management (202) 366–2053 or email: *elan.flippin@dot.gov.*

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Title: 49 U.S.C. Section 5339—Alternatives Analysis Program (*OMB Number: 2132–0571*)

Background: Under Section 3037 of the Safe, Accountable, Flexible, Efficient Transportation Act—A Legacy for Users (SAFETEA–LU), the Alternatives Analysis Program (49 U.S.C. 5339) provides grants to States, authorities of the States, metropolitan planning organizations, and local government authorities to develop studies as part of the transportation planning process. The purpose of the Alternatives Analysis Program is to assist in financing the evaluation of all reasonable modal and multimodal alternatives and general alignment options for identified transportation needs in a particular, broadly defined travel corridor. The transportation planning process of Alternatives Analysis includes an assessment of a wide range of public transportation or multimodal alternatives, which will address transportation problems within a corridor or subarea; provides ample information to enable the Secretary to make the findings of project justification and local financial commitment; supports the selection of a locally preferred alternative; and enables the local Metropolitan Planning Organization to adopt the locally preferred alternative as part of the long-range transportation plan. FTA intends to evaluate program implementation by collecting information such as project milestones and financial status reports.

Respondents: State and local government and Metropolitan Planning Organizations.

Estimated Annual Burden on Respondents: 18 hours for each of the respondents.

Estimated Total Annual Burden: 383 hours.

Frequency: Annual.

Title: Over the Road Bus (OTRB) Accessibility Program (*OMB Number: 2132–0570*)

Background: The Over-the-Road Bus (OTRB) Accessibility Program is authorized under section 3038 of the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–85, as amended by the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Public Law 109–059, August 10, 2005. OTRBs are used in intercity fixed route service as well as other services, such as commuter, charter and tour bus services. These services are an important element of the U.S. transportation system. TEA–21 authorized FTA's OTRB Accessibility Program to assist OTRB operators in complying with the Department's OTRB Accessibility regulation, ''Transportation for Individuals with Disabilities'' (49 CFR part 37, subpart H). The legislative intent of this grant program is to increase the number of wheelchair accessible OTRBs available to persons with disabilities throughout the country.

Respondents: Charter/tour service operators, fixed route companies, small mixed service operators.

Estimated Annual Burden on Respondents: 8 hours for each of the respondents.

Estimated Total Annual Burden: 800 hours.

Frequency: Annual.

Signed: September 17th 2013.

Susan Camarena,

Acting Deputy Associate Administrator for Administration.

[FR Doc. 2013–23110 Filed 9–23–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2013 0107]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel CAROL LYNN; 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 October 24, 2013.

ADDRESSES: Comments should refer to docket number MARAD–2013–0107. 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 CAROL LYNN is:

Intended Commercial Use of Vessel: ''Six Pack Charter Fishing''

Geographic Region: ''Alaska (excluding waters in Southeastern Alaska and waters North of a line between Gore Point to Cape Suckling [including the North Gulf Coast and Prince William Sound]). Will be operating mainly out of Homer, AK.''

The complete application is given in DOT docket MARAD–2013–0107 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: September 16, 2013.

Christine Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. 2013–23158 Filed 9–23–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2013 0104]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel PHANTOM; 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 October 24, 2013.

ADDRESSES: Comments should refer to docket number MARAD–2013–0104. 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 PHANTOM is:

Intended Commercial Use of Vessel: ''Private Vessel Charters, Passengers Only''

Geographic Region: ''Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, California, Oregon, Washington, and Alaska (excluding waters in Southeastern Alaska and waters North of a line between Gore Point to Cape Suckling [including the North Gulf Coast and Prince William Sound]).''

The complete application is given in DOT docket MARAD–2013–0104 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: September 16, 2013.

Christine Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. 2013–23157 Filed 9–23–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2013 0105]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel ALL GOOD; 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 October 24, 2013.

ADDRESSES: Comments should refer to docket number MARAD–2013–0105. 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 ALL GOOD is:

INTENDED COMMERCIAL USE OF VESSEL: ''Carrying up to six passengers for day trips, sunset cruises, weekend and full week.''

GEOGRAPHIC REGION: ''Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, Florida''

The complete application is given in DOT docket MARAD–2013–0105 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: September 16, 2013.

Christine Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. 2013–23150 Filed 9–23–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2013 0106]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel DRUMBEAT; 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 October 24, 2013.

ADDRESSES: Comments should refer to docket number MARAD–2013–0106. 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 DRUMBEAT is:

Intended Commercial Use Of Vessel: ''Private Vessel Charters, Passengers Only''

Geographic Region: ''Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, California, Oregon, Washington, and Alaska (excluding waters in Southeastern Alaska and waters North of a line between Gore Point to Cape Suckling [including the North Gulf Coast and Prince William Sound]).''

The complete application is given in DOT docket MARAD–2013–0106 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: September 16, 2013.

Christine Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. 2013–23183 Filed 9–23–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2013–0210, Notice No. 13–16]

Safety Advisory: Unauthorized Marking of Compressed Gas Cylinders

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Safety Advisory Notice.

SUMMARY: PHMSA is issuing this safety advisory to notify the public of the unauthorized marking of high pressure compressed gas cylinders by Beauchesne Fire Equipment located at 21 Freeman St. Attleboro Falls, MA.

FOR FURTHER INFORMATION CONTACT: Chris Michalski, Senior Hazardous Materials Investigator, Eastern Region, Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 820 Bear Tavern Road, Suite 306, West Trenton, NJ 08034. Telephone: (609) 989–2256, Fax: (609) 989–2277 or, via email: *chris.michalski@dot.gov*

SUPPLEMENTARY INFORMATION: Agents from the U.S. DOT Inspector General's Office in Cambridge, MA, with assistance from a PHMSA investigator from the Eastern Region Field Operations Office, recently conducted an investigation into allegations that Beauchesne Fire Equipment (BFE) represented high pressure DOT specification and special permit cylinders as requalified in accordance with the Hazardous Materials Regulations (HMR; 49 CFR Part 171–180) without conducting the required hydrostatic testing. The investigation revealed that BFE marked approximately 5,900 high pressure compressed gas cylinders with test dates and Requalifier Identification Number (RIN) H557 in 2011 and 2012 without conducting the prescribed hydrostatic testing of these cylinders.

On May 14, 2013, Aaron Beauchesne, the owner of BFE, pleaded guilty in the U.S. District Court, District of Massachusetts to violating the Federal hazardous materials transportation law (49 U.S.C. 5101–5128) relating to testing and requalification of compressed gas cylinders.

A cylinder requalification consisting of a visual inspection and a hydrostatic test, conducted as prescribed in the HMR, is used to verify the structural integrity of a cylinder. If the requalification is not performed in accordance with the HMR, a cylinder with compromised structural integrity may be returned to service when it is not safe or authorized for use. Extensive property damage, serious personal injury, or death could result from rupture of a cylinder.

On September 18, 2013, PHMSA terminated the RIN Approval H557 issued to Beauchesne Fire Equipment. Any cylinder stamped with the RIN H557 with a test date in 2011 or 2012 should be considered unsafe and not authorized to be filled with hazardous material unless the cylinder is first properly visually examined and hydrostatically tested by an individual or company authorized to requalify DOT specification cylinders. Cylinders described in this safety advisory that are filled with an atmospheric gas should be vented or otherwise safely discharged. Cylinders that are filled with a material other than an atmospheric gas should not be vented, but instead should be safely discharged. Prior to refilling, the cylinders must be taken to a DOT-authorized cylinder requalifier to ensure their suitability for continued service. A list of authorized requalifiers may be obtained at this Web site: *http://www.phmsa.dot.gov/hazmat/regs/sp-a/approvals/cylinders.*

Issued in Washington, DC, on September 18, 2013.

R. Ryan Posten,

Deputy Associate Administrator for Hazardous Materials Safety.

[FR Doc. 2013–23104 Filed 9–23–13; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2013–0195, Notice No. 13–12]

Safety Advisory: Unauthorized Filling of Compressed Gas Cylinders

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Safety Advisory Notice.

SUMMARY: This is to notify the public that PHMSA has confirmed that Komer Carbonic Corp., 12120 Cloverdale Street, Detroit, MI 48021, improperly filled and offered for transportation high pressure compressed gas cylinders (DOT Specification 3A, 3AA and 3AL) without verifying that they met the appropriate safety requirements for continued use. The US DOT PHMSA was alerted on July 5, 2013 and verified on July 9, 2013 that Komer Carbonic

Corp. filled and transported compressed gas cylinders without verifying their suitability for continued service. Komer Carbonic Corp. fills and offers cylinders containing Carbon dioxide, for restaurants and other establishments.

FOR FURTHER INFORMATION CONTACT: Komer Carbonic Corp.: Mr. Dave Bamford, President or Mr. Mike Bamford, Vice President, 12120 Cloverdale Street, Detroit, MI 48204, Telephone 313–931–7373, to arrange for the return of these empty cylinders.

SUPPLEMENTARY INFORMATION: As a result of an extensive investigation of cylinder fillers in the Detroit Metropolitan area, PHMSA determined that Komer Carbonic Corp. improperly filled various types of high pressure US DOT cylinders with compressed gases without verifying that they met the appropriate safety requirements for continued use. US DOT Cylinders filled with carbon dioxide must be successfully requalified through a visual inspection and a pressure test at least once every 5 years. Cylinders that are not properly requalified as required may not possess the structural integrity to safely contain their contents under pressure during normal transportation and use. Extensive property damage, serious personal injury, or death could result from a rupture of a cylinder.

Because Komer Carbonic Corp. did not ensure their cylinders were requalified prior to filling them, and the potential exists for a catastrophic failure, PHMSA questions the condition of all of the cylinders owned and filled by Komer Carbonic Corp. in the past 5 years. These cylinders should be considered unsafe and unauthorized for the filling of hazardous material unless and until they are first subjected to a visual inspection and pressure test by an individual or company authorized by DOT to requalify DOT specification cylinders. Anyone who had their carbonated beverage service cylinders filled or provided by Komer Carbonic Corp. is advised to remove these cylinders from service immediately and contact a cylinder filler to have the cylinders depressurized. Komer Carbonic Corp. will contact their customers with further instructions on returning the empty cylinders.

Issued in Washington, DC, on September 18, 2013.

R. Ryan Posten,

Deputy Associate Administrator for Hazardous Materials Safety.

[FR Doc. 2013–23080 Filed 9–23–13; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2010–52

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2010–52, Extension of the Amortization Period.

DATES: Written comments should be received on or before November 25, 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 revenue procedure should be directed to LaNita Van Dyke at Internal Revenue Service, room 6511, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Lanita.VanDyke@irs.gov*

SUPPLEMENTARY INFORMATION:

Title: Extension of the Amortization Period.

OMB Number: 1545–1890.

Revenue Procedure Number: Revenue Procedure 2010–52.

Abstract: Revenue Procedure 2010–52 describes the procedure by which the plan sponsor of a multiemployer pension plan my request and obtain approval of an extension of an amortization period in accordance with section 431(d) of the Code. Rev. Proc. 2008–67 superseded. Rev. Proc. 2010–4 modified.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, and farms.

Estimated Number of Respondents: 25.

Estimated Annual Average Time Per Respondent: 100 hours.

Estimated Total Annual Hours: 2,500.

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: August 30, 2013.

R. Joseph Durbala,

IRS Tax Analyst.

[FR Doc. 2013–23116 Filed 9–23–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8453–EMP, Form 8453–F, Form 8453–FE, Form 8879–F, and 8879–EMP.

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 8453–F, U.S. Estate of Trust Income Tax Declaration and Signature for Electronic and Magnetic Made Filing; Form 8453–FE, U.S. Estate or Trust Declaration and Signature for an IRS e-file Return; Form 8453–EMP, Employment Tax Declaration for an IRS e-file Return; Form 8879–EMP, IRS e-file Signature Authorization for Forms 940, 941, 941–PR, 941–SS, 943, 943–PR, 944, and 945; and Form 8879–F, IRS e-file Signature Authorization for Form 1041.

DATES: Written comments should be received on or before November 25, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Gerald J. Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224 or through the Internet at *Gerald.J.Shields@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Employment Tax Declaration for an IRS e-file Return.

OMB Number: 1545–0967.

Form Numbers: 8453–EMP.

Abstract: This process would allow CI, Exam, Audit, and other IRS employees' immediate access to the signature document (tax return), instead of submitting a manual request for the document and waiting for someone to manually search, find, and copy/fax/mail the document to them. Data will be used to verify and affirm the 94X series of forms (excluding the amended series of returns) taxpayer's signature. The expected respondents will be taxpayers, who file a 94X series of form.

Title: U.S. Estate of Trust Income Tax Declaration and Signature for Electronic and Magnetic Media Filing.

OMB Number: 1545–0967.

Form Numbers: 8453–F.

Abstract: This form is used to secure taxpayer signatures and declarations in conjunction with electronic or magnetic media filing of trust and fiduciary income tax returns, Form 8453–F, together with the electronic or magnetic media transmission, will comprise the taxpayer's income tax return (Form 1041).

Title: U.S. Estate or Trust Declaration and Signature for an IRS e-File Return.

OMB Number: 1545–0967.

Form Numbers: 8453–FE.

Abstract: This is a new form for the SB/SE division of the IRS. It is very similar to existing IRS Form 8453–F, U.S. Estate or Trust Income Tax Declaration and Signature for Electronic Filing. This form will only be used as a signature letter to Form 1041.

This new form was requested by the Mod-E file division of the IRS, and approved by the SB/SE. It is used as an electronic signature letter for Form 1041, whenever Form 1041 is filed electronically. Form 8453–FE is associated with E-file, while Form 8453–F is associated with Legacy. For 2013, both forms will be used. However, in the future, Form 8453–F will be retired when Legacy is no longer used by the IRS. The authorizing statue is 26 USC Section 7502, Electronic Filing.

Title: IRS e-file Signature Authorization for Form 1041.

OMB Number: 1545–0967.

Form Number: 8879–F.

Abstract: This form has been created to provide e-file signature authorization for Form 1041 to foster IRS policy promoting e-filing of returns. The form is necessary to support modernized e-file initiatives. This form will reduce paper processing and handling of forms 1041, schedule K–1 (Form 1041), and related forms and schedules.

Title: IRS e-file Signature Authorization for Forms 940, 941, 941–PR, 941–SS, 943, 943–PR, 944, and 945.

OMB Number: 1545–0967.

Form Number: 8879–EMP.

Abstract: This process would allow CI, Exam, Audit, and other IRS employees' immediate access to the signature document (tax return), instead of submitting a manual request for the document and waiting for someone to manually search, find, and copy/fax/mail the document to them. Data will be used to verify and affirm the 94X series of Forms (excluding the amended series of returns) taxpayer's signature. Form 8879–EMP will enable an ERO to file and sign electronically.

Current Actions: There are changes being made to the information collection at this time.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals, or households.

Estimated Number of Respondents: 2,000.

Estimated Time Per Respondent: 53 minutes.

Estimated Total Annual Burden Hours: 1,750.

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: August 27, 2013.

Allan M. Hopkins,

Tax Analyst.

[FR Doc. 2013–23120 Filed 9–23–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 3911

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 3911, Taxpayer Statement Regarding Refund.

DATES: Written comments should be received on or before November 25, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Gerald J. Shields, LL.M. at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224 or through the internet at *Gerald.J.Shields@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Taxpayer Statement Regarding Refund.

OMB Number: 1545–1384.

Form Number: 3911.

Abstract: Form 3911 is used by taxpayers to notify the IRS that a tax refund previously claimed has not been received. The form is normally completed by the taxpayer as the result of an inquiry in which the taxpayer claims non-receipt, loss, theft, or destruction of a tax refund and IRS research shows that the refund has been issued. The information on the form is needed to clearly identify the refund to be traced.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 200,000.

Estimated Time Per Response: 5 minutes.

Estimated Total Annual Burden Hours: 16,600.

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: September 11, 2013.

Allan M. Hopkins,

Tax Analyst.

[FR Doc. 2013–23123 Filed 9–23–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1041–ES

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 1041–ES, Estimated Income Tax for Estates and Trusts.

DATES: Written comments should be received on or before November 25, 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 LaNita Van Dyke at Internal Revenue Service, Room 6511, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Estimated Income Tax for Estates and Trusts.

OMB Number: 1545–0971.

Form Number: Form 1041–ES.

Abstract: Internal Revenue Code section 6654(1) imposes a penalty on trusts, and in certain circumstances, a decedent's estate, for underpayment of estimated tax. Form 1041–ES is used by the fiduciary to make the estimated tax payments. The form provides the IRS with information to give estates and trusts proper credit for estimated tax payments.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and Businesses or other for-profit organizations.

Estimated Number of Respondents: 1,200,000.

Estimated Time per Respondent: 2 hours, 38 minutes.

Estimated Total Annual Burden Hours: 3,161,236.

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: August 30, 2013.

R. Joseph Durbala,

Tax Analyst.

[FR Doc. 2013–23117 Filed 9–23–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request: Furnishing Identifying Number of Tax Return Preparer

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 furnishing identifying number of tax return preparer.

DATES: Written comments should be received on or before November 25, 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 LaNita Van Dyke, at Internal Revenue Service, Room 6511, 1111 Constitution Avenue NW., Washington DC 20224, or through the Internet, at *Lanita.VanDyke@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Furnishing Identifying Number of Tax Return Preparer.

OMB Number: 1545–2176.

Regulation Project Number: TD 9501.

Abstract: This document contains final regulations under section 6109 of the Internal Revenue Code that provide guidance to tax return preparers on furnishing an identifying number on tax returns and claims for refund of tax that they prepare. The final regulations describe how the IRS will define the identifying number of tax return preparers. Additional provisions of the final regulations provide that tax return preparers must apply for and regularly renew their preparer identifying number as the IRS may prescribe in forms, instructions, or other guidance.

Current Actions: There are no changes being made to the regulation at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, Business or other for-profit organizations.

Estimated Number of Respondents: 1,200,000.

Estimated Total Annual Burden Hours: 300,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 18, 2013.

R. Joseph Durbala,

Tax Analyst.

[FR Doc. 2013–23119 Filed 9–23–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for the EFTPS Primary Contact Information Change Form

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning the EFTPS Primary Contact Information Change Form.

DATES: Written comments should be received on or before November 25, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Gerald J. Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224 or through the Internet at *Gerald.J.Shields@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: EFTPS Primary Contact Information Change Form.

OMB Number: 1545–2100.

Form Number: N/A.

Abstract: EFTPS is a service offered free by the U.S. Department of the Treasury to help business and individual taxpayers conveniently pay all their federal taxes electronically. Currently taxpayers can only obtain the Primary Contact Information Form by calling EFTPS Customer Service. The taxpayer calls EFTPS Customer Service requesting to change the contact information on their enrollment. As an alternative to faxing, we are offering the taxpayer the option of downloading the form.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and Households.

Estimated Number of Respondents: 12,000.

Estimated Time per Respondent: 9 minutes.

Estimated Total Annual Burden Hours: 200.

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: August 23, 2013.

Allan M. Hopkins,

Tax Analyst.

[FR Doc. 2013–23121 Filed 9–23–13; 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 Designated Roth Contributions to Cash or Deferred Arrangements Under Section 401(k).

DATES: Written comments should be received on or before November 25, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Gerald J. Shields, LL.M. at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington DC 20224 or through the Internet at *Gerald.J.Shields@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Designated Roth Contributions to Cash or Deferred Arrangements Under Section 401(k).

OMB Number: 1545–1931.

Regulation Project Number: TD 9237 (REG–152354–04).

Abstract: These regulations provide guidance concerning the requirements for designated Roth contributions to qualified cash or deferred arrangements under section 401(k). The IRS needs this information to insure compliance with section 401(k) and (m) and section 402A.

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, not-for-profit institutions and state, local or tribal governments.

Estimated Number of Respondents: 157,500.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 157,500.

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: September 11, 2013.

Allan M. Hopkins,

Tax Analyst.

[FR Doc. 2013–23122 Filed 9–23–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0188]

Agency Information Collection (Claim, Authorization and Invoice for Prosthetic Items and Services); Activity Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Health Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 24, 2013.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0188'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records

Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW,, Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0188.''

SUPPLEMENTARY INFORMATION:

Titles:

(a) Request to Submit Quotation, Form Letter 10–90.

(b) Veterans Application for Assistance in Acquiring Home Improvement and Structural Alterations, VA Form 10–0103.

(c) Application for Adaptive Equipment Motor Vehicle, VA Form 10–1394.

(d) Prosthetic Authorization for Items or Services, VA Form 10–2421.

(e) Prosthetic Service Card Invoice, VA Form 10–2520.

(f) Prescription and Authorization for Fee Basis Eyeglasses, VA Form 10–2914.

OMB Control Number: 2900–0188.

Type of Review: Revision of a currently approved collection.

Abstract: The following forms will are used to determine eligibility, prescribe and authorize prosthetic devices:

a. VA Form Letter 10–90 is used to obtain to estimated price for prosthetic devices.

b. VA Form 10–0103 is used to determine eligibility/entitlement and reimbursement of individual claims for home improvement and structural alterations.

c. VA Form 10–1394 is used to determine eligibility/entitlement and reimbursement of individual claims for automotive adaptive equipment.

d. VA Form 10–2421 is used for the direct procurement of new prosthetic appliances and/or services. The form standardizes the direct procurement authorization process, eliminating the need for separate purchase orders, expedites patient treatment and improves the delivery of prosthetic services.

e. VA Form 10–2520 is used by the vendors as an invoice and billing document. The form standardizes repair/treatment invoices for prosthetic services rendered and standardizes the verification of these invoices. The Veteran certifies that the repairs were necessary and satisfactory. This form is furnished to vendors upon request.

f. VA Form 10–2914 is used as a combination prescription, authorization and invoice. It allows veterans to purchase their eyeglasses directly. If the form is not used, the provisions of providing eyeglasses to eligible Veterans may be delayed.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 11, 2013, at page 35099.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 5,738.

(a) Form Letter 10–90—708.
(b) VA Form 10–0103—583.
(c) VA Form 10–1394—1,000.
(d) VA Form 10–2421—67.
(e) VA Form 10–2520—47.
(f) VA Form 10–2914—3,333.

Estimated Average Burden Per Respondent:

(a) Form Letter 10–90—5 minutes.
(b) VA Form 10–0103—5 minutes.
(c) VA Form 10–1394—15 minutes.
(d) VA Form 10–2421—4 minutes.
(e) VA Form 10–2520—4 minutes.
(f) VA Form 10–2914—4 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 71,200.

a. Form Letter 10–90—8,500.
c. VA Form 10–0103—7,000.
d. VA Form 10–1394—4,000.
e. VA Form 10–2421—1,000.
f. VA Form 10–2520—700.
g. VA Form 10–2914—50,000.

Dated: September 19, 2013.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, U.S. Department of Veterans Affairs.

[FR Doc. 2013–23137 Filed 9–23–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0261]

Agency Information Collection (Application for Refund of Educational Contributions) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 24, 2013.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0261'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0261.''

SUPPLEMENTARY INFORMATION: *Title:* Application for Refund of Educational Contributions (VEAP, Chapter 32, Title 38, U.S.C.), VA Form 22–5281.

OMB Control Number: 2900–0261.

Type of Review: Revision of a currently approved collection.

Abstract: Veterans and service persons complete VA Form 22–5281 to request a refund of their contribution to the Post-Vietnam Veterans Education Program. Contribution made into the Post-Vietnam Veterans Education Program may be refunded only after the participant has disenrolled from the program. Request for refund of contribution prior to discharge or release from active duty will be refunded on the date of the participant's discharge or release from activity duty or within 60 days of receipt of notice by the Secretary of the participant's discharge or disenrollment. Refunds may be made earlier in instances of hardship or other good reasons. Participants who stop their enrollment from the program after discharge or release from active duty contributions will be refunded within 60 days of receipt of their application.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 18, 2013 at page 36643.

Affected Public: Individuals or households.

Estimated Annual Burden: 85 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 511.

Dated: September 19, 2013.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, U.S. Department of Veterans Affairs.

[FR Doc. 2013–23136 Filed 9–23–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0539]

Agency Information Collection (Application for Supplemental Service Disabled Veterans Insurance) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 24, 2013.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0539'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0539.''

SUPPLEMENTARY INFORMATION:

Title: Application for Supplemental Service Disabled Veterans Insurance (SRH), VA Form 29–0188 and 29–0189, and Application for Supplemental Service Disabled Veterans (RH) Life Insurance, VA Form 29–0190.

OMB Control Number: 2900–0539.

Type of Review: Extension of a currently approved collection.

Abstract: VA Forms 29–0188, 29–0189 and 29–0190 are completed by Veterans applying for Supplemental Service Disabled Veterans Insurance. VA uses the information collected to establish Veterans' eligibility for insurance coverage.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on July 19, 2013, at page 36830.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,333 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 10,000.

Dated: September 19, 2013.

By direction of the Secretary:

Crystal Rennie,

VA Clearance Officer, U.S. Department of Veterans Affairs.

[FR Doc. 2013–23206 Filed 9–23–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0212]

Agency Information Collection (Veterans Mortgage Life Insurance Statement) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 24, 2013.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0212'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0212.''

SUPPLEMENTARY INFORMATION:

Title: Veterans Mortgage Life Insurance Statement, VA Form 29–8636.

OMB Control Number: 2900–0212.

Type of Review: Revision of a currently approved collection.

Abstract: Veterans complete VA Form 29–8636 to decline Veterans Mortgage Life Insurance (VMLI) or to provide information upon which the insurance premium can be based. VMIL provides financial protection to cover eligible veterans' outstanding home mortgage in the event of his or her death. VMIL is available only to disabled veterans, who, because of their disability, have received a specially adapted housing grant from VA.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 19, 2013, at pages 36829–36830.

Affected Public: Individuals or households.

Estimated Annual Burden: 250 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,000.

Dated: September 19, 2013.

By direction of the Secretary:

Crystal Rennie,

VA Clearance Officer, U.S. Department of Veterans Affairs.

[FR Doc. 2013–23204 Filed 9–23–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Notice of Funds Availability Inviting Applications for the Rural Veterans Coordination; Amendment

AGENCY: Department of Veterans Affairs.

ACTION: Notice; second extension of NOFA application deadline.

SUMMARY: This notice extends the Department of Veterans Affairs (VA) application deadline for funds available under the Rural Veterans Coordination Pilot (RVCP) program. VA published a Notice of Funds Availability (NOFA) in the **Federal Register** on June 4, 2013 (78 FR 33472) to announce the availability of funds for applications beginning June 4, 2013 through July 19, 2013, 5 pm eastern standard time. VA also published a Notice; extension of NOFA application deadline in the **Federal Register** on June 25, 2013 (78 FR 38099) to allow applicants more time to complete the application process until September 19, 2013. The NOFA includes funding priorities for those applicants who will assist veterans and their families who are transitioning from military service to civilian life in rural or underserved communities. To allow applicants even more time to complete the application process, VA is extending the application deadline to midnight eastern standard time on October 4, 2013.

DATES: Applications must be received in accordance with this NOFA no later than midnight eastern standard time on October 4, 2013.

Applications must be uploaded as a complete package into *http://www.Grants.gov*. Applications may not be sent by fax.

In the interest of fairness to all competing applicants, this deadline of no later than midnight September 19, 2013, is firm as to date and hour, and VA will not consider any application that is received after the deadline.

FOR FURTHER INFORMATION CONTACT: Karen Malebranche, Veterans Health Administration, Office of Interagency Health Affairs (10P5), 810 Vermont Avenue NW., Washington, DC 20420, telephone (202) 461–4001. (This is not a toll-free number.)

For a copy of the Application Package: Download directly from *http://www.ruralhealth.va.gov/coordination-pilot/index.asp*. Questions should be referred to the RVCP Program Office at (202) 461–4001. (This is not a toll-free number.) For detailed program information and requirements, see the final rule published in the **Federal Register** on February 25, 2013 (78 FR 12617), which is codified at 38 CFR part 64.

Approved: September 18, 2013.

Robert C. McFetridge,

Director, Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

[FR Doc. 2013–23097 Filed 9–23–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Genomic Medicine Program Advisory Committee, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that the Genomic Medicine Program Advisory Committee will meet on October 16, 2013, at the Sheraton Crystal City, 1800 Jefferson Davis Highway, Arlington, Virginia. The meeting will convene at 9 a.m. and adjourn at 5 p.m. The meeting is open to the public.

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on using genetic information to optimize medical care for Veterans and to enhance development of tests and treatments for diseases particularly relevant to Veterans.

The Committee will receive program updates and continue to provide insight into optimal ways for VA to incorporate genomic information into its health care program while applying appropriate ethical oversight and protecting the privacy of Veterans. The meeting focus will be on developing infrastructure and guidelines for phenotyping and maintaining privacy and security of genomic information. The Committee will also receive an update on the status of the ongoing Million Veteran Program and the Clinical Genomics Service. Public comments will be received at 3:30 p.m. and are limited to 5 minutes each. Individuals who speak are invited to submit a 1–2 page summary of their comments for inclusion in the official meeting record to Dr. Sumitra Muralidhar, Designated Federal Officer, Veterans Health Administration (10P9B), 810 Vermont Avenue NW, Washington, DC 20420, or by email at *sumitra.muralidhar@va.gov.* Any member of the public seeking additional information should contact Dr. Muralidhar at (202) 443–5679.

By Direction of the Secretary.

Dated: September 18, 2013.

Vivian Drake,

Committee Management Officer.

[FR Doc. 2013–23115 Filed 9–23–13; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Department of Labor

Office of Federal Contract Compliance Programs

41 CFR Parts 60–250 and 60–300

Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Special Disabled Veterans, Veterans of the Vietnam Era, Disabled Veterans, Recently Separated Veterans, Active Duty Wartime or Campaign Badge Veterans, and Armed Forces Service Medal Veterans; Final Rule

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Parts 60–250 and 60–300

RIN 1250–AA00

Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Special Disabled Veterans, Veterans of the Vietnam Era, Disabled Veterans, Recently Separated Veterans, Active Duty Wartime or Campaign Badge Veterans, and Armed Forces Service Medal Veterans

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Final rule.

SUMMARY: The Office of Federal Contract Compliance Programs (OFCCP) is publishing revisions to the current implementing regulations of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended by the Jobs for Veterans Act of 2002, (VEVRAA). OFCCP is responsible for enforcement of VEVRAA, which prohibits employment discrimination against protected veterans by covered Federal contractors and subcontractors. VEVRAA also requires each covered Federal contractor and subcontractor to take affirmative action to employ and advance in employment these veterans.

The final rule strengthens several provisions that are intended to aid in recruitment and hiring efforts, such as clarifying the mandatory job listing requirements, requiring data collection pertaining to protected veteran applicants and hires, and establishing hiring benchmarks to assist in measuring the effectiveness of their affirmative action efforts. However, some of the proposals set forth in the NPRM, particularly with regard to the creation and maintenance of certain records and specific mandated affirmative action obligations, have been eliminated or made more flexible in order to reduce the time and cost burden on contractors. The specific revisions made, and the rationale for making them, are set forth in the Section-by-Section Analysis.

DATES: *Effective Date:* These regulations are effective March 24, 2014.

FOR FURTHER INFORMATION CONTACT: Debra A. Carr, Director, Division of Policy, Planning and Program Development, Office of Federal Contract Compliance Programs, at 200 Constitution Avenue NW., Room C–3325, Washington, DC 20210, or by calling (202) 693–0104 (voice) or (202) 693–1337 (TTY). Copies of this rule in alternative formats may be obtained by calling (202) 693–0103 (voice) or (202) 693–1337 (TTY). The alternative formats available are large print and electronic file on computer disk. The rule also is available on the Internet on the Regulations.gov Web site at *http://www.regulations.gov* or on the OFCCP Web site at *http://www.dol.gov/ofccp*.

Executive Summary

I. Purpose of the Regulatory Action

The Office of Federal Contract Compliance Programs (OFCCP) is a civil rights, worker protection agency which enforces an Executive Order and two laws that prohibit employment discrimination and require affirmative action by companies doing business with the Federal Government.[1] Specifically, Federal contractors must engage in affirmative action and provide equal employment opportunity without regard to race, color, religion, sex, national origin, disability, or status as a protected veteran. Executive Order 11246, as amended, prohibits employment discrimination on the basis of race, religion, color, national origin, and sex. Section 503 of the Rehabilitation Act of 1973, as amended, prohibits employment discrimination against individuals with disabilities. The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (VEVRAA) prohibits employment discrimination against certain protected veterans. Contemporaneous with these revisions, OFCCP is also publishing revisions to the implementing regulations of Section 503 of the Rehabilitation Act of 1973 (section 503). OFCCP has historically viewed these regulations together, maintaining identity between the two regulations where possible and allowing contractors to prepare an Affirmative Action Plan that covers both laws jointly. Accordingly, the vast majority of the revisions announced here in the VEVRAA regulation are also present in the section 503 rule. The exceptions to this—mainly in the structure of the hiring benchmark/goal for the two rules, are discussed in further detail below.

The existing implementing regulations for VEVRAA are split into two separate parts: 41 CFR part 60–250 (part 60–250) and 41 CFR part 60–300 (part 60–300). Part 60–250 applies to any Government contract or subcontract of $25,000 or more entered into before December 1, 2003, while part 60–300 applies to any Government contract or subcontract of $100,000 or more entered into on or after December 1, 2003. The final rule rescinds the regulations at part 60–250, as discussed in full in the Section-by-Section Analysis below. With regard to part 60–300, however, the final rule retains many of the revisions set forth in the notice of proposed rulemaking (NPRM).

OFCCP evaluates the employment practices of over 4,000 Federal contractors and subcontractors annually, and investigates individual complaints. OFCCP also engages in outreach to employees of Federal contractors to educate them about their rights, and provides technical assistance to contractors on their nondiscrimination and affirmative action obligations. We estimate that our jurisdiction covers approximately 200,000 Federal contractor establishments, and an estimated 50,000 parent companies.[2]

Although progress has been made in the employment of veterans, the number of unemployed veterans still remains too high, and substantial disparities in unemployment and pay rates continue to persist, especially for some categories of veterans. The annual unemployment rate for post-September 2001 veterans, referred to as ''Gulf War-era II veterans,'' is higher than the rates for all veterans and for nonveterans. BLS data on the 2012 employment situation of veterans show that about 2.6 million of the nation's veterans had served during Gulf War-era II.[3] In 2012, the unemployment rate for Gulf War-era II veterans was 9.9 percent compared to nonveterans at 7.9 percent.[4] However, the unemployment rate, in the same year, for male Gulf War-era II veterans age 18 to 24 was 20.0 percent, higher than the rate for nonveterans of the same age group (16.4 percent).[5]

OFCCP also found that, on average, wages of veterans (defined as anyone who is employed and reported serving

[1] Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended, (Section 503); and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212 (VEVRAA.).

[2] This establishment estimate is based on a review of FY 2009 EEO–1 contractor establishment data and other contractor databases, including the Federal Procurement Data System (FPDS). Based on EEO–1 data, we determined that the ratio of parent companies to the number of establishments is approximately four establishments per parent company.

[3] U.S. Bureau of Labor Statistics, Economic News Release, ''Employment Situation of Veterans Summary 2012,'' March 20, 2013, *http://www.bls.gov/news.release/vet.nr0.htm* (last accessed Aug. 8, 2013).

[4] *Id.,* ''Table A: Employment situation of the civilian non-institutionalized population 18 years and over by veteran status, period of service, and sex, 2011–2012 annual averages.''

[5] *Id.*

in the military in the past) are higher than non-veterans. However, there are different age groups represented in each era, and because earnings generally increase with age, we controlled for age and race in a regression analysis. Using America Community Survey (ACS) data and conducting a regression analysis, OFCCP found that:

- Male veterans earn 2.7 percent less than non-veterans.
- Female veterans earn 6.3 percent than non-veterans.[6]

Controlling for the era of service, rather than just whether or not the person served,

- OFCCP finds that: Male Gulf War-era II veterans earn 1.4 percent less than non-veterans.
- Male Vietnam era veterans earn 6.9 percent less than non-veterans.[7]

Though it is unclear what portion of these disparities is caused by discrimination, employment discrimination and underutilization of qualified workers, such as veterans and individuals with disabilities, contribute to broader societal problems such as income inequality and poverty.

The final rule is intended to provide contractors with the tools needed to evaluate their own compliance and proactively identify and correct any deficiencies in their employment practices. These tools include, for example, removing barriers related to job postings so both contractors can effectively post or advertise their jobs, and jobseekers can take full advantage of these job opportunities. It also includes data collection to support meaningful self-assessments of employment practices and the ability for contractors to adjust their outreach and recruitment efforts for greater effectiveness and efficiency when needed.

II. Statement of Legal Authority

Initially enacted into law in 1974 and amended several times in the intervening years, the purpose of VEVRAA is twofold. First, VEVRAA prohibits employment discrimination against specified categories of veterans by Federal Government contractors and subcontractors. The universe of protected veterans includes disabled veterans, veterans who have separated from the military within the past three years (recently separated veterans), veterans who received an Armed Forces service medal while on active duty, and veterans who served in active duty during a war or in a campaign or expedition for which a campaign badge was authorized. Second, it requires each covered Federal Government contractor and subcontractor to take affirmative action to employ and advance in employment these veterans.

The VEVRAA regulations found at 41 CFR part 60–250 generally apply to Government contracts of $25,000 or more entered into before December 1, 2003. The threshold amount for coverage is a single contract of $25,000 or more; contracts are not aggregated to reach the coverage threshold. If a Federal contractor received a Government contract of at least $50,000 prior to December 1, 2003, an affirmative action program (AAP), the specific obligations of which are detailed at 41 CFR 60–250.44, must be developed. *See* 41 CFR 60–250.40.

The VEVRAA regulations found at 41 CFR part 60–300 apply to Government contracts entered into on or after December 1, 2003. The threshold amount for VEVRAA coverage and AAP threshold coverage is a single contract of $100,000 or more, entered into on or after December 1, 2003; contracts are not aggregated to reach the coverage threshold. Federal contractors and subcontractors that meet the coverage threshold and have 50 or more employees must develop an AAP. *See* 41 CFR 60–300.40. The regulations found at 41 CFR part 60–300 also apply to modifications of otherwise covered Government contracts made on or after December 1, 2003. Consequently, a contract that was entered into before December 1, 2003, will be subject only to the part 60–300 regulations if it is modified on or after December 1, 2003, and meets the contract dollar threshold of $100,000 or more.

In the VEVRAA context, receiving a Federal contract comes with a number of responsibilities, including compliance with the VEVRAA non-discrimination and non-retaliation provisions, meaningful and effective efforts to recruit and employ veterans protected under VEVRAA, creation and enforcement of personnel policies that support the contractor's affirmative action obligations, maintenance of accurate records documenting the contractor's affirmative action efforts, and providing OFCCP access to these records upon request. Contractor compliance with these provisions is, therefore, vital to improving the employment opportunities of veterans protected by VEVRAA. And, given the unique skills and experiences that veterans have acquired as a result of their service, improving employment opportunities benefits not only the veterans and their families but also the contractor as an employer. Failure to abide by these responsibilities may result in various sanctions, including withholding progress payments, termination of contracts, and debarment from receiving future contracts. It also deprives the contractor of the opportunity to benefit from this uniquely qualified pool of applicants.

III. Major Provisions

The following major provisions in the final rule would:

- Provide contractors with a quantifiable means to measure their success in recruiting and employing veterans by requiring, for the first time, that contractors establish their own or adopt a predetermined annual hiring benchmark (currently 8 percent based on national labor force data).
- Create greater accountability for employment decisions and practices by requiring that contractors maintain several quantitative measurements and comparisons for the number of veterans who apply for jobs and the number of veterans they hire. Having this data will also assist contractors and OFCCP in measuring the effectiveness of contractors' outreach and recruitment efforts.
- Provide knowledge and support to veterans seeking jobs by improving the effectiveness of the VEVRAA requirement that contractors list their job openings with the appropriate state employment service agency. Contractor job listings must be provided in a format that the state agency can access and use to make the job listings available to job seekers.
- Provide knowledge and increasing compliance by subcontractors with their obligations by requiring prime contractors to include specific, mandated language in their subcontracts alerting subcontractors to their responsibilities as Federal contractors.
- Create flexibility for contractors when they are establishing formal relationships with organizations that provide recruiting or training services to veterans. The relationships or ''linkage agreements'' can be established to meet the contractors' specific needs, while assuring outreach to veterans seeking employment.
- Clarify the contractor's mandatory job listing requirements and the relationship between the contractor, its agents, and the state employment

[6] OFCCP's labor economist conducted the regression analysis. All models were run using the American Community Survey 2008–2010 Public Use Microdata (PUMS). The models that examine veterans only were also run with the ACS 2006–2010 files, but the results were largely the same, so we use the 2008–10 for all (since questions on disability were only available in 2008 and after). The analysis was run on the private sector.

[7] Females comprise an estimated 14.2% (nearly 167,000 women) in the enlisted ranks.

services that providepriority referral of protected veterans.

• Repeal outdated and obsolete regulations at 41 CFR Part 60–250 that apply to contracts entered into before December 1, 2003 and not since modified. OFCCP believes that all such contracts have either expired or been modified, and that there is, therefore, no longer a need for the Part 60–250 regulations.

IV. Costs and Benefits

This is an economically significant and major rule. Veterans make up 7.25 percent of the employed population.[8] Under the VEVRAA rule, contractors have the option of establishing their own benchmark for employing protected veterans or meeting a benchmark set by OFCCP, currently 8 percent. Assuming all contractors will choose to meet the OFCCP benchmark of 8 percent, OFCCP estimates that Federal contractors would need to hire an additional 205,500 protected veterans.[9] Dividing our estimate of this rule's first-year cost by our estimate of the number of protected veterans expected to be hired in the first year because of this rule returns a cost of approximately $863 to $2,353 per new hire.

TOTAL COST OF THE FINAL RULE (YEAR ONE) [10]

	Low	High
Total Cost of the Rule	$177,296,772	$483,560,138
Cost Per Company	3,830	7,120
Cost Per Establishment	1,035	1,924
Company Cost Per Hire	863	2,353

PROJECTED VETERAN HIRES

	Year 1	Year 2	Year 3	Year 4	Year 5
Employees of Fed Contractors (assuming steady with population)	27,400,000.00	27,610,980.00	27,823,584	28,037,826.15	28,253,717.41
Veterans	2,192,000.00	2,208,878.40	2,225,886.76	2,243,026.09	2,260,297.39
Veterans Gap	205,500.00	207,082.35	208,676.88	210,283.70	211,902.88

Present value costs over ten years for the final rule range from $1.08 billion to $3.1 billion using a 3 percent discount rate. If we use a 7 percent discount rate then the present value costs range from $899 million to $2.57 billion. Annualizing these costs yields a cost range of $127 million to $363 million at the 3 percent discount rate and $128 million to $366 million using a 7 percent discount rate.

	7% discount rate	3% discount rate
Benefits	Not Quantified	Not Quantified.
Costs	$899 million to $2.57 billion	$1.08 billion to $3.1 billion.

These projected hires, some of whom will require reasonable accommodation, will not add significant costs for the employers. According to a study conducted by the Job Accommodation Network (JAN), of the employers who gave the researchers cost information related to accommodations they had provided, 57 percent said the accommodations needed by employees cost absolutely nothing.[11] For 43 percent of employers, the typical one-time expenditure by employers to provide a reasonable accommodation was $500. Finally, 2 percent reported that accommodations required a combination of one-time and annual costs.

In projecting the overall increase in Federal contractor employment of protected veterans under the VEVRAA rule and individuals with disabilities under the section 503 rule, there is likely to be an interaction between the two categories. Some of the newly hired individuals with disabilities will likely be protected veterans. There are 5.78 million people 18 years or older in the labor force with a disability, 822,000, or 14.21 percent, of whom are veterans.[12]

To meet the section 503 rule's utilization goal of 7 percent, Federal contractors would have to hire an additional 594,580 individuals with disabilities. Assuming that the number of disabled veterans hired will be proportional to their share of the disabled labor force, then we estimate that 84,490 of the newly hired

[8] Calculation based on unpublished table, *Employment status of persons 18 years and over by veteran status, period of service, sex, race, Hispanic or Latino ethnicity, and disability status, Annual Average 2012 (Source: Current Population Survey).* (10,233/141,050) * 100 = 7.25%. The table is available on request from the Bureau of Labor Statistics at the Department of Labor. BLS does not release some tables for a variety of reasons, such as sample size or possibility of confusion. Finally, this estimate includes all veterans, not only the protected veterans.

[9] Based on data from the Bureau of Labor Statistics Quarterly Census of Employment and Wages, OFFCP estimates that approximately 27.4 million employees could be affected.

[10] The high cost estimates are based on the highest contractor establishment count of 251,300 and 67.919 companies while the low estimates are based on a contractor establishment count of 171,275 and 46,291 companies.

[11] Job Accommodation Network, ''Workplace Accommodations: Low Cost, High Impact,'' Sept. 1, 2012. *Accommodation and Compliance Series, http://askjan.org/media/lowcosthighimpact.html* (last accessed Aug. 9, 2013), p.3; ''Fast Facts: Reasonable Accommodations & The Americans with Disabilities Act,'' U.S. Chamber of Commerce & the Virginia Commonwealth University, Rehabilitation Research and Training Center on Workplace Supports,'' *http://www.worksupport.com/Topics/downloads/rrtcfactsheet2.pdf* (last accessed August 12, 2013).

[12] Calculation based on unpublished table, *Employment status of persons 18 years and over by veteran status, period of service, sex, race, Hispanic or Latino ethnicity, and disability status, Annual Average 2012* (Source: Current Population Survey).

individuals with disabilities will also be protected veterans.[13] Subtracting 84,490 protected veterans from the target of 205,500 leaves 121,010 non-disabled veterans needed to meet the hiring goal. Viewed independently, Federal contractors under VEVRAA would employ an additional 205,500 protected veterans and under section 503 employ an additional 594,580 individuals with disabilities. In the aggregate, we anticipate the overall number of hires across both rules will be closer to 715,590. We adjust the reasonable accommodation estimates based on the aforementioned assumptions. The total cost of providing reasonable accommodation to protected veterans with disabilities is $19,010,209 in the year the target is met and $8,037,516 in recurring costs.

Employers often think providing a reasonable accommodation is more costly than it actually is. Sometimes an accommodation may be something as simple as allowing someone to have their instructions tape recorded, or allowing someone to wear ear phones so they are not distracted by noise around them, or allowing someone an empty office as space when they have difficulty with concentration or attention span. Employers must provide effective accommodations but are not expected to create an undue hardship for themselves by doing so. Individuals seeking reasonable accommodation beyond what is effective have the option of paying the difference between the cost of the more expensive accommodation and the cost of what the employer will pay for an effective reasonable accommodation.

We estimate the percentage of veterans in the civilian labor force with disabilities, with service-connected disabilities, to be 12 percent.[14] For all Gulf War-era veterans it is 19 percent but for Gulf War-era II veterans it is 24 percent.[15] We have not found projections on the percentage of these populations that are likely to seek reasonable accommodation. The requirement to provide reasonable accommodations to individuals with disabilities existed under the ADA, and now exists under the ADA Amendments Act for employers. This is not a new obligation created by this rule. However, because this rule seeks to increase employment of protected veterans, and some of those veterans are expected to meet the ADA's definition of disabled and, therefore, are entitled to a reasonable accommodation, we estimate the cost of providing reasonable accommodations to those disabled protected veterans that we expect to be hired because of this rule.

There are tangible and intangible benefits to investing in the recruitment and hiring of disabled veterans. Among them are employer tax credits, access to a broader talent pool, an expanded pool of job applicants, access to new markets by developing a workforce that mirrors the general customer base, lower turnover based on increased employee loyalty, and lower training costs resulting from lower staff turnover.[16] According to the U.S. Business Leadership Network (USBLN), ''corporate CEOs understand that it's cost effective to recruit and retain the best talent regardless of disability.'' [17] Broad public policy considerations also exist related to the decreased demand for and cost of social services as more people move into jobs and pay taxes. We were not able to quantitatively assess these broad societal benefits.

Introduction

Addressing the barriers our veterans face in returning to civilian life, particularly with regard to employment, is the focus of a number of Federal efforts. Among these efforts is the VOW to Hire Heroes Act signed into law by President Obama on November 21, 2011, which provides tax credits for businesses that hire veterans who are unemployed or have service-connected disabilities and creates a new Veteran's Retraining Assistance Program for unemployed veterans. Other Federal efforts presented during the August 2011 announcement by President Obama included a plan for the private sector to hire 100,000 veterans by the end of 2013 and creating a ''career-ready military'' which will ''ensure that every member of the service receives the training, education, and credentials they need to transition to the civilian workforce or to pursue higher education.'' These efforts are now a part of the Administration's Joining Forces Initiative. Strengthening the implementing regulations of VEVRAA, whose stated purpose is ''to require Government contractors to take affirmative action to employ and advance in employment qualified protected veterans,'' is another important means by which the government can address the issue of veterans' employment.

To that end, OFCCP published a notice of proposed rulemaking (NPRM) on April 26, 2011 in the **Federal Register** (76 FR 23358), seeking comment on a number of proposals that would strengthen the regulations implementing VEVRAA. The NRPM was published for a 60-day public comment period. The proposed regulations detailed specific actions that contractors and subcontractors must satisfy to meet their VEVRAA obligations, including increasing data collection obligations, and requiring covered Federal contractors and subcontractors to establish hiring benchmarks for protected veterans. The NPRM also proposed the rescission of 41 CFR part 60–250. After receiving several requests to extend the public comment period, OFCCP published a subsequent notice in the **Federal Register** on June 22, 2011 (76 FR 36482), extending the public comment period an additional 14 days.

OFCCP received over 100 comments on the NPRM. Commenters represented diverse perspectives including: Approximately 40 individuals; ten groups representing contractors; three disability rights advocacy groups; two veterans' associations; two unions; and two governmental entities. Commenters raised a broad range of issues, including concerns with the cost and burden associated with the proposed rule, the extended recordkeeping requirements, developing benchmarks, and the new categories of data collection and analyses. OFCCP carefully considered the comments in the development of this final rule.

Pursuant to Executive Order (EO) 13563, the final rule was developed through a process that involved public participation. In addition to the 60-day public comment period, OFCCP conducted multiple town hall meetings, webinars, and listening sessions with individuals from the contractor community, state employment services, disability organizations, veterans' service organizations and other interested parties to understand the features of VEVRAA regulations that

[13] Because of data limitations, OFCCP is using the share of veterans as a proxy for ''protected'' veterans. For more information on the difference between protected and unprotected veterans, please visit, *http://www.dol.gov/ofccp/regs/compliance/factsheets/vetrights.htm#Q2*.

[14] Bureau of Labor Statistics, Table 6: Employment status of veterans 18 years and over by presence of service-connected disability, reported disability rating, period of service, and sex, August 2012, not seasonally adjusted *http://www.bls.gov/news.release/vet.t06.htm* (last accessed July 9, 2013).

[15] *Id.*

[16] Job Accommodation Network, ''Workplace Accommodations: Low Cost, High Impact,'' Sept. 1, 2012. *Accommodation and Compliance Series, http://askjan.org/media/lowcosthighimpact.html* (last accessed Aug. 9, 2013).

[17] USBLN Disability at Work, and U.S. Chamber of Commerce, ''Leading Practices on Disability Inclusion,'' *http://www.usbln.org/pdf-docs/Leading_Practices_on_Disability_Inclusion.pdf* (last accessed Aug. 9, 2013). The USBLN and Chamber report shares best practices from larger corporations for hiring and providing reasonable accommodations.

work well, those that can be improved, and possible new requirements that could help to effectuate the overall goal of increasing the employment opportunities for qualified veterans with Federal contractors.

I. Compliance With the Final Rule

Although this final rule becomes effective 180 days after publication, full compliance with the requirements of this final rule by current contractors will be phased in as follows. Current contractors subject to subpart C of the existing 41 CFR part 60–300 regulations that have written affirmative action programs (AAP) prepared pursuant to those regulations in place on the effective date of this final rule may maintain that AAP for the duration of their AAP year. Such contractors are required to update their affirmative action programs to come into compliance with the requirements of subpart C of this final rule at the start of their next standard 12-month AAP review and updating cycle. OFCCP will verify a contractor's compliance with the requirements of this final rule if the contractor is selected for a compliance evaluation pursuant to § 60–300.60 or subject to a complaint investigation pursuant to § 60–300.61. The effective date and the approach to compliance are the same as those set forth in the section 503 Final Rule. OFCCP believes that adopting similar approaches to the effective date and to compliance makes the most sense based on the similarity of the two rules, and will help contractors make required system and process changes at one time.

II. Overview of the Final Rule

As stated above, the final rule incorporates many of the proposed changes set forth in the NPRM. However, in order to focus the scope of the final rule more closely on key issues, and in an effort to reduce the burden of compliance on contractors, the final rule also revises or eliminates some of the NPRM's proposals. This discussion highlights the major provisions of the final rule and summarizes relevant comments. The fuller discussion of the provisions of the rule is in the Section-by-Section Analysis.

The final rule strengthens the affirmative action provisions for Federal contractors in several ways. The regulations reiterate the contractor's mandatory job listing requirements and the relationship between the contractor, its agents, and the state employment services that provide priority referral of protected veterans. The mandatory job listing obligation, which is set forth in and required by the VEVRAA statute, *see* 38 U.S.C. 4212(a)(2)(A), ensures that veterans seeking the assistance of state employment service delivery systems to find employment will be able to find job listings from Federal contractors, and that the delivery systems will be able to provide priority referral of these veterans back to contractors. The final rule also addresses the increased use of technology in the workplace by allowing for the electronic posting of employee rights and contractor obligations under VEVRAA and updating the manner in which compliance evaluations are conducted. Further, the regulations enhance data collection pertaining to protected applicants and hires in order to provide contractors vital information against which they can effectively measure their recruitment efforts, and establish two mechanisms—the flexible approach set forth in the NPRM, or a more simplified, single national target—from which contractors may choose in order to establish a hiring benchmark. These revisions will help contractors better evaluate their outreach efforts and modify them as needed, toward the end of increasing employment opportunities for protected veterans by Federal contractors and subcontractors. Additionally, as proposed in the NPRM, part 60–250 of these regulations is rescinded. However, as we discuss further in the Section-by-Section Analysis, part 60–300 is revised to provide that any protected veteran as defined in the former part 60–250 regulations who is employed by or applies for a position with a part 60–250 covered contractor will still be protected under the anti-discrimination provisions of part 60–300, and will be able to file complaints with OFCCP regarding discriminatory treatment.

OFCCP revised or eliminated a number of provisions from the NPRM in response to the comments that were received, particularly as they relate to the cost and burden of the rule, recordkeeping requirements, data collection and analyses, and benchmarks. These changes are summarized below.

OFCCP received 55 comments concerning the overall burdens and costs of the proposed rule from several contractor groups and contractors, including 21 form letters. Most commenters stated that OFCCP's estimates in costs and hours were too low. Commenters also noted that OFCCP's contractor universe was too small. In response to these concerns, OFCCP modified the burden and costs estimates for the final rule. As discussed further in the Regulatory Procedures section, OFCCP also increased the overall contractor and subcontractor establishment count to 171,275 based on Fiscal Year 2009 Employer Information Report EEO–1 (EEO–1), the Federal Procurement Data System-Next Generation (FPDS–NG) report data on contractor establishments, and other information. These changes provide a more accurate depiction of the burden and cost associated with the final rule. As discussed in more detail below, OFCCP also made key changes to the recordkeeping requirements to minimize the burden on contractors.

We received comments on the estimated number of contractor establishments as well, including recommending an establishment count of 285,390 using the Veterans Employment Training Services (VETS) annual report. While OFCCP declines to exclusively rely on the VETS report number, we present an estimated high end for the range of the cost of the rule based on a contractor establishment number of 251,300. This number is based on 2010 VETS data from their pending Information Collection Request.[18]

The NPRM proposed that contractors maintain data pursuant to §§ 60–300.44(f)(4) (linkage agreements and other outreach and recruiting efforts), 60–300.44(k) (collection of referral, applicant, and hire data), and 60–300.45(c) (criteria and conclusions regarding hiring benchmarks) for five years. Twenty-three commenters opposed these provisions. Several of the commenters were particularly concerned with the burden associated with the five-year requirement. In response, OFCCP reduces the proposed five-year recordkeeping requirement to three years in the final rule. Further, in light of the comments we received, the final rule does not incorporate the proposal under paragraph 5 of the Equal Opportunity (EO) Clause and § 60–300.44(k) of the NPRM to maintain data related to referrals from employment service delivery systems. The proposal required contractors to maintain quantitative measurements and comparisons regarding those protected veterans who were referred by state employment services. Commenters were concerned with the requirement to obtain referral data, as they indicated that the state employment delivery service either cannot provide data or provides data inconsistently across the states, and that acquiring the data and

[18] OMB Control Number 1293–0005, Federal Contractor Veterans' Employment Report, VETS–100/VETS–100A, *http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201104-1293-003* (last accessed Aug. 13, 2013).

synthesizing it would be burdensome. In reviewing the practical utility of the referral data in light of the burden that it would create on contractors, OFCCP has eliminated the requirement to collect and analyze referral data. Eliminating the referral data requirement and reducing the length of recordkeeping for the other provisions minimizes the burden on contractors yet still requires contractors to keep adequate records to aid and inform their outreach and recruitment efforts.

The NPRM also proposed to require many of the affirmative action efforts that are only suggested in § 60–300.44 of the existing rule. Among these were proposals requiring contractors to: review personnel processes on an annual basis (§ 60–300.44(b)); establish linkage agreements with three veteran-related organizations to increase connections between contractors and veterans seeking employment (§ 60–300.44(f)); take certain specified actions to internally disseminate its affirmative action policy (§ 60–300.44(g)); and train all personnel on specific topics related to the employment of protected veterans (§ 60–300.44(j)). After consideration of the comments and taking into account the expected utility of these provisions in light of the burden that contractors would incur to comply with the proposals, OFCCP decided not to incorporate the majority of these proposals, and instead retains the language in the existing rule. The proposals in the NPRM, for the most part, required certain specific steps contractors must take to fulfill their already existing, general affirmative action obligations. These general affirmative action obligations—reviewing personnel processes on a periodic basis, undertaking appropriate outreach and positive recruitment activities, developing internal procedures to disseminate affirmative action policies, and training its employees on these policies—remain in the final rule. By eliminating the specific provisions but maintaining the general affirmative action obligations, the final rule provides the contractor flexibility and lesser burden while maintaining a robust affirmative action program.

The final rule also modifies the approach to setting benchmarks. The NPRM proposed requiring contractors to establish annual hiring benchmarks, expressed as the percentage of total hires who are protected veterans that the contractor seeks to hire in the following year. The hiring benchmarks were to be established by the contractor using existing data on veteran availability, while also allowing the contractor to take into account other factors unique to its establishment that would tend to affect the availability determination. OFCCP received a total of 38 comments on the proposed benchmarks. Twelve commenters questioned whether contractor established benchmarks would be arbitrary and ineffective because of concerns about the reliability of data on the number of protected veterans in the workforce. Commenters also sought clarity on exactly how they should develop benchmarks based on the varying sources of data available. In addition, commenters asserted that the benchmarks were quotas that would adversely impact women and minorities since demographically veterans are predominantly white males. In response to these concerns, OFCCP has revised § 60–300.45 to provide a simpler, nationwide benchmark as another option that contractors can use, in addition to the flexible approach set forth in the NPRM. Further, the final rule addresses the incorrect assumptions—*e.g.,* that goals represent a ''quota'' or will place contractors in jeopardy of violating the sex discrimination provisions of Executive Order 11246—that many comments in the NPRM detailed.

Finally, in response to some comments and to further reduce costs, the final rule eliminates a few other minor requirements included in the NPRM. For instance, the final rule does not include the proposed requirement in § 60–300.42(d) of the NPRM that contractors affirmatively ask disabled veterans if they require a reasonable accommodation, retaining the requirement in the existing rule that contractors must take part in an interactive process regarding accommodation and should, but are not required to, seek the advice of the applicant regarding such accommodation. This aligns the rule with the obligations set forth in the Americans with Disabilities Act. Additionally, the final rule eliminates the specific obligation to inform off-site employees about the availability of the contractor's affirmative action plan, and instead retains the existing obligation that requires the affirmative action plan to be available upon request with the location and hours of availability posted publicly. As with the other changes discussed, these revisions maintain the general obligations while reducing the burden of compliance for contractors.

The final rule presents the most substantial re-write of VEVRAA regulations since their inception. In light of these significant changes, and in response to contractors' requests to delay implementation due to these changes, the effective date of this final rule is set for 180 days after publication in the **Federal Register**. The detailed Section-by-Section Analysis below identifies and discusses all of the final changes in each section. For ease of reference, part 60–300 will be republished in its entirety in the final rule.

Section-by-Section Analysis

41 CFR Part 60–250

Rescission of Part 60–250

The NPRM proposed two alternative approaches to updating part 60–250. The first approach proposed rescinding part 60–250 in its entirety. The second approach proposed revising part 60–250 so that it mirrors the proposed changes to part 60–300. OFCCP received 16 comments on these proposals from a variety of entities including individuals, law firms, contractors, and associations representing veterans, contractors, or individuals with disabilities.

OFCCP received few comments supporting retaining part 60–250. One commenter stated that it held several contracts that are covered under parts 60–250 and 60–300. One individual commenter stated that part 60–250 should remain in place as some major contractors have contracts spanning several decades that are still in force. The commenter also expressed concern about eliminating the definition of ''special disabled veteran.'' The commenter noted that 30 percent of disabled veterans may need additional affirmative action since it would be difficult to compete with a veteran that has no service connected disability.

OFCCP received 14 comments that either recommended rescinding part 60–250, indicated that the commenter was unaware of contractors that were subject to part 60–250, or stated that the commenter was neutral on the proposal to rescind part 60–250. Many commenters questioned whether there were any remaining active contracts that would still be covered by part 60–250. One commenter, an industry group, stated that one of its members has a continuing contract from the 1980s; however, that contract has since been modified and is no longer covered under part 60–250.

Commenters provided alternative recommendations to implementing a part 60–250 that mirrors part 60–300. An equal employment opportunity consulting firm recommended allowing contractors to combine their obligations under both parts 60–250 and 60–300 into a single AAP to eliminate unnecessary duplication. Another

commenter recommended widening the scope of part 60–300 to incorporate contracts that are covered under part 60–250.

Part 60–250 is rescinded. As stated in the NPRM and echoed by many commenters, we do not believe that there are any remaining contracts for $25,000 or more entered into prior to December 1, 2003, that have not either terminated or since been modified (which, if over $100,000 in value, would fall under part 60–300's coverage). While the agency received one comment from a company that asserted that it held contracts that are subject to part 60–250, OFCCP's research revealed that the commenter is a grantee. However, out of an abundance of caution that any contracts falling under part 60–250's coverage still exist, and to ensure that all veterans that are protected by part 60–250 (and not part 60–300 as well) will be able to pursue complaints of discrimination, the final rule includes a definition of ''pre-JVA veteran'' in § 60–300.2, and provides that such individuals continue to be protected by the non-discrimination prohibitions in § 60–300.21 and are able to file discrimination complaints pursuant to § 60–300.61. There is further discussion of this definition in the analysis of Section 60–300.2.

41 CFR Part 60–300

Subpart A—Preliminary Matters, Equal Opportunity Clause

Section 60–300.1 Purpose, Applicability and Construction

Section 60–300.1 of the current rule sets forth the scope of VEVRAA and the purpose of its implementing regulations. The NPRM proposed deleting references throughout the regulation to the ''Vietnam Era Veterans' Readjustment Assistance Act of 1974'' or ''VEVRAA'' and replacing it in this section and throughout the regulation with ''Section 4212.'' OFCCP proposed the change due to concerns that the continued reference to ''Vietnam era veterans'' leads to confusion regarding the categories of veterans that are protected under the law. There were a total of six comments on the proposed revision.

Some commenters supported referring to the regulations as ''Section 4212.'' One commenter stated that the change would be an important and positive step to clarifying the fact that the regulations are no longer focused on issues that only concern veterans of the Vietnam era. Another commenter believed that the proposed change would eliminate confusion entirely regarding whether VEVRAA applied to only Vietnam era veterans. One commenter opposed the revision and argued that deleting the reference to ''VEVRAA'' would be an insult to Vietnam era veterans. Commenters also provided several recommendations for this section. One commenter suggested that if the agency is going to use the term ''Section 4212,'' it should do so consistently. The commenter cited several examples where ''Section 4212'' was used inconsistently in the NPRM. Other commenters suggested that the agency utilize a name that connects ''Section 4212'' to the veterans who are protected, such as ''Section 4212/Protected Veterans.'' The commenter that opposed the revision stated that OFCCP should invest resources into properly advertising the law rather than changing the name.

The final rule does not incorporate the proposal to use the term ''Section 4212,'' and instead continues the use of the term ''VEVRAA.'' While referring to the law as ''Section 4212'' had potential benefits as described in the NPRM, there was also concern that the new term ''Section 4212'' might invite further confusion. For instance, for those unfamiliar with the law, the term ''Section 4212'' does not indicate any relationship to veterans' rights on its face. Further, there was concern that some may think that ''Section 4212'' and ''VEVRAA'' were two unrelated laws. Accordingly, the final rule retains the term ''VEVRAA,'' and in response to comments we have ensured that the term is used consistently throughout the regulation.

In addition, to address confusion among contractors and veterans regarding the scope of the various veterans' employment rights statutes, the final rule adds language to the discussion in paragraph (c)(2) of VEVRAA's ''relationship to other laws.'' New paragraph (c)(2)(i) highlights that VEVRAA and the Uniformed Services Employment and Reemployment Rights Act (USERRA) are separate laws with distinct obligations for contractors and distinct protections for employees who have past, present or future military service, status or obligations. It clarifies that this part does not limit the contractor's obligations, responsibilities, and requirements under USERRA, including the obligation to reemploy employees returning from qualifying military service, and emphasizes that compliance with this part is not determinative of compliance with USERRA.

Section 60–300.2 Definitions

The NPRM proposed clarifying several key definitions in part 60–300. The current classifications of protected veterans under VEVRAA include: (1) Disabled veterans, (2) veterans who served on active duty in the Armed Forces during a war or in a campaign or expedition for which a campaign badge was authorized, (3) veterans who, while serving on active duty in the Armed Forces, participated in a United States military operation for which an Armed Forces service medal was awarded pursuant to Executive Order No. 12985, and (4) recently separated veterans. The regulations define ''disabled veteran,'' ''recently separated veteran,'' and ''Armed Forces service medal veteran.'' The definition of ''other protected veteran'' in the existing regulation applies to veterans who served on active duty in the Armed Forces during a war or in a campaign or expedition for which a campaign badge has been authorized. OFCCP proposed replacing ''other protected veteran'' with ''active duty wartime or campaign badge veteran'' to eliminate confusion regarding the veterans that are protected under this category. Some have interpreted erroneously the ''other protected veteran'' category as a ''catch-all'' that includes all veterans. The proposed rule also added new definitions for ''protected veteran'' and ''linkage agreement.'' OFCCP received a total of 18 comments on the proposed changes to § 60–300.2 from a variety of entities including individuals, law firms, contractors, and associations representing veterans, contractors, or disability rights.

• *Definition for ''Active Duty Wartime or Campaign Badge Veteran''*

There were a total of eight comments on the proposal to change the category of veterans referred to as ''other protected veteran'' in the existing rule to ''active duty wartime or campaign badge veteran.'' This category of veteran includes all those who served on active duty in the U.S. military, ground, naval, or air service either: (a) during a war; or (b) in a campaign or expedition for which a campaign badge was authorized by the Department of Defense (DOD). The proposal did not change which veterans are covered; we made the change so that the category name was more accurately descriptive of who it covered.

Most commenters supported the proposal. One commenter noted that the proposed language would more accurately reflect the language in the statute and alleviate some of the past confusion surrounding the wording. Another commenter stated that the proposed change is helpful in understanding the nature of veterans protected by this category.

A few commenters expressed concern about the proposed definition. One commenter argued that the law is quite clear on who is protected by VEVRAA and that the proposed term ''active duty wartime or campaign badge veteran'' does not provide any additional clarification. A human resources consulting company suggested that using ''active duty'' may lead to under-reporting. The company asserted that individuals may interpret this to mean that they have to be on active duty to qualify. Commenters also stated that it is unclear who qualifies as a ''wartime'' or ''campaign badge veteran.'' One commenter noted that the clearest guidance on who qualifies as a ''campaign badge veteran'' could only be found on the United States Department of Defense and Office of Personnel Management Web sites. The commenter further stated that many contractors do not want to directly reference the information on those sites because they are related to the Federal government's veterans' preference. The commenter requested that OFCCP develop guidance specifically for contractors clearly identifying which veterans are protected under the ''wartime'' or ''campaign badge veteran'' classification.

The final rule adopts the definition ''active duty wartime or campaign badge veteran'' as proposed in the NPRM. OFCCP believes that this is a more accurate description, and less subject to confusion, than the general ''other protected veteran'' classification. OFCCP notes that the Department of Defense and the individual services of the Armed Forces (*e.g.,* Army; Navy) administer these campaign badges, and thus contractors should consult with DOD or the issuing military service if they have questions about whether a particular badge is a campaign badge that provides coverage under VEVRAA.

• *Definition for ''Protected Veterans,'' ''Pre-JVA Veterans''*

While commenters were generally supportive of the proposal to create a definition for ''protected veteran,'' there were a few concerns regarding using the term ''protected'' to label the definition. One commenter argued that using the term ''protected veteran'' may cause further confusion since many mistakenly interpreted ''other protected veteran'' to mean all other veterans not protected under the other defined categories. Another commenter argued that the definition should utilize the label ''protected veteran,'' since this is the statutory language in VEVRAA.

The final rule retains the proposed definition for ''protected veteran.'' As this final rule eliminates the ''other protected veteran'' definition and replaces it with a clearer, more specific alternative, we believe that the new ''protected veteran'' term will not be confused with the previous ''other protected veteran'' term. Further, while we understand that the VEVRAA statute uses the term ''protected veterans'' to describe the various categories of veterans protected by VEVRAA, we use the term ''protected veteran'' in the regulations for consistency with other regulations administered by OFCCP. The Executive Order 11246 and section 503 regulations, as well as the VEVRAA regulations to date, have used the term ''protected'' to refer to the individuals and groups of individuals who have rights under the various statutes (*e.g.,* ''protected classes''). Meanwhile, the term ''covered'' has typically referred to the contractors to whom the regulations apply (*e.g.,* ''covered contractor''). Therefore, in order to maintain word usage continuity with all of OFCCP's laws, we retain the term ''protected veteran'' as proposed in the NPRM.

One commenter suggested that OFCCP expand the types of veterans protected under VEVRAA to include Desert Storm-era veterans, veterans that served in a war zone and veterans who utilize service dogs. The categories of ''protected veterans'' are not set by OFCCP, but rather are defined by the VEVRAA statute codified at 38 U.S.C. 4212(a)(3). OFCCP cannot expand the categories beyond those set forth in the statute. We note that most of the types of veterans listed above are protected by the categories of veterans set forth in the statute. Veterans that served in the Desert Storm-era or otherwise in a war zone likely will be protected under the ''active duty wartime or campaign badge veteran'' category of protected veteran, and possibly the ''recently separated veteran'' category as well. As for veterans who use service dogs, if they were discharged or released from active duty due to a service-connected disability, or are otherwise entitled to compensation for disability under laws administered by the Department of Veterans Affairs, they would already be protected under the ''disabled veteran'' classification.

Finally, as noted in the discussion on the rescission of part 60–250, the final rule also includes a definition for ''pre-JVA veteran,'' which incorporates those individuals who were previously protected under part 60–250 into part 60–300. The definition is as follows:

''*Pre-JVA veteran* means an individual who is an employee of or applicant to a contractor with a contract of $25,000 or more entered into prior to December 1, 2003, and who is a special disabled veteran, veteran of the Vietnam era, pre-JVA recently separated veteran, or other protected veteran, as defined below:

(1) Special disabled veteran (also referred to in this regulation as 'Pre-JVA special disabled veteran') means:

(i) a veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans Affairs for a disability:

(A) Rated at 30 percent or more; or

(B) Rated at 10 or 20 percent in the case of a veteran who has been determined under 38 U.S.C. 3106 to have a serious employment handicap; or

(ii) A person who was discharged or released from active duty because of a service-connected disability.

(2) Veteran of the Vietnam era means a person who:

(i) Served on active duty for a period of more than 180 days, and was discharged or released there from with other than a dishonorable discharge, if any part of such active duty occurred:

(A) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or

(B) Between August 5, 1964, and May 7, 1975, in all other cases; or

(ii) Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed:

(A) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or

(B) Between August 5, 1964, and May 7, 1975, in all other cases.

(3) Pre-JVA recently separated veteran means a pre-JVA veteran during the one-year period beginning on the date of the pre-JVA veteran's discharge or release from active duty.

(4) Other protected veteran means a person who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized, under the laws administered by the Department of Defense.''

As stated in the discussion of the rescission of part 60–250, references to ''Pre-JVA veteran'' are included in the discrimination prohibition section for the final rule (§ 60–300.21) and the complaint procedures section of the final rule (§ 60–300.61) to ensure that, if there are any individuals remaining who are protected solely by part 60–250, such individuals will be able to avail themselves of their rights and file complaints for discrimination based on their veteran status just as ''protected veterans'' under part 60–300 are able to do. We do not include ''pre-JVA veterans'' along with ''protected

veterans'' in the sections of the regulation pertaining to contractors' affirmative action obligations. As we have noted above, we have no evidence that there are any contracts remaining that fall solely under part 60–250's coverage, and thus requiring contractors to engage in affirmative action efforts pursuant to contracts that by all accounts no longer exist is not a good use of resources. Regardless, the protected veteran categories under part 60–300 include the vast majority of veterans who were protected under the part 60–250 categories—indeed, the part 60–300 categories are even broader with regard to recently separated veterans and disabled veterans. To the extent they do not, many of contractors' affirmative action obligations under part 60–300 would likely reach such individuals anyway (*e.g.,* a contractor's recruitment and outreach effort, which could include a linkage agreement with a local veterans service group).

• *Definition for ''Linkage Agreements''*

Commenters expressed a variety of concerns regarding the proposed definition of ''linkage agreements.'' However, as the final rule eliminates the requirement for contractors to enter into linkage agreements—see discussion of § 60–300.44(f), below—there is no need for the regulation to contain a definition for it, and thus it is eliminated from the final rule.

• *Additional Definitions*

Commenters recommended adding certain definitions to § 60–300.2 for clarification purposes. Two commenters stated that OFCCP needed to clearly define ''priority referral.'' One of the commenters, a law firm, expressed concern that contractors are specifically directed to request ''priority referrals'' and conduct analyses of ''priority referrals'' in comparison to other referrals, but the regulations do not clearly define ''priority referral.'' Another commenter requested that OFCCP define ''external job search organizations'' because the term has been broadly interpreted to encompass a broad range of organizations including online job search engines, veterans' service organizations, and other third parties that provide candidates for contractors.

OFCCP declines to include a definition of ''priority referral'' in § 60–300.2. OFCCP believes that it is clear from the statute that the term refers to individuals referred pursuant to a local employment services office's requirement to give ''veterans priority in referral'' for contractor employment listings. *See* 38 U.S.C. 4212(a)(2). Further, the requirement that the One-Stop service delivery systems provide priority referral of veterans is not administered and carried out by OFCCP, but by other agencies within the Department. The Department's Employment and Training Administration (ETA) and Veterans' Employment and Training Service (VETS) have published guidance on implementing priority of service requirements for veterans, including: the Training and Employment Guidance Letter 10–09 (accessible on ETA's Web site at *http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2816*); Veterans' Program Letter 07–09; and Training and Employment Notice 15–10, ''A Protocol for Implementing Priority of Service for Veterans and Eligible Spouses.'' However, we note that the final rule eliminates the proposed requirement to collect and maintain data on priority referrals, which should limit any concerns raised in response to the NPRM about how to specifically categorize priority referrals.

OFCCP also disagrees with the assertion that the agency should define ''external job search organization.'' The NPRM noted in the discussion of the proposed Paragraph 4 of the EO Clause that if a ''contractor uses any outside job search companies (such as a temporary employment agency) to assist in its hiring, the contractor must provide the state employment service with the contact information for these outside job search companies.'' This context clarifies the kinds of organizations that are considered ''external job search organizations.'' OFCCP intends for ''external job search organization'' to be read as broadly as possible. ''External job search organization'' includes any entity not wholly owned and operated by the contractor that assists with its hiring.

Finally, the final rule appends additional language to the definition for ''employment service delivery system'' (ESDS). The existing rule references that the ESDS offers services in accordance with the Wagner-Peyser Act. The final rule adds some additional background and explanation of the Wagner-Peyser Act, stating that ''[t]he Wagner-Peyser Act requires that these services be provided as part of the One-Stop delivery system established by the States under Section 134 of the Workforce Investment Act of 1998.'' The Wagner-Peyser Act of 1933 established a national network of Employment Service offices that provided labor exchange services to jobseekers and employers. The Workforce Investment Act of 1998 (WIA) amended the Wagner-Peyser Act and required states and localities to integrate employment and training programs into a single public workforce system. Thus, employment services and training programs are all provided through a national network of One-Stop Career Centers established in the local workforce investment areas of the states. The description of the Employment Service's role in the public workforce system can be found at 20 CFR 652.202, and Section 7(e) of the Wagner-Peyser Act.

We also note that several commenters representing the contractor community requested that OFCCP add formal definitions for ''applicant'' and for ''Internet applicant,'' as those terms are defined in the Executive Order 11246 (EO 11246) implementing regulations at 41 CFR part 60–1. While OFCCP does not formally adopt the definition of ''Internet applicant'' into the section VEVRAA regulations, OFCCP is harmonizing the requirements of these regulations and the EO 11246 Internet Applicant Rule. OFCCP provides further guidance on this issue in the preamble discussion related to § 60–300.42.

Section 60–300.5 Equal Opportunity Clause

The NPRM proposed several changes to the content of the Equal Opportunity Clause found in § 60–300.5, and the manner in which the Clause is included in Federal contracts. These proposals, the comments to these proposals, and the revisions made to the final rule are discussed in turn below.

• *EO Clause Paragraph 2—Clarification of Mandatory Job Listing Obligations*

The NPRM proposed additional language to this paragraph clarifying that the contractor must provide job vacancy information to the appropriate employment service in the manner that the local employment service delivery system (ESDS) requires in order to include the job in their database so that they may provide priority referral of veterans. The NPRM also proposed additional language to this paragraph clarifying that, for any contractor who utilizes a privately-run job service or exchange to comply with its mandatory listing obligation, the information must be provided to the appropriate employment service in the manner that the employment service requires. OFCCP received 14 comments concerning this section from an individual, law firms, contractors, contractor groups, a veteran's group, and others. As explained below, we adopt the language proposed in the NPRM for this paragraph with one minor revision.

The majority of the comments received asserted that posting jobs in the

format required by a given ESDS was burdensome, as ESDSs in varying states and localities require different submission formats and information for their job listing system. On a related note, several commenters suggested that the Department reinstitute America's Job Bank, a nationwide job listing service operated and eventually eliminated several years ago by the Employment and Training Administration. OFCCP did not develop or maintain America's Job Bank, as one law firm commenter asserted.

A bit of historical background is perhaps helpful in addressing these comments. As was discussed in the NPRM, the requirement to list jobs with the appropriate ESDS is not a purely regulatory creation, but is established in the statute itself. *See* 38 U.S.C. 4212(a)(2)(A). The statute has long required that each contractor ''shall immediately list all of its employment openings with the appropriate employment service delivery system.'' *Id.* The JVA, in amending VEVRAA in 2002, further specified that while contractors could also list a job with America's Job Bank or any additional or subsequent national electronic job bank established by the Department of Labor, this *was not in and of itself sufficient* to satisfy the job listing requirement. *Id.* at 4212(a)(2)(A). Accordingly, reinstitution of America's Job Bank or something similar would not change the statutory requirement that contractors list their jobs with the appropriate ESDS. OFCCP is obligated to comply with the statute as written.

Thus, the mandatory job listing requirement set forth in the NPRM is not a new creation; it merely clarified that contractors list their jobs with the ESDS ''in the manner and format required'' by the ESDS. This, for example, could include requiring electronic transmission through a web-based form or electronic document format (such as PDF), requiring paper transmission using mail or facsimile, or requiring the contractor to provide particular types of information in its submissions. As we stated in the NPRM, this clarification stems from numerous reports received by OFCCP that contractors were occasionally providing job listing information to the ESDS in an unusable format, such that their jobs were not being listed and the ESDS could not properly carry out the priority referral of veterans, which is required by VEVRAA and its regulations. We received input during the public comment period from individuals working for or with an ESDS that corroborated these reports. If the purpose of the mandatory job listing requirement is to help veterans find work with Federal contractors, then surely Congress did not intend to permit contractors to provide information about their job openings in an unusable format, completely defeating the purpose of the requirement. Some commenters were concerned that the proposed language in the NPRM required contractors to provide information about their job openings in one specific format mandated by the ESDS. This was not the intention of the proposal. Rather, the aim of the proposal was simply to ensure that contractors provide information about their job openings with the ESDS in a format that the ESDS can use to provide priority referrals of protected veterans to contractors. If an ESDS permits the contractor to provide this information in various formats, the contractor would be free to use any one of them. To clarify this requirement, the final rule revises the proposal's language (providing the listing ''in the manner or format required by the appropriate [ESDS] . . .'') to require contractors to list their jobs ''in *a* manner and format *permitted* by the appropriate [ESDS] which will allow that system to provide priority referral of veterans. . .''

Finally, a few commenters questioned whether the language proposed in the NPRM for the last sentence of this paragraph, which clarifies that any contractor using a privately-run job service or exchange to list its jobs is still required to have the job listed with the appropriate ESDS in a usable format, would forbid third parties from posting jobs for contractors or the use of private job boards. The language in the NPRM, now adopted into the final rule, does not prevent a contractor from utilizing a third party to list its jobs, so long as the job listing is submitted to the appropriate ESDS in any manner and format permitted by the ESDS. However, if the job is not listed by the third party with the appropriate ESDS in a permitted manner and format, the contractor will be held responsible. Similarly, the language in the NPRM, now adopted into the final rule, does not prevent a contractor from listing its jobs on any privately-run job boards it may deem worthwhile; however, it may only do so in addition to, and not instead of, the mandatory job listing requirement established by statute and set forth in the rule.

• *EO Clause Paragraph 4—Information Provided to State Employment Services*

The NPRM proposed that the contractor, when it becomes obligated to list its job openings with the appropriate state employment service, must provide additional information, including its status as a Federal contractor, the contact information for the contractor hiring official at each location in the state, and its request for priority referrals of protected veterans for job openings at all its locations within the state, and that this information must be updated annually. These requirements were added in response to feedback received from ESDSs that there is no centralized list of Federal contractors that they can consult in order to determine if a listing employer is a Federal contractor, and to ensure that these ESDSs have contact information for the listing contractor if there are any questions that need to be resolved in the job listing or priority referral process. The NPRM also required that the contractor provide the ESDS with the contact information for any outside job search companies (such as a temporary employment agency) assisting with its hiring process.

OFCCP received four comments specific to these proposed changes. One commenter stated that GSA has a list of Federal contractors and, therefore, the Federal Government should make this list available to the ESDS and not require listing companies to indicate whether or not they are a Federal contractor as defined by the VEVRAA regulations. While it is true that the GSA e-library Web site has a list of contractors, this list does not contain companies that have contracts with all agencies throughout the Federal Government, and in fact did not include certain contractors that OFCCP has investigated in recent years and for whom coverage is not disputed. Additionally, the library is not limited to those contracts entered into on or after December 1, 2003 with a value of $100,000 or more, the criteria for coverage under part 60–300 of the regulations. As such, this list is both under-inclusive and over-inclusive, and cannot be relied upon for VEVRAA enforcement purposes. In this context, and in the interest of insuring that Federal contractors are properly identified so an ESDS can fulfill its duty to give priority referral of protected veterans to contractors, we believe that requiring contractors to simply indicate ''VEVRAA Federal Contractor'' on its job listings facilitates the business engagement efforts of the ESDS and is not unduly burdensome for either the contractor or the ESDS (this revision does not add any additional reporting requirements for the ESDS aside from those already set forth in the VEVRAA and these regulations). Accordingly, the final rule incorporates this proposal.

Some commenters stated that posting the contact information for ''the contractor official responsible for hiring at each location'' would be burdensome on that person, especially if recruiting nationwide, and might be confusing, as multiple persons could be involved in hiring. Among the alternative suggestions in the comments was using ''chief hiring official,'' ''HR contact,'' or ''senior management contact'' in the place of ''contractor official responsible for hiring at each location.''

As stated in the NPRM, the reason for requiring this information was to ensure that the ESDS had the contact information for someone working for the contractor that could answer any questions the ESDS may have about the listing to ensure it is processed appropriately and was the proper recipient of priority referrals of veterans. In order to make this requirement less vague and to provide contractors with greater flexibility, the final rule includes a sentence providing further guidance that the ''contractor official'' may be a chief hiring official, a Human Resources contact, a senior management contact, or any other manager for the contractor that can verify the information set forth in the job listing. Additionally, the final rule makes a small change to the reporting schedule for the information required by this paragraph. While the NPRM required that this information be reported annually, the final rule requires that contractors provide this information at the time of its first job listing, and then update it for subsequent job listings only if any of the provided information has changed. This will ensure that the ESDS has the information it needs while potentially limiting the reporting burden on contractors.

The NPRM also required that the contractor provide the ESDS with the contact information for any outside job search companies (such as a temporary employment agency) assisting with its hiring process, and replaced the term ''state workforce agency'' and ''state agency'' throughout the regulation with the term ''employment service delivery system,'' which was already a defined term in the regulation. We did not receive any comments specific to these proposals, and thus they are adopted in the final rule as proposed.

• *EO Clause Paragraph 5—Maintaining Referral Data*

The NPRM proposed an entirely new paragraph 5 to the EO Clause that would require contractors to collect and maintain data on the number of referrals and priority referrals they receive, in order to give the contractor and OFCCP a quantifiable measure of the availability of protected veterans and, therefore, provide part of a baseline for measuring the success of a contractor's outreach and recruitment programs. The NPRM also proposed that contractors maintain this data for five years, in order to ensure that contractors had enough historical referral data to consider when evaluating its outreach efforts (*see* § 60–300.44(f)(3)) and establishing benchmarks (*see* § 60–300.45).

OFCCP received several comments on this proposal, the majority of which stated that the data collection and five-year recordkeeping requirements were unduly burdensome. Other commenters believed that it would be difficult and perhaps impossible to obtain accurate referral data, and thus the practical utility of the data collection requirement was limited. For instance, one commenter asserted that accurate referral data would be difficult to obtain if an applicant filed directly with a contractor, and that referral data from private Web sites would not be counted as referral. Several commenters representing the contractor community also asserted that requiring contractors to collect and maintain this data was inconsistent with the Internet Applicant rule set forth in the Executive Order 11246 regulations.

OFCCP has considered these comments and believes that the points raised by commenters regarding the practical utility of the referral data, in light of the burden of collecting it, have merit. Accordingly, the final rule deletes the proposed paragraph 5 and renumbers the subsequent paragraphs in the EO Clause accordingly.

• *EO Clause Paragraph 10 (NPRM)/Paragraph 9 (Final Rule)—Providing Notice to People with Disabilities*

In paragraph 10 of the EO Clause in the NPRM, we proposed two changes. First, we updated the contractor's duty to provide notices of rights and obligations that are accessible to individuals with disabilities, replacing the outdated suggestion of ''hav[ing] the notice read to a visually disabled individual'' as an accommodation with the suggestion to provide Braille, large print, or other versions that allow persons with disabilities to read the notice themselves. OFCCP received one comment from a contractor asserting that there were ''too many'' types of notices possible for all types of disabilities. We respectfully disagree with this commenter's assertion. The context of the existing regulation and the proposed changes clearly and specifically refer to providing an alternative notice to individuals who are unable to read it due to visual impairment or visual inaccessibility (such as an individual who uses a wheelchair being unable to read the fine print of a notice posted high on a wall). The commenter did not specify any other disabilities for which contractors would need to create alternative notices, and we cannot conceive of any that would create any significant burden. Further, any burden in providing a notice in Braille is slight given the fact that they are available from the EEOC's Office of Communications and Legislative Affairs, who may be contacted at 202–663–4191 or TTY 202–663–4494. *See http://www1.eeoc.gov/eeoc/publications/*. We have amended the language slightly in the final rule to clarify that among the ''other versions'' of the notice there are additional technological options available to contractors that would fulfill the requirement, such as providing it electronically or on computer disc.

Second, we proposed additional language detailing that a contractor can satisfy its posting obligations through electronic means for employees who use telework arrangements or otherwise do not work at the physical location of the contractor, provided that the contractor provides computers to its employees or otherwise has actual knowledge that employees can access the notice. The addition of this language is in response to several things: the increased use of telecommuting and other work arrangements that do not include a physical office setting; internet-based application processes in which applicants never enter a contractor's physical office; and a number of complaints received by OFCCP in recent years from individuals employed by contractors without a constant physical workplace—such as airline pilots—who assert that they were unaware of their rights under VEVRAA. OFCCP received two comments on this proposal, one from a law firm and one from a contractor, raising two separate issues.

The first issue raised by one of these comments was that ''actual knowledge'' of an off-site employee being able to access the notice is unduly burdensome. We respectfully disagree. First, to clarify, ''actual knowledge'' does not mean actual knowledge that the employee accessed the notice, but rather actual knowledge that the notice was posted or disseminated in such a way that would be accessible to the employee. As set forth in the proposed language, for a contractor with employees who do not work at a physical location of the contractor, electronic notices that are posted in a conspicuous location and format on the company's intranet or sent by electronic

mail to employees satisfies the posting obligations. In the example of electronic mail, ''actual knowledge'' could easily be documented merely by maintaining an electronic copy of the email message sent to employees—something that is done (or can be done) automatically by virtually all enterprise-based email systems. Similarly, ''actual knowledge'' for postings on a company intranet can be verified simply by having an employee in personnel or IT periodically check the link to the electronic posting to ensure that it works and the posting is readable. Performing these types of checks on information posted on a company intranet is a common best practice that takes seconds to complete. In light of the numerous comments and complaints OFCCP has received from protected veteran employees of Federal contractors—particularly those without a traditional physical workplace—that they were unaware of their rights or their contractor's affirmative action obligations, we believe the importance of ensuring that employees have access to statements of their rights and the contractor's obligations far outweighs the slight burden that compliance creates.

The second issue raised in the comments pertained to the requirement that, for contractors using electronic or internet-based application processes, an electronic notice of employee rights and contractor obligations must be ''conspicuously stored with, or as part of, the electronic application.'' One commenter opined that storing the electronic notice with the application would increase the size of applicant files. The potentially small increase in the size of the electronic file does not outweigh the benefit of providing employees notice of their employment rights and protections.

Accordingly, for the reasons stated above, OFCCP has adopted the proposed changes to paragraph 10 of the EO Clause into paragraph 9 of the final rule. We have also added a clarification stating that a contractor is able to satisfy its posting obligation by electronic means for employees who do not work at a physical location of the contractor, provided that the contractor provides computers ''or access to computers'' that can access the electronically posted notices. This clarifies that electronic posting is appropriate not only for employees who telework, but also for those who share work space—and contractor-provided computers—at a remote work center.

• *EO Clause Paragraph 11 (NPRM)/ Paragraph 10 (Final Rule)—Providing Notice to Labor Organizations*

The NPRM proposed additional language that a contractor, in addition to its existing obligation to notify labor organizations with which it has collective bargaining agreements about its affirmative action efforts, must also notify the labor organizations about its non-discrimination obligations as well. There were no comments specific to this minor change, and thus the language in paragraph 11 of the NPRM is adopted as paragraph 10 of the final rule as proposed.

• *EO Clause Paragraph 13 (NPRM)/ Paragraph 12 (Final Rule)—Contractor Solicitations and Advertisements*

The proposed regulation added a new paragraph 13 to the EO clause which would require the contractor to state and thereby affirm in solicitations and advertisements that it is an equal employment opportunity employer of veterans protected by VEVRAA, much like it is already required to do under the Executive Order 11246 regulations.

OFCCP received one comment from a contractor group, objecting to this proposal on the grounds that advertisements would cost more due to their increased word length. However, as stated in the NPRM, contractors are already required under Executive Order 11246 to state in advertisements and solicitations that ''all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.'' *See* 41 CFR 60–1.4(a)(2). The requirement set forth in paragraph 13 of the NPRM would require adding ''protected veteran status,'' or an abbreviation thereof, to the language that contractors are already required to use in advertisements. This is a very minor change involving nominal time and expense to contractors that will affirm to the public a fact that many do not know—that protected veterans are entitled to non-discrimination and affirmative action in the workplace of Federal contractors. Accordingly, the language in paragraph 13 of the NPRM is adopted as paragraph 12 of the final rule as proposed.

• *Inclusion of EO Clause in Federal Contracts (proposed §§ 60–300.5(d) and (e))*

Finally, the NPRM proposed requiring that the entire equal opportunity clause be included verbatim in Federal contracts. This proposed change was to ensure that the contractor, and particularly any subcontractor, who often relies on the prime contractor to inform it of nondiscrimination and affirmative action obligations, reads and understands the language in this clause. OFCCP received four comments—from two law firms, a contractor, and a contractor group—all of whom opposed this proposed new requirement. These commenters asserted that the requirement to incorporate the EO Clause into Federal contracts was too burdensome, as the length of a contract would increase greatly in size to perhaps double or triple its original length. The commenters further opined that the increase in the length would cause contracts to be rewritten, and that the increase in paper that would accompany such a requirement was not environmentally friendly. Finally, the commenters asserted that cutting and pasting the text of the clause into the text of contracts was not a simple task, and would require time to reformat and otherwise edit the contract prior to signing it.

In light of the comments and upon further consideration of the issue, OFCCP withdraws and revises the proposal to incorporate the entire EO Clause into Federal contracts. In addition to the burden concerns set forth by commenters, there is concern that the length of the EO Clause will dissuade, rather than promote, contractors and subcontractors from reading and taking note of the non-discrimination and affirmative action obligations toward protected veterans. This is contrary to the intent behind the proposal in the NPRM.

However, the requirement in the existing regulations does little to notify contractors and subcontractors of the nature of their obligations to employ and advance in employment protected veterans, which was a primary objective of the NPRM proposal. Accordingly, in order to draw greater attention to the contractors' obligations under VEVRAA without the burden of including the entire VEVRAA EO clause, the final rule revises paragraph (d) of this section to require the following text, set in bold text, in each contract, following the reference to VEVRAA required by the FAR:

> ''This contractor and subcontractor shall abide by the requirements of 41 CFR 60–300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.''

This requirement would apply to all contracts entered into after the effective date of the rule.

Lastly, the final rule does not incorporate the proposed change to paragraph (e), and instead reverts to the existing language in that subsection. The NPRM proposed eliminating the last clause of the paragraph (''whether or not it is physically incorporated in

such contract and whether or not there is a written contract between the agency and the contractor'') to align with the proposed paragraph (d), which required incorporation of the entire EO Clause into Federal contracts. Because paragraph (d) of the final rule does not include this requirement, the final rule revises paragraph (e) accordingly back to its existing form.

Subpart B—Discrimination Prohibited

Section 60–300.21 Prohibitions

The proposed rule included clarifying language to paragraph (f)(3) of this section, qualifying that an individual who rejects a reasonable accommodation made by the contractor may still be considered a qualified disabled veteran if the individual subsequently provides or pays for a reasonable accommodation. One law firm commenter stated that the proposal to allow individuals to provide their own accommodations could lead to legal, safety, and equal treatment issues.

OFCCP opts to retain the proposed language in the final rule. First, this proposal is not ''wholly inconsistent'' with the ADA like the commenter suggested. Rather, it is entirely consistent with longstanding EEOC ADA reasonable accommodation policies. *See, e.g.,* EEOC's ''Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act,'' October 17, 2002 (''to the extent that a portion of the cost of an accommodation causes undue hardship, the employer should ask the individual with a disability if s/he will pay the difference.'') We likewise do not believe that safety concerns warrant a change in the regulation, as the provisions on ''direct threat'' in this regulation and any contractors' general workplace safety policies will guard against these concerns. Nor would a contractor have to permit a disabled veteran to provide an accommodation if the contractor can show that that accommodation would significantly disrupt the workplace or otherwise impose an undue hardship on its operations.

Finally, as set forth in the discussion of the new ''pre-JVA veteran'' definition in § 300.2, the final rule adds ''or pre-JVA veteran'' after each instance of ''protected veteran'' in this section, and adds ''or pre-JVA special disabled veteran'' after each instance of ''disabled veteran'' in this section. This incorporates the categories of veterans protected by the now rescinded part 60–250 into this part, ensuring that pre-JVA veterans, if any still exist, are protected by the anti-discrimination provisions of this section.

Subpart C—Affirmative Action Program

Section 60–300.40 Applicability of the affirmative action program requirement

The NPRM proposed one small change to paragraph (c) of this section, specifying that a contractor's affirmative action program shall be reviewed and updated annually ''by the official designated by the contractor pursuant to § 60–300.44(i).'' We received no comments on this section. Accordingly, § 60–300.40 is adopted in the final rule as proposed.

Section 60–300.41 Availability of affirmative action program

The proposed regulation added a sentence requiring that, in instances where the contractor has employees who do not work at the contractor's physical establishment, the contractor shall inform these employees about the availability of the affirmative action program by means other than a posting at its establishment, in light of the increased use of telecommuting and other flexible workplace arrangements. This proposal in many respects mirrored the electronic notice requirements set forth in paragraph 10 of the EO Clause at § 60–300.5 of the rule. OFCCP received 6 comments from an individual, two law firms, two contractors and a contractor association regarding the proposed revisions to this section, discussed in turn below.

The comments from the two law firms assert that the proposed changes regarding data collection and analysis in §§ 60–300.44(f) and 60–300.44(k) change the character of the VEVRAA AAP by including potentially confidential information and should warrant excluding ''data metrics'' contained in the AAP when the AAP is accessible by applicants and employees. One of these comments indicated that even if data is aggregated, it may still identify an employee as a veteran violating confidentiality, *e.g.,* one hire occurs for which the position is named and the individual is identified as a disabled veteran. Another comment similarly recommended that a ''soft'' copy of the AAP be made available to those requesting a copy. Finally, one comment noted that the AAP should simply be made available at the convenience of the requesting applicant and/or employee, which is essentially the function of the existing rule.

In response to these comments, and as part of the effort to focus the final rule on those elements that are of critical importance to OFCCP and reduce burden on contractors where possible, the final rule does not incorporate the proposals in the NPRM regarding informing off-site individuals about the availability of the contractor's affirmative action program. Rather, the final rule retains the language in the existing § 60–300.41 in that regard. Therefore, contractors must still make available their affirmative action programs to employees and applicants for inspection upon request. We further clarify, in light of the modern workplace in which more and more workplaces house information electronically, that contractors may respond to requests by making their AAPs available electronically, so long as the requester is able to access the electronic version of the information. In response to the law firm commenters' concerns about confidentiality and the AAP's ''data metrics,'' OFCCP revises the language for the final rule to state that ''[t]he full affirmative action program, *absent the data metrics required by § 60–300.44(k),* shall be made available to any employee or applicant . . .'' (revisions emphasized). This balances the interest in confidentiality of the contractor and its employees with the need for transparency regarding the contractor's affirmative action efforts.

Section 60–300.42 Invitation to self-identify

The NPRM included three significant revisions to this section: (1) Requiring the contractor to invite all applicants to self-identify as a ''protected veteran'' prior to the offer of employment without disclosing the particular category of veteran; (2) in addition to the new pre-offer inquiry, requiring a post-offer self-identification process to collect more refined data regarding the specific category or categories of protected veteran to which an applicant belongs; and (3) requiring, rather than suggesting, that the contractor seek the advice of the applicant regarding accommodation. OFCCP received 28 comments on this section, 9 of which were in support of the self-identification proposals in the NPRM. For those that opposed portions of the NPRM, most comments centered on the issues of burden, the possibility of inaccurate self-reporting, alleged conflict between the pre-offer inquiry and requirement to seek accommodation advice with State and Federal laws (most notably the ADA and the ADAAA), and interplay between the pre-offer data collection requirement and the Internet Applicant Rule set forth in the regulations for Executive Order 11246. The proposals and the comments to these proposals, and the revisions made to the final rule are discussed in

turn below (with the exception of some specific comments on burden, which are addressed in the Regulatory Procedures section of the final rule).

• *Paragraph (a): Pre-offer invitation to self-identify*

As discussed in the NPRM, the primary reason for proposing a pre-offer invitation to self-identify was to allow the contractor, and subsequently OFCCP, to collect valuable, targeted data on the number of protected veterans who apply for Federal contractor positions. The data would enable the contractor and OFCCP to measure the effectiveness of the contractor's recruitment and affirmative action efforts over time, and thereby identify and promote successful recruitment and affirmative efforts taken by the contractor community.

At the outset, several commenters addressed the issue of whether a pre-offer invitation to self-identify as a protected veteran was legally permissible under the Americans with Disabilities Act regulations, which limit the extent to which employers may inquire about disabilities prior to an offer of employment. The vast majority of commenters addressing the issue—including disability rights groups, veterans groups, and two commenters representing the contractor community—stated that the proposed pre-offer inquiry was legally permissible. Two commenters representing contractors on EEO matters disagreed. One stated that its clients avoid pre-offer inquiries specifically to avoid ''running afoul'' of the ADA. The other stated that ''[w]hile the ADA provides that an applicant can ask for a reasonable accommodation during the hiring process, employers cannot otherwise ask any questions about an individual's disability.''

OFCCP believes the concerns of these two commenters are based on an incorrect reading of the ADA and its regulations. As we discussed in the NPRM, the ADA and section 503 regulations specifically permit the contractor to conduct a pre-offer inquiry into disability status if it is ''made pursuant to a Federal, state or local law requiring affirmative action for individuals with disabilities,'' such as VEVRAA. *See* 29 CFR 1630.13, 1630.14; 41 CFR 60–741.42. Further, as discussed in the NPRM, even though a pre-offer inquiry into disability status is legally permissible, the proposed pre-offer inquiry does not ask about disability status specifically; rather, it only asks that the applicant identify whether he or she is a protected veteran generally. Regardless, the ''affirmative action'' exception carved into the ADA clearly allows the type of pre-offer self-identification proposed in the NPRM, and thus there is no legal reason to modify it.[19]

Among those commenters agreeing that the proposed pre-offer inquiry was legally permissible, however, two commenters—a disability rights association and a contractor—stated that the inclusion of paragraphs (a)(1) and (a)(2), which describe the conditions under which pre-offer invitations of disabled veterans are legally allowed, is confusing when they are stated ''additionally'' to the required pre-offer invitation in paragraph (a). One of these commenters stated it was unclear whether the inclusion of these paragraphs ''intended to require pre-offer invitation for all protected veterans or only for non-disabled protected veterans.'' Given that the new regulation requires all contractors to conduct a pre-offer inquiry that is lawful under the ADA, this guidance is now largely superfluous. Accordingly, as suggested by these commenters, this language (*i.e.,* the third sentence of paragraph (a), and subparagraphs (1) and (2)) are not included in the final rule.

The majority of those commenting upon the scope of the proposed pre-offer inquiry—requesting ''protected veteran'' status in the aggregate, as opposed to inviting individuals to identify as one or more of the categories of protected veteran—approved of it, but one HR consulting firm commenter stated that the pre-offer inquiry should ask individuals to denote the specific categories of veteran under which they fall, and that contractors could then aggregate the data for purposes of evaluating their outreach efforts and setting benchmarks. OFCCP declines to require contractors to collect data by protected veteran category at the pre-offer stage. We believe maintaining such refined data at this stage would be more burdensome on contractors than simply capturing whether interested job seekers are protected veterans or not, particularly given that the overall population of protected veterans is relatively small and that further division of the pool would tend to reduce the contractor's ability to engage in any meaningful data analysis. Further, as discussed in the NPRM, the contractor's obligations would be the same with respect to each category of protected veteran at the pre-offer stage, thus there is limited benefit at that stage to knowing the specific categories of protected veteran to which each individual belongs.

The majority of those commenters opposed to the proposed pre-offer inquiry expressed concerns about the accuracy of veteran self-identification data. First, several commenters from the contractor community asserted that not all protected veterans will self-identify—either due to privacy concerns, fear of reprisal, or a failure to understand that they fall within one of the four listed categories of protected veterans—which will result in an underreporting of actual protected veteran applicants. Second, the commenters asserted that some veterans that are not protected by VEVRAA may nevertheless choose to self-identify as a protected veteran due to a misunderstanding of the four categories of protected veterans, which could lead to an inaccurate over-reporting of protected veterans. While some commenters urged OFCCP to eliminate the pre-offer inquiry entirely on these grounds, others propounded suggestions for how to increase the accuracy of self-reporting. One commenter suggested that the invitation include language that the applicant must *know* he or she is a protected veteran in order to self-identify as such (rather than the model language in Appendix B, which asks applicants to self-identify if they believe they are a veteran who may be protected), in order to ''minimize the possibility of self-identification error.'' Several other commenters requested that OFCCP provide contractors (and, in turn, applicants) with more detailed descriptions of the protected veteran categories, including, for instance, the specific campaign badges or Armed Forces service medals that qualify a veteran as an ''active duty wartime or campaign badge veteran'' or ''Armed Forces service medal veteran,'' respectively.

At the outset, while OFCCP concedes the possibility that self-reporting data on veterans will not be entirely accurate, OFCCP disagrees that this is sufficient reason to eliminate the pre-offer inquiry. Contractors already collect and report data on the number of protected veteran employees and new hires on an annual basis pursuant to the VETS–100A form. While this data is subject to the same accuracy concerns, it provides the Department with a useful measure for identifying and tracking the number of protected veteran new hires and employees among the Federal contractor workforce. Similarly, while self-reported applicant data will never be perfect, it is nonetheless a useful

[19] To assuage any remaining doubt on this matter, OFCCP obtained a letter from EEOC's Office of Legal Counsel in advance of the publication of this rule affirming that a requirement to invite pre-offer self-identification of disability is permissible under the ADA and its regulations. This letter will be posted on OFCCP's Web site.

mechanism for collecting important information that currently goes completely unrecorded—the number of protected veterans who are able to connect to Federal contractors and submit an expression of interest in employment. With regard to more detailed descriptions of the protected veteran categories, we note that the campaign badges and service medals are created and administered by the Department of Defense and the individual services of the Armed Forces, and thus those with questions would be best served consulting with DOD or the issuing military service if they have questions about whether a particular badge or medal is a campaign badge or service medal that provides coverage under VEVRAA.

Another concern raised by several commenters is that the requirement to collect and maintain self-identification data from applicants does not comport with the Internet Applicant Rule found in the regulations to Executive Order 11246. *See* 41 CFR 60–1.3, 1.12. These commenters recommended that OFCCP add a definition of ''applicant'' and ''Internet applicant'' to this final rule and ensure that wherever in the regulations the term ''applicant'' is used, the term ''Internet applicant'' applies as well. OFCCP did not propose to add a definition of ''applicant'' or ''Internet applicant'' in its NPRM. Therefore, the final rule does not do so. However, the discussion that follows provides guidance about how contractors may invite Internet applicants to self-identify as a protected veteran under VEVRAA in a manner consistent with demographic collection requirements under the Executive Order Internet Applicant Rule. Under this final rule, contractors will be able to invite applicants to self-identify as a protected veteran at the same time the contractor solicits demographic data on applicants under the Executive Order 112146 Internet Applicant Rule. For Internet applicants this generally will be after the contractor has determined the individual has been screened for basic qualifications and meets other requirements for being an Internet applicant. Therefore, this final rule does not require contractors to change their existing systems for screening Internet applicants so long as those systems comply with existing law.

By way of background, OFCCP's longstanding definition of ''applicant'' is contained in agency subregulatory guidance. See the Uniform Guidelines on Employee Selection Procedures (UGESP), Question and Answer 15, 44 FR 11996 (March 2, 1979).[20] According to that guidance, in general, an applicant is a person who has indicated an interest in being considered for hiring, promotion, or other employment opportunities, either in writing (by completing an application form or submitting a resume) or orally, depending upon the contractors' practice. The Internet Applicant Rule came into effect in February 2006, and pertains to recordkeeping by contractors on Internet-based hiring processes and the solicitation of race, gender, and ethnicity data, in conjunction with their recordkeeping obligations under the Executive Order implementing regulation at § 60–1.12. Under § 60–1.12, contractors' recordkeeping obligations include maintaining expressions of interest through the Internet that the contractor considered for a particular position, as well as applications and resumes. Contractors also are required to maintain, where possible, data about the race, sex, and ethnicity of applicants and Internet applicants, as appropriate. The term Internet applicant is defined in § 60–1.3 and generally means an individual who: (1) Submitted an expression of interest in employment through the Internet; (2) is considered by the contractor for employment in a particular position; (3) possessed the basic qualifications for the position; and (4) did not remove himself or herself from consideration.

OFCCP has taken into account contractors' concerns about inviting self-identification for applications submitted electronically, particularly for those contractors who create resume data bases which they mine for applicants when they have a job opening. In recognition of these concerns, and consistent with EO 13563's focus on simplifying and harmonizing requirements, OFCCP will permit contractors to invite applicants to self-identify as a protected veteran at the same time as the contractor collects the demographic data for applicants required under EO 11246. The Internet Applicant Rule under EO 11246 generally allows contractors to do a ''first cut'' and screen out individuals whom they believe do not meet the basic qualifications of the position—without capturing or retaining any demographic documentation on these individuals. There is the concern, however, that in doing this ''first cut'' contractors may be engaging in discrimination (e.g., if they are incorrectly applying their basic qualifications, or the basic qualifications have an adverse impact on a protected group and are not job related and consistent with business necessity), and by not keeping the demographic information on the individuals they screened out they are eliminating evidence to prove that discrimination may be occurring. This concern is even greater with regard to disabled veterans because these Executive Order ''first cuts'' are not designed to take into account the possibility that someone with a disability might be able to meet the qualification standard or perform the essential functions of the job with the provision of a reasonable accommodation.

Under existing law, it is unlawful under VEVRAA to use qualification standards, including at the ''basic qualifications'' screen stage, that screen out or tend to screen out a disabled veteran or class of disabled veterans unless the standard is shown to be job-related for the position in question and consistent with business necessity. Selection criteria that concern an essential function may not be used to exclude a disabled veteran if that individual could satisfy the criteria with a reasonable accommodation. See § 60–300.21(g). These requirements, therefore, apply when contractors design and implement their ''basic qualifications'' screens. In addition, after the initial screening for ''basic qualifications,'' contractors must also ensure that they are complying with their duty to evaluate all applicants for jobs based on the applicant's ability to perform the essential functions of the job with or without reasonable accommodation.

OFCCP will treat the recordkeeping provisions of VEVRAA at 60–300.80 in the same manner as the recordkeeping requirements under EO 11246 at 41 CFR 60–1.12 as applied to Internet applicants. These recordkeeping requirements are not new and will impose no additional burden on contractors. The record retention requirements exist independently of whether and when individuals are invited to self identify under VEVRAA.

The VEVRAA recordkeeping provisions require contractors to retain personnel or employment records made or kept by the contractor for one or two years depending on the size of the contractor and contract. These records

[20] Question and Answer 15 reads: ''Q. What is meant by the terms ''applicant'' and ''candidate'' as they are used in the Uniform Guidelines? A: The precise definition of the term ''applicant'' depends upon the user's recruitment and selection procedures. The concept of an applicant is that of a person who has indicated an interest in being considered for hiring, promotion, or other employment opportunities. This interest might be expressed by completing an application form, or might be expressed orally, depending upon the employer's practice.''

include the records contractors are required to maintain under 41 CFR 60–1.12. Section 60–1.12 requires contractors to maintain all expressions of interest through the Internet or related technologies considered by the contractor for a particular position, such as on-line resumes or internal resume databases, and records identifying job seekers contacted regarding their interest in a particular position. For purposes of recordkeeping with respect to internal resume databases, the contractor also must maintain a record of each resume added to the database, a record of the date each resume was added to the database, the position for which each search of the database was made, and corresponding to each search, the substantive search criteria used and the date of the search. For purposes of recordkeeping with respect to external databases the contractor must maintain a record of the position for which each search of the database was made, and corresponding to each search, the substantive criteria used, the date of the search, and the resumes of job seekers who met the basic qualifications for the particular position who are considered by the contractor. As with records retained under the EO 11246, these records are to be maintained regardless of whether the job seeker is an Internet applicant.

If a contractor has a practice of welcoming unsolicited resumes regardless of current job openings, OFCCP will permit the contractor to invite self-identification only of those considered for employment, consistent with requirements under EO 11246 and its regulations at 41 CFR 60–1.3 and 60–1.12. The obligation to invite self-identification is triggered by considering the job seeker for employment, not by including the resume in the resume database. For example, if a contractor has an internal resume database with 1,000 resumes and is looking for applicants to fill a job as an engineer in Omaha, the contractor could limit the pool of resumes under review by applying a ''basic qualifications'' screen that identifies those who have a masters degree in electrical engineering, at least three years of experience as an electrical engineer, and further limit the review to resumes submitted within the last three months. If that search produced a pool of 30 job seekers, the contractor might narrow the pool further by asking the 30 job seekers if they are interested in being considered for the job. If 10 job seekers indicate interest in being considered, they would be applicants and the contractor would invite the 10 job seekers to self-identify. In contrast, if a contractor has a practice of not accepting unsolicited resumes, job seekers who submit an unsolicited resume are not applicants. Accordingly, the contractor would have no obligation to invite them to self-identify as a protected veteran.

It is also possible that potential and qualified job applicants with disabilities may not apply for jobs posted on contractors' online application systems because, for example, they are not aware that selection criteria concerning essential functions may not be used to exclude them if they can satisfy the criteria with a reasonable accommodation. Contractors seeking to fill jobs should seek to attract the best possible pool of applicants; this includes applicants who are disabled veterans who could perform the job with or without reasonable accommodations. OFCCP notes that a best practice for ensuring a diverse, qualified pool of applicants for contractors using online application systems is posting a notice on their human resources Web page or online application portal that notifies job applicants who may need a reasonable accommodation to perform the functions of a job that they are entitled to one under the ADAAA. This best practice encourages qualified individuals with disabilities to pursue job vacancies, and provides contractors with access to a wide range of skills and talents.

In providing this guidance as to application of the self-identification requirement under VEVRAA, contractors should be able to operate as they have been using their existing systems and processes because this final rule does not change how contractors handle Internet applicants. This should allow contractors to avoid creating separate data collection and storage systems as many contractors feared. For those contractors that need further help determining which individuals must be given a pre-offer self-identification inquiry, OFCCP is available to provide technical guidance.

One commenter expressed concern regarding possible liability in connection with storing large amounts of sensitive data, such as that disclosed in an applicant's pre-offer self-identification form. However, the current regulations have long required contractors to maintain sensitive self-identification data that comes from post-offer inquiries, thus contractors should already have a mechanism in place for the proper storage of this information. While the additional pre-offer data increases the amount of data that contractors will need to maintain, this is largely a scope or resources question, not an information security issue. We have addressed the expected cost and burden of the pre-offer requirement in the revised Regulatory Procedures section of the final rule.

Finally, several commenters asserted that the new pre-offer inquiry would require significant lead time for contractors to change their current human resources information and applicant tracking systems so as to capture the pre-offer self-identification data. A revised burden analysis for these endeavors is included in the Regulatory Procedures section of the final rule. With regard to the amount of lead time necessary to incorporate the changes in this paragraph, one law firm commenter suggested that contractors be given ''a substantial grace period, which we propose to be at least one to two years,'' so that contractors and their systems providers can get up to speed. Another law firm commenter was less specific with the time needed, but said that ''90 days would not be enough time for some companies that do not have the internal resources to do it themselves.'' OFCCP has consulted with information systems analysts regarding an appropriate amount of preparation time, and on the basis of those discussions believes an effective date of 180 days after publication of the final rule is sufficient for contractors to incorporate Appendix B, or a substantially similar form, into their systems. Moreover, as noted in the Introduction to this preamble, contractors are permitted to update their affirmative action programs to come into compliance with the new requirements during their standard 12-month AAP review and updating cycle. If a contractor has prepared an AAP under the old regulations it may maintain that AAP for the duration of the AAP year even if that AAP year overlaps with the effective date of this final rule.

• *Paragraph (b): Post-offer invitation to self-identify*

The NPRM created a new paragraph (b) to describe the contractor's duty to invite applicants to submit post-offer self-identification regarding the specific category of protected veteran to which the applicant belongs, and retain this information. As we explained in the NPRM, this self-identification requirement will enable the contractor to capture refined data pertaining to each category of protected veteran to foster the contractor's compliance with the requirement to report such data set forth in the Veterans' Employment and Training Service (VETS) regulations at 41 CFR part 61–300. Although OFCCP received no comments specific to new paragraph (b), the paragraph is revised

in the final rule to make this intent explicit. Accordingly, paragraph (b) is revised to state that, post-offer, ''the contractor shall invite applicants to inform the contractor'' if they belong to one or more of the categories of protected veteran ''for which the contractor is required to report pursuant to 41 CFR part 61–300.'' This clarifies that the contractor's paragraph (b) obligation to ask applicants to identify their specific protected veteran classification(s) is contingent upon their having an obligation to report that information on the VETS–100A, or other future form, pursuant to 41 CFR part 61–300.

• *Paragraph (c): Content of invitations*

The NPRM revised paragraph (c) of this section by deleting the second sentence of the parenthetical at the end of the paragraph. This sentence described the format of and rationale behind the current Appendix B, which has been substantially amended in light of the new self-identification procedures proposed herein. We received no comments on this paragraph. Accordingly, the language in the NPRM is adopted as proposed. In addition, we revised the first sentence of paragraph (c) to say that invitations to self-identify ''shall state that the contractor is a Federal contractor required to take affirmative action to employ and advance in employment protected veterans pursuant to the Act.'' This language replaces the statement in the existing regulation that ''a request to benefit under the affirmative action program may be made immediately and/or at any time in the future.'' OFCCP believes that this statement could be misinterpreted to suggest that affirmative action must be ''requested'' by a protected veteran, thus confusing protected veterans and contractors alike.

• *Paragraph (d): Requirement that contractor seek applicant's advice regarding accommodation*

There were three proposed changes to paragraph (d). First, we revised the language to reflect the newly proposed self-identification process in which applicants will only identify themselves as disabled veterans at the post-offer self-identification stage. Second, we replaced the term ''appropriate accommodation'' in paragraph (d) with ''reasonable accommodation,'' which is the more broadly used and accepted legal term. OFCCP received no comments on these two changes, and thus the language in the NPRM is adopted as proposed.

As for the third proposed change to paragraph (d), the NPRM required, rather than suggested, that the contractor seek the advice of the applicant regarding accommodation. As we explained in the NPRM, the idea was that this requirement would help to initiate a robust interactive and collaborative process between the contractor and the employee or applicant to identify effective accommodations that will facilitate a disabled veteran's ability to perform the job. OFCCP received 10 comments from various organizations on this change, all of which opposed the proposal.

Several of these commenters argued that the proposed change is inconsistent with (and, according to some commenters, in violation of) the ADA, which states that an employer may ask all individuals if they require a reasonable accommodation, not just individuals that self-identify as disabled. Specifically, several commenters cited ADA enforcement guidance from the EEOC stating that if an employer asks post-offer disability-related questions to entering employees, it must ask the same question to all entering employees in the same job group, and not a single classification of employees (such as ''disabled veterans''). However, as set forth in the discussion of paragraph (a) of this section, both herein and in the NPRM, the EEOC's interpretive guidance for its ADA regulations permits inquiries into disability status if made pursuant to another Federal law or regulation. It states that ''[t]he ADA does not preempt any Federal law, or any State or local law, that grants to individuals with disabilities protection greater than or equivalent to that provided by the ADA. This means that the existence of a lesser standard of protection to individuals with disabilities under the ADA will not provide a defense to failing to meet a higher standard under another law.'' *See* Appendix to 29 CFR part 1630. Accordingly, the proposed affirmative action obligation, in requiring contractors to inquire with disabled veterans offered employment to determine if they need a reasonable accommodation, is not inconsistent with the ADA.

However, other commenters, including a human resources association, asserted that disabled veterans should not be treated differently than disabled non-veterans with regard to reasonable accommodations, and that creating unique processes for veterans could serve to stigmatize veterans rather than help them. One commenter argued that the proposed change implies that contractors should assume that just because an individual self-identifies as a disabled veteran, they are in need of an accommodation, which may have negative and unintended consequences. Several other comments suggested that the proposed change does not take into account the administrative burden associated with ascertaining whether an individual is legally entitled to an accommodation and to research alternative sources of funding for requested accommodations when the accommodation is financially burdensome. Since the contractor is to be proactive in determining whether an individual needs an accommodation, the contractor would potentially have to conduct this research for each person that self-identifies as having a disability.

The final rule does not incorporate the proposed requirement, and instead retains the existing rule's suggestion that contractors ask disabled veteran applicants whether an accommodation is necessary. The final rule also states that the contractor should engage in an interactive process with the applicant to help identify a reasonable accommodation, which is consistent with ADA guidance. Eliminating the proposed requirement alleviates the administrative burden concerns raised by some commenters, thus reducing the burden associated with the rule, while highlighting the importance of the reasonable accommodation obligation.

Finally, the final rule makes a technical, non-substantive change by eliminating the parenthetical at the end of the second sentence which provides an example of a post-offer inquiry. OFCCP finds that this language is unnecessary and potentially confusing.

Section 60–300.43 Affirmative action policy

The NPRM proposed replacing the phrase ''because of status as a'' in this section to ''against,'' in order to clarify that the nondiscrimination requirements of VEVRAA are limited to protected veterans and that reverse discrimination claims may not be brought by individuals who do not fall under one of the protected veteran categories. We received no comments on this section. Accordingly, § 60–300.43 is adopted in the final rule as proposed.

Section 60–300.44 Required contents of affirmative action programs

The proposed rule contained significant revisions to several of the paragraphs under this section. These proposals, the comments to these proposals, and the revisions made to the final rule are discussed in turn below.

• *Paragraph (a): Affirmative action policy statement*

Section 60–300.44(a) requires contractors to state their equal

employment opportunity policy in the company's AAP. The NPRM proposed revising the section to clarify the contractor's duty to provide notice of employee rights and contractor obligations in a manner that is accessible and understandable to persons with disabilities. The NPRM also proposed revising paragraph (a) to require the contractor's chief executive officer to clearly articulate their support for the company's AAP in the policy statement. OFCCP received three comments on the proposed revisions from an individual, a law firm and a human resources consulting group.

There were a variety of comments on this section. One individual suggested that the policy statement include 'retain' in the following sentence ''* * * the contractor will: Recruit, hire, train and promote persons in all job titles * * *'' Another commenter, a law firm, recommended revising the language so that it is inclusive of contractors that have foreign parent companies by requiring the top United States based executive to attest to their support for the contractor's AAP. Finally, the human resources consulting group expressed concern that OFCCP seemed to dictate the terms of the policy statement, but did not provide a sample statement as an Appendix.

OFCCP declines to add the term ''retain'' to this section. The regulation currently states that the contractor's affirmative action policy must state that it will ''recruit, hire, train and promote persons in all job titles, *and ensure that all other personnel actions are administered,* without regard to'' protected veteran status. Given that the regulation already prohibits veteran status to be a consideration for ''all other personnel actions,'' there is no need to delineate further specific personnel actions in the regulatory text.

OFCCP agrees with the suggestion to revise the language of this section to clarify the level of company leadership that must demonstrate their support for the company's AAP. The purpose of the proposed revision is to ensure that the statement communicates to employees that support for the AAP goes to the very top of the contractor's organization. For contractors with foreign-based parent companies, it is appropriate to require the company leadership that is based in the United States to express that support. Therefore, § 60–300.44(a) of the final rule is revised to state ''[t]he policy statement shall indicate the top United States executive's (such as the Chief Executive Officer or the President of the United States Division of a foreign company) support for the contractor's affirmative action program * * *.''

OFCCP declines to make any modifications to the portion of § 60–300.44(a) related to the content of the policy statement. OFCCP outlined the required content of the policy statement when the agency issued the final rule implementing VEVRAA in 2007 (72 FR 44408). The NPRM did not propose any revisions to this language. OFCCP declines to append a policy statement to the rule. OFCCP believes that providing a policy statement in the Appendix may discourage contractors from proactively developing a policy statement that reflects the company's culture and values. If contractors need additional guidance on how to develop an equal opportunity policy statement, OFCCP staff is available to provide technical assistance.

• *Paragraph (b): Review of personnel processes*

The proposed rule made two changes to this paragraph. First, it required that the contractor review its personnel processes on at least an annual basis to ensure that its obligations are being met, as opposed to ''periodically.'' Second, the proposed paragraph (b) mandated certain specific steps (carried over from the existing Appendix C) that the contractor must take, at a minimum, in the review of its personnel processes, including: (1) Identifying the vacancies and training programs for which protected veteran applicants and employees were considered; (2) providing a statement of reasons explaining the circumstances for rejecting protected veterans for vacancies and training programs and a description of considered accommodations; and (3) describing the nature and type of accommodations for disabled veterans who were selected for hire, promotion, or training programs.

OFCCP received 13 comments from contractors, contractor associations and law firms regarding these proposals. Eleven of the 13 comments asserted that a significant burden was imposed by the proposed section, much greater than that calculated by OFCCP in the NPRM's Regulatory Procedures section. For instance, regarding compliance with item (1) above, the commenters indicated that for most contractors there are no such tracking systems in place and these will take time, staff, and money to establish. The comments also indicate that promotion and training opportunities, unlike hiring, are not as readily distinguishable for individual candidates. It is noted that these opportunities may be available to all employees, take a number of different forms, and may be noncompetitive. The comments indicate it is ''unreasonable'' to make this mandatory because it fails to recognize these differences and creates additional administrative and documentary burdens. These commenters further objected that the requirement to create and maintain a statement of reasons for every instance in which a protected veteran was denied a position or training activity was unreasonable and tantamount to requiring a drafted legal defense before any claims were brought, could serve to ''drive underground'' the real reason for the rejection, and treated protected veterans differently than protected classes under E O 11246 and section 503.

Based on the comments submitted and the questions raised about the efficacy of these requirements toward the end of increasing employment of protected veterans as compared to the burden that it creates, OFCCP does not adopt the proposal as drafted in the NPRM, and the final rule retains the existing language in § 60–300.44(b). However, in so doing, OFCCP reiterates that the existing paragraph (b) contains several requirements—including ensuring that its personnel processes are careful, thorough, and systematic, ensuring that these processes do not stereotype protected veterans, and designing some kind of procedures that facilitate a review of the implementation of these obligations—that still apply to contractors. As they do currently, contractors may coordinate the periodic review of their personnel processes for compliance with both VEVRAA and section 503.

• Paragraph (c): Physical and mental qualifications

The NPRM proposed three substantive revisions to this paragraph. First, it required that all physical and mental job qualification standards must be reviewed and updated, as necessary, on an annual, as opposed to a ''periodic,'' basis. Second, paragraph (c)(1) of the NPRM required the contractor to document its annual review of physical and mental job qualification standards. Third, paragraph (c)(3) of the NPRM required the contractor to contemporaneously document those instances in which it believes that an individual would constitute a ''direct threat'' as understood under the ADA and as defined in these regulations.

As to the proposal to require annual reviews of physical and mental job qualification standards, OFCCP received 10 comments from contractors, a contractor association, employee and other associations, and law firms. Nine of the 10 comments stated that the requirement to review physical and mental qualifications of all jobs with

openings during the AAP period would be burdensome because of the number of job openings, variety of jobs, time, staff and needed changes to HRIS systems. One employment benefit consultant firm commenter characterized the burden as ''one of the most burdensome requirements of the proposal.'' Additionally, one comment noted that the assumption that a description of the job's physical and mental requirements should already be available when a job opening occurs is a false assumption.

Five comments suggested less burdensome approaches. One comment suggested continuing to follow the current regulation and conducting periodic reviews. Three comments suggested reviewing the qualifications only when a change in the job occurs. One of the three comments also noted that an initial review should occur with the start of the covered contract along with reviews when changes occur. One comment suggested doing reviews of only ''jobs filled,'' not all job openings.

We note at the outset that the existing regulation clearly prohibits the contractor from using job qualification standards that are not job related and consistent with business necessity and have the effect of discriminating (or perpetuating discrimination) against protected veterans. *See* 41 CFR 60–300.21(d), 60–300.44(c)(2). This is a primary reason that the affirmative action provisions require reviews of physical and mental job qualification standards. To the extent that contractors are not conducting these reviews at all, they are already in violation of the existing regulations.

With this in mind, and taking into account the commenters' concerns about the burden associated with the proposal, the final rule does not adopt the proposal as drafted in the NPRM. Instead, the final rule retains the language in existing § 60–741.44(c)(1), requiring that contractors adhere to a schedule for the ''periodic review of all physical and mental job qualification standards,'' and providing that contractors have the burden to demonstrate that qualification standards that tend to screen out qualified individuals with disabilities are job related and consistent with business necessity.

With regard to the second proposed change in paragraph (c)(1) requiring that the contractor document its job qualification standard reviews, we received four comments. All of these commenters questioned what evidence will be necessary to demonstrate that a review has been completed. One of these comments noted that the proposed regulation lacks clarity as to how job-relatedness is evidenced and asserted that the ADA practice of examining ''essential functions'' of a job should be sufficient. OFCCP declines to adopt this proposal into the final rule as well, and retains the existing provision. As for the comment that the ''job relatedness'' standard lacks clarity and should be replaced with an ''essential functions'' standard, we note that the ''job related and consistent with business necessity'' standard has been used in the existing VEVRAA regulations for several years, and is the same standard that is well-understood and applies to the section 503 regulations prohibiting discrimination on the basis of disability. We therefore decline to revise the standard in the final rule.

Finally, with regard to the third proposed change requiring the contractor to contemporaneously document those instances in which it believes that an individual would constitute a ''direct threat,'' one comment raised the concern that the provision differed from the requirement in proposed § 300.44(b)(3) to disclose the ''direct threat'' determination to the affected applicant or employee. However, because proposed § 60–300.44(b)(3) was not adopted into the final rule, we decline to amend this paragraph to coordinate with it. Rather, we adopt paragraph (c)(3) as proposed in the NPRM.

• Paragraph (f): Outreach and recruitment efforts

Paragraph (f) as it existed prior to the NPRM suggested a number of outreach and recruitment efforts that the contractor could undertake in order to increase the employment opportunities for protected veterans. The NPRM proposed several changes to this paragraph: the proposed paragraph (f)(1) required that the contractor enter into three linkage agreements with veteran-related entities to serve as sources of finding potential veteran applicants; paragraph (f)(2) included a list of additional suggested outreach and recruitment efforts that contractors could take; paragraph (f)(3) proposed a new requirement that the contractor conduct self-assessments of their outreach and recruitment efforts; and paragraph (f)(4) clarified the contractor's recordkeeping obligations with regard to these outreach and recruitment efforts.

Overall, OFCCP received 34 comments on the proposed changes to § 60–300.44(f). While a few commenters praised OFCCP's efforts to strengthen Federal contractors' recruitment and outreach efforts, the majority of the comments expressed concerns about the proposed rule. Commenters raised a variety of issues including concerns about the burden associated with the proposed mandatory requirements, technical questions regarding the drafting of the proposed rule language, and the utility of some of the recommended provisions.

As stated above, paragraph (f)(1) required contractors to enter into three linkage agreements with three different veteran-related entities: specifically, the proposal required linkage agreements with (1) the Local Veterans' Employment Representative (LVER) in the local employment service office nearest the contractor's establishment; (2) one of several organizations listed in the existing regulation, with the addition of the Department of Defense Transition Assistance Program (TAP); and (3) an organization listed on the National Resource Directory (NRD), a Web site provided by the Departments of Labor, Defense, and Veterans Affairs. Commenters voiced several concerns with this proposal. Several commenters expressed concern about the administrative and financial burden related to requiring three linkage agreements. Further, a specific point made by one commenter echoed in general terms by several others was that, if the linkage agreement requirement was to be a ''per establishment'' requirement rather than a ''per contractor'' requirement, a Federal contractor with multiple establishments could end up entering into hundreds of linkage agreements. Commenters also questioned the capacity of the organizations that are outlined in the proposed rule, noting that some of the entities listed in the NRD do not exist anymore, the DOD's TAP program does not reach all service members, and that some veterans' service organizations have difficulty generally getting through to staff or returning phone calls. While two commenters stated that entering into linkage agreements with LVERs was an appropriate requirement, several others raised the concern that LVERs, of which there are fewer than 1,000 in the entire country, may not have the capacity to enter into and manage linkage agreements with all Federal contractor establishments.

In light of these comments, and in order to reduce the burden on contractors, the final rule does not incorporate the proposal requiring contractors to enter into linkage agreements. Rather, the final rule retains the existing language of § 60–300.44(f), which requires that the contractor undertake ''appropriate outreach and positive recruitment activities,'' in paragraph (f)(1)(i) of the final rule, and then provides a number of suggested

resources in paragraph (f)(2)(i) that contractors should utilize to carry out their general recruitment obligations. Paragraph (f)(2)(i) of the final rule differs from the existing rule only in that it adds two additional resources discussed in the NPRM—the Department of Defense Transition Assistance Program (TAP) and the National Resource Directory—to the list of suggested resources that contractors should consult. This will allow contractors flexibility to choose the resources they feel will be most helpful in identifying and attracting protected veteran job seekers. It will also provide contractors with greater flexibility to switch between and among different resources in order to find those that are the most effective, in light of the self-assessment obligation set forth in paragraph (f)(3) of the final rule. For those commenters who had concerns that the NRD contained resources that were out of date or did not contain additional resources that would be a good source for protected veteran job seekers, we note that the NRD is a dynamically-updated resource, and that contractors may suggest that additional veterans groups and service organizations be added to it through the ''Suggest a Resource'' link on the NRD's front page. On a related note, however, the reference to the specific URL address for the NRD's employment resources in the text of the regulation has been revised to refer to the NRD's home page. As one commenter noted, the URL listed in the regulation had changed since the publication of the NPRM, and may very well change again in the future, thus listing the URL address for a specific Web page in the regulation text makes little sense.

Lastly with regard to paragraph (f)(1), several commenters argued that OFCCP underestimated the burden hours associated with complying with the proposed paragraph (f)(1)(iii) (paragraph (f)(1)(ii) in the final rule), which requires the contractor to send written notification of company policy related to its affirmative action efforts to all subcontractors, including subcontracting vendors and suppliers. OFCCP retains this requirement as proposed, as we believe it is crucial to effective implementation and enforcement of the regulations that subcontractors are aware of VEVRAA's affirmative action obligations. Compliance with this requirement could be met by providing subcontractors with the affirmative action policy statement it is already required to post on company bulletin boards pursuant to § 60–300.44(a), either electronically or in paper form. A discussion responding to commenters' concerns regarding the burden of compliance with this requirement is found in the Regulatory Procedures section of this final rule.

OFCCP received relatively few comments regarding the proposed paragraph (f)(2) (paragraph (f)(2)(ii) in the final rule), which set forth additional suggested outreach efforts that contractors could engage in to increase its recruitment efforts. These comments centered on the proposed paragraph (f)(2)(vi) (which is paragraph (f)(2)(ii)(F) in the final rule), which states that ''the contractor, in making hiring decisions, *shall* consider applicants who are known protected veterans for all available positions for which they may be qualified when the position(s) applied for is unavailable'' (emphasis added). The commenters indicated that the word ''shall'' suggested that contents of that paragraph were mandatory. The use of ''shall'' in this paragraph was an inadvertent error in the NPRM. OFCCP intended the paragraph to state that contractors ''should consider applicants * * *'' and the final rule amends the NPRM in that regard. We also note that this suggested activity is intended to be a limited one. Contractors who choose to consider protected veterans for jobs other than those for which they applied may exercise discretion to limit this consideration based on geography, the qualifications of the applicant, and other factors. Contractors may also exercise discretion with respect to the time period by which they will consider applicants for other positions. This provision is intended to be flexible and is not required of contractors.

The final rule adds an additional resource to paragraph (f)(2)(ii) that contractors are suggested to use, and that is the Veterans Job Bank. The Veterans Job Bank, created by the Obama Administration and launched in November 2011 as part of the National Resource Directory Web site, is an easy-to-use tool aimed at helping veterans find job postings from companies looking to hire them. Through the Veterans Job Bank, veterans are able to search hundreds of thousands of jobs (500,000 at the time the Veterans Job Bank was launched) by location, keyword, and military occupation code (MOC). Further, the Web site provides detailed instructions for employers wishing to post their job openings with the Veterans Job Bank, so that the resource can continue to grow and become an even more effective resource for veterans seeking new job opportunities and employers seeking qualified workers.

Paragraph (f)(3) of the NPRM required the contractor, on an annual basis, to review the outreach and recruitment efforts it has undertaken over the previous twelve months and evaluate their effectiveness in identifying and recruiting qualified protected veterans, and document its review. Several commenters expressed concern about the utility of the suggested metrics for analyzing external outreach and recruitment efforts. One commenter stated that if the only standard used for assessing outreach and recruitment is the number of veterans hired, the proposed rule would effectively become a quota system for hiring protected veterans. Another commenter questioned whether overall hiring statistics would provide much useful information about the effectiveness of specific outreach efforts. Commenters also had concerns about the requirement to analyze hiring data for the current year as well as the previous two years. One commenter stated that ''[e]very other analytical requirement under the affirmative action regulations, including Executive Order 11246, focuses on reviewing the past one-year recordkeeping period.'' Commenters argued that the most recent year is the most relevant year in measuring effectiveness of affirmative action efforts. Finally, commenters also questioned OFCCP's calculation of the cost of compliance with this provision.

OFCCP declines to make changes to the proposed paragraph (f)(3) in response to these comments. With regard to the comment suggesting that the number of veterans hired was the ''only'' standard for analyzing the effectiveness of outreach efforts, OFCCP respectfully disagrees. The proposed rule makes clear that the number of veterans hired should be a primary factor considered, given VEVRAA's stated purpose to ''employ and advance in employment'' protected veterans, but is far from the only metric used for analyzing external outreach and recruitment efforts. Rather, the proposed rule required that the contractor consider all the metrics required by § 60–300.44(k) (which includes applicant and hiring data), but also clearly allows the contractor to consider any other criteria, including ''a number of factors that are unique to a particular contractor establishment,'' in determining the effectiveness of its outreach, so long as these criteria—whatever they are—are reasonable and documented so that OFCCP compliance officers can understand what they are. The purpose of the self-assessment is simply to ensure that the contractor

thinks critically about how to evaluate and improve upon its recruitment and outreach efforts in order to maximize its connections to protected veterans seeking jobs. OFCCP strongly believes this is a worthy goal—indeed, a goal central to the very heart of VEVRAA's affirmative action obligations—and that the proposal provides the contractor a significant amount of flexibility to meet that goal.

With regard to the timeframe of applicant and hire data that a contractor must consider when evaluating its outreach efforts—the current year and two previous years—OFCCP understands that this is a longer period than that required by, for instance, the Executive Order, which looks to hiring and applicant data over the previous year. However, VEVRAA is a different law with different analytic mechanisms. As explained in the NPRM, the purpose of considering a longer history of data under VEVRAA is because it will provide more complete information through which a contractor can understand which outreach efforts it has engaged in historically have tended to correspond with increased veteran applicants and hires. Further, we do not believe that requiring contractors to look at and compare a few additional numbers, which are already calculated pursuant to § 60–300.44(k), is onerous, particularly compared to the potential benefit. Accordingly, we retain the paragraph (f)(3) in the final rule as written in the NPRM. OFCCP has conducted an amended calculation of the cost of this provision in light of the comments provided, set forth in the Regulatory Procedures section of this final rule.

The final rule makes one small change to the second to last sentence in paragraph (f)(3). As explained in the preamble to the NPRM, OFCCP proposed that the contractor's conclusion as to the effectiveness of its outreach efforts ''shall be reasonable as determined by OFCCP in light of these regulations.'' The final rule replaces the word ''shall'' with ''must,'' which more clearly describes the requirement.

Finally, several commenters expressed concern about the five-year recordkeeping requirement set forth in paragraph (f)(4). As discussed previously in this final rule and in the discussion of recordkeeping in § 60–300.80, and for the reasons stated therein, OFCCP amends this to a three-year recordkeeping requirement. While this documentation may take several forms, such documentation may include, for example, the numbers and types of outreach and recruitment events, the targeted group(s) or types of participants, when and where the events occurred, and who conducted and participated in the outreach and recruitment efforts on behalf of the contractor.

• *Paragraph (g): Internal dissemination of affirmative action policy*

This section requires contractors to develop internal procedures to communicate to employees their obligation to engage in affirmative action efforts to employ and advance in employment qualified protected veterans. The NPRM proposed requiring the contractor to undertake many specific actions that are only suggested in the existing rule, including incorporating the affirmative action policy in company policy manuals, informing all applicants and employees of the contractor's affirmative action obligations, and conducting meetings with management and company leadership to ensure they are informed about the contractor's obligations. The NPRM also proposed requiring contractors to hold meetings with employees at least once a year to discuss the company's VEVRAA affirmative action policy. OFCCP received 17 comments on § 60–300.44(g) from a variety of groups, including a disability association, an employee association, four contractor associations, four law firms, and two individuals, among others.

One commenter proposed maintaining some of the language in the current § 60–300.44(g)(1). The commenter expressed concern about the NPRM's deletion of the following sentence: ''[t]he scope of the contractor's efforts shall depend upon all the circumstances, including the contractor's size and resources and the extent to which existing practices are adequate.'' The commenter asserted that deleting this sentence leaves the requirement without an applicable measure of compliance. The commenter recommended maintaining the language in the section and defining ''adequate'' to mean ''being received and understood by veterans, as determined in sample interviews.''

The final rule adopts the proposed language in § 60–300.44(g)(1) without change because the rule provides a measure of compliance, thus making the suggested change unnecessary. This section clearly states that the procedures for internally disseminating affirmative action policies ''. . . shall be designed to foster understanding, acceptance and support among the contractor's executive, management, supervisory and other employees and to encourage such persons to take the necessary actions to aid the contractor in meeting this obligation.'' Further, the revisions clearly identify the actions that contractors must undertake to meet this obligation.

With regard to the remainder of paragraph (g), the existing rule has a single paragraph (g)(2) that lists eight separate actions that contractors were suggested to undertake to implement and internally disseminate their internal affirmative action policies. The NPRM proposed to mandate some of these actions and thus restructured the remainder of paragraph (g). Paragraph (g)(2) of the NPRM listed five internal dissemination efforts that would be required of all contractors: (i) Including the contractor's affirmative action policy toward veterans in the contractor's policy manual; (ii) informing all employees and prospective employees of the contractor's affirmative action obligations and having annual meetings with employees to discuss these obligations; (iii) conducting meetings with executive, managerial and supervisory personnel to ensure they understood the intent of the policy and responsibility for its implementation; (iv) discussing the policy thoroughly in employee orientation and management training programs; and (v) if the contractor is party to a collective bargaining agreement, informing union officials and/or employee representatives of the contractor's affirmative action policy and requesting the union's cooperation in implementing it. Paragraph (g)(3) of the NPRM listed additional dissemination efforts that would continue to be suggested efforts as in the existing rule, such as publicizing its affirmative action policy in company publications and including in these publications features and articles of protected veteran employees. Finally, paragraph (g)(4) of the NPRM set forth the recordkeeping obligations in connection with those actions contractors undertook.

We received many comments in response to the elements that were required in paragraph (g)(2) of the NPRM. Some commenters requested alternative options to including the affirmative action policy in the contractor's policy manual pursuant to the proposed § 60–300.44(g)(2)(i). A law firm suggested allowing for posting the policy on the company's intranet where similar human resources and EEO pronouncements are found. One comment requested that OFCCP clarify the requirement to make it optional for contractors that do not have policy manuals. Several of the comments expressed concern about the requirement in the proposed paragraph

(g)(2)(ii) to hold a meeting at least once a year with employees to discuss affirmative action obligations. Commenters asserted the OFCCP miscalculated the burden associated with hosting these meetings, stating that requiring this element would incur a much higher burden. Commenters stated that OFCCP should allow contractors to disseminate the equal employment opportunity policy at regularly scheduled meetings and allow for electronic and web-based formats. Commenters also stated that it was unclear what would constitute adequate training and compliance with the newly required elements of paragraph (g)(2).

In response to the comments, and with an eye toward reducing the burden on contractors, the final rule narrows the scope of the internal dissemination efforts that will be required of contractors from that set forth in the NPRM. Two of the five elements that the NPRM proposed to require are maintained as requirements in paragraph (g)(2) of the final rule: (1) Including the policy in the contractor's policy manual; and (2) notifying (a change from ''meeting with'' in the NPRM, in order to facilitate compliance) union officials to inform them of the policy and request their cooperation, if the contractor is party to a collecting bargaining agreement. The first of these requirements is modified slightly from what was proposed in the NPRM based on comments received so as to allow contractors to include the affirmative action policy either in the contractor's policy manual, or to otherwise make the policy available to its employees. We believe that most companies generally have some form of document that provides guidance on human resources policies and procedures—either a policy manual, employee handbook, or similar document– that is available to employees that is an appropriate place to put the policy. OFCCP believes including the affirmative action policy in these documents will enhance the visibility of the contractor's commitment to protected veterans. However, the final rule also allows contractors the flexibility to make the policy available to its employees through other means. This could include posting the policy on a company intranet, but this will only fulfill the requirement if all employees have access to this intranet.

The remaining elements that were required in the NPRM and/or were suggested in the existing rule remain in paragraph (g)(3) of the final rule as actions that the contractor is suggested to take, with the exception of the recordkeeping provision, which has been eliminated. We note, however, that to the extent any activities undertaken pursuant to paragraph (g) involve the creation of records that are subject to the general recordkeeping requirement of § 60–300.80, contractors will still be required to maintain such documents as specified by § 60–300.80.

• *Paragraph (h): Audit and reporting system for affirmative action program*

Section 60–300.44(h) outlines the contractor's responsibility to design and implement an audit and reporting system for the company's AAP. The NPRM proposed requiring contractors to document the actions taken to comply with the section. The NPRM also proposed that contractors maintain the records of their documentation subject to the recordkeeping requirements of § 60–300.80. OFCCP received one substantive comment on the proposed revisions. The commenter, a human resources consulting group, stated that the documentation requirement would be potentially burdensome.

This section is adopted in the final rule as proposed. Many of the requirements of § 60–300.44(h) necessitate developing documentation. The section requires contractors to measure the effectiveness of its affirmative action program, indicate any need for remedial action, determine the degree to which the contractor's objectives have been attained, determine whether protected veterans have had the opportunity to participate in all company professional and social activities, and measure the contractor's compliance with the program's specific obligations. Section 60–300.44(h)(2) requires contractors to undertake necessary action to bring the program into compliance. In order to conduct this kind of analysis, many contractors will likely develop documentation. The final rule formalizes that process for all contractors and requires that the documentation be maintained in accordance with the recordkeeping requirements of § 60–300.80. OFCCP feels strongly that this requirement will allow for a more effective review of whether the contractor's affirmative action obligations in this paragraph are being met.

• *Paragraph (i): Responsibility for implementation*

The only substantive proposed change in paragraph (i) required that the identity of the officials responsible for a contractor's affirmative action activities must appear on all internal and external communications regarding the contractor's affirmative action program. In the current regulation, this disclosure is only suggested. Upon further review, OFCCP does not believe that the benefit of this suggested change outweighs the potential burden that it would place on contractors. Accordingly, the final rule does not incorporate the proposal, and the language in the existing regulation that contractors should, but are not required, to take this step is retained.

• *Paragraph (j): Training*

Paragraph (j) of the existing regulation already requires that the contractor train ''[a]ll personnel involved in the recruitment, screening, selection, promotion, disciplinary and related processes . . . to ensure that the commitments in the contractor's affirmative action program are implemented.'' The NPRM proposed revising this paragraph to identify specific topics that must be considered in this training, including: the benefits of employing protected veterans; appropriate sensitivity toward protected veteran recruits, applicants and employees; and the legal responsibilities of the contractor and its agents regarding protected veterans generally and disabled veterans specifically, such as reasonable accommodation for qualified disabled veterans and the related rights and responsibilities of the contractor and protected veterans. The NPRM also required that the contractor record which of its personnel receive this training, when they receive it, and the person(s) who administer(s) the training, and maintain these records, along with all written or electronic training materials used.

OFCCP received 12 comments from law firms, disability and veterans associations, and contractors and contractor associations. The majority of these comments raised concern regarding the burden the training requirements places on contractors and the manner in which OFCCP calculated it. Several comments noted specific concerns about what constitutes ''sensitivity'' training. Two commenters suggested that OFCCP or OFCCP-approved training programs should be offered, instead of the contractor having to create additional training to what is done now.

Taking these comments into account, and balancing the utility of the proposal against the burden that it would create for contractors, the final rule does not incorporate the portion of the proposed rule listing specific training items that must be covered by contractors or the specific recordkeeping requirement. However, the final rule does retain the existing rule's general requirement that ''[a]ll personnel involved in the recruitment, screening, selection, promotion, disciplinary, and related processes'' must be trained to ensure that the contractor's affirmative action

commitments are implemented. Further, we note that to the extent any activities undertaken pursuant to paragraph (j) involve the creation of records that are subject to the general recordkeeping requirement of § 60–300.80, contractors will still be required to maintain such documents as specified by § 60–300.80.

• *Paragraph (k): Data Collection Analysis*

The proposed regulation added paragraph (k) to the rule, requiring that the contractor document and update annually the following information: (1) For referral data, the total number of referrals, the number of priority referrals of protected veterans, and the ''referral ratio'' of referred protected veterans to total referrals; (2) for applicant data, the total number of applicants for employment, the number of applicants who are known protected veterans, and the ''applicant ratio'' of known protected veteran applicants to total applicants; (3) for hiring data, the total number of job openings, the number of jobs filled, the number of known protected veterans hired, and the ''hiring ratio'' of known protected veteran hires to total hires; and (4) the total number of job openings, the number of jobs that are filled, and the ''job fill ratio'' of job openings to job openings filled.

As stated in the NPRM, the impetus behind this new section is that no structured data regarding the number of protected veterans who are referred for or apply for jobs with Federal contractors is currently maintained. This absence of data makes it nearly impossible for the contractor and OFCCP to perform even rudimentary evaluations of the availability of protected veterans in the workforce, or to make any sort of objective, data-based assessments of how effective contractor outreach and recruitment efforts have been in attracting protected veteran candidates. Conversely, maintaining this information will provide the contractor with much more meaningful data for evaluating and tailoring its recruitment and outreach efforts.

OFCCP received a total of 52 comments from veterans' associations, a disability association, an employee association, contractor associations, medical and other associations, law firms, and contractors. The three veterans and disability associations that commented on the proposal supported the required data collection and the goal behind it. Virtually all commenters from the contractor community opposed the proposal on varying grounds, including: issues with the integrity of the data to be collected (and particularly data on referrals); assertions that some of the data conflicts with the Internet Applicant Rule in the Executive Order regulations; and assertions that collecting, analyzing, and maintaining the data would be unduly burdensome. Further, 19 commenters, all of whom were members of the construction industry, submitted form letters asserting that they should be exempted from the requirement due to the unique nature of their industry. Finally, a number of commenters sought clarification of some of the processes set forth in paragraph (k). These issues are considered in turn below.

With regard to the eleven data elements required by the proposed new section, 40 comments (total includes 19 form letters) articulated data integrity concerns regarding data to be used in calculating the referral ratio. Comments describe the state employment service delivery systems as ''self-service,'' leaving source identification to the candidate for the job, and as such making data unreliable in terms of identifying referrals. Examples were provided indicating that veterans may apply directly online with a company and may fail to identify that he/she was referred and even that he/she is a veteran. These comments also raised the issue that the referral ratio does not account for referrals from sources other than the state employment service delivery systems and may include referrals of veterans that are not qualified for the position(s) at issue. For the reasons set forth in the discussion of the proposed paragraph 5 of the EO Clause (§ 60–300.5), OFCCP has eliminated from the final rule the requirement for contractors to collect, maintain, and analyze information on the number of referrals and the ratio of priority referrals of veterans to total referrals, *i.e.,* paragraphs (k)(1), (k)(2), and (k)(3) in the NPRM. This eliminates many of the concerns commenters had with regard to this paragraph, and also serves to decrease the burden on contractors.

However, eight of these comments also discussed the requirement to document and maintain applicant and hiring ratios. These comments reiterated data integrity issues and questions about the purpose of conducting the calculations or comparisons. One of the primary issues identified by commenters is that applicant data appears to be dependent upon self-identification which is not reliable. These issues were addressed in the discussion of the invitation to self-identify proposals in § 60–300.42(a). In short, demographic data based on self-identification will never be perfect, but it is the best data that is available.

Another identified concern is that the proposed data collection and analysis is not aligned with the availability analysis conducted when examining employment activities for females and minorities. However, as stated previously in this preamble, VEVRAA and the Executive Order are different laws with different data calculation and enforcement schemes, largely because of the differences in the Census and other data available. It is, therefore, not feasible to pattern data collection after the Executive Order regulations.

Comments also questioned the purpose of the job opening/job filled ratio. On a related point, one comment from a law firm noted that there appears to be an underlying assumption that there will be jobs that are not filled which is seldom true in the current economic environment. While it may not be a common occurrence in the current economic environment: (a) this does not mean it never happens (and if it never does, the burden on the contractor to calculate a ''job fill ratio'' shrinks to virtually nothing); and (b) the current economic environment will not last forever, at which point these regulations will still be in effect. The job fill ratio is a commonly recorded metric by companies and HR professionals, as it measures the effectiveness of a company's recruiting efforts. Also, in some cases, a particularly low job fill ratio could be an indicator that the company's hiring process is being conducted incorrectly. This is useful information for both the contractor and OFCCP. We have eliminated the requirement, however, that contractors document and maintain for three years the ratio of jobs filled to job openings and the ratio of protected veterans hired to all hires. The remaining data points permit OFCCP and the contractor to make those calculations; thus separate data collection is unnecessary. Several commenters also objected to the collection of data about protected veteran status of applicants because it differs from the recordkeeping requirements related to Internet Applicants under the EO 11246 implementing regulations at 41 CFR 60–1.12. We addressed this issue in the discussion of the pre-offer self-identification requirement, and incorporate by reference that discussion here, but we wish to reiterate the salient points here in response. Under § 60–1.12, contractors' recordkeeping obligations include maintaining expressions of interest through the Internet that the contractor considered for a particular position, as well as applications and resumes. Contractors

also are required to maintain, where possible, data about the race, sex, and ethnicity of applicants and Internet Applicants, as applicable. The term Internet Applicant is defined at § 60–1.3. The term ''applicant'' is defined in OFCCP subregulatory guidance. The Internet Applicant definition is limited to OFCCP recordkeeping and data collection requirements under the Executive Order implementing regulations in § 60–1.12.

In sum, after consideration of the comments received, the final rule retains the NPRM's proposal for contractors to document and maintain applicant, hiring, and job fill ratio data, but eliminates the requirement for contractors to document and maintain referral data.

With regard to burden calculation issues, 43 of the 52 commenters, entirely from the contractor community, indicated that OFCCP had not correctly calculated the burden of this section. Specific cost information was provided by two commenters. A contractor association that combined comments from three such entities indicated that a survey conducted by the association found OFCCP's estimate of six minutes a year to collect, maintain and ''in some cases'' calculate the data elements should be stated more accurately as six hours. A revised burden calculation is included in the Regulatory Procedures section of this final rule, as well as the methodology behind the revised calculation, but we wish to highlight a few points here where we believe the contractor community may have misunderstood portions of the burden we proposed they undertake. First, as stated above, the referral data metrics have been eliminated, which reduces the burden. Second, the hiring metrics are already maintained and calculated by the contractor as part of its existing obligation under 41 CFR part 61–300; therefore, that portion of paragraph (k) does not create any additional burden. The only ''new'' items proposed were those pertaining to the self-identification applicant data and the job fill ratio.

Also pertaining to burden, 19 commenters from the construction industry asserted that they should be exempted from this section of the proposed regulation because of the unique nature of the industry, namely that it is project-based and its workers are transitory and seasonal. Traditionally, construction contractors who meet the basic coverage requirements (contract amount and number of employees) of VEVRAA have not been exempted from any of its provisions. This includes the collection of data under part 61–300 for the VETS–100A report, which tracks the numbers of new hires and overall employees who are protected veterans, data which makes up a significant portion of the requirements under paragraph (k). Accordingly, we decline to exempt construction contractors.

Commenters from the contractor community also cited burden concerns with the proposed requirement to maintain the paragraph (k) computations for a period of five (5) years. As set forth in the discussions of § 60–300.44(f)(4) and § 60–300.80 herein, the final rule reduces the document retention requirement to three (3) years, and revises the language of paragraph (k) to reflect this change.

Finally, a few of the comments raised clarification questions we would like to address, including: (1) Whether the intent of the analyses is to measure change from year to year; (2) whether the ratios should be run by job group, job title, or establishment; and (3) how compliance determinations will be made. As to the first question, as set forth in the discussion of § 60–300.44(f)(3), measuring change from year to year, and looking at two previous years of data, is a central intent of the analyses, as that can aid the contractor in seeing trends that may be associated with certain of its outreach and recruitment efforts over time. However, as discussed in that section, contractors are also free to use any other reasonable criteria in addition to the applicant and hiring data they feel is relevant to evaluate the effectiveness of their efforts. As to the second question, the ratios in paragraph (k) will be calculated by establishment, and not by job groups or titles within a given establishment. The number of protected veterans in the civilian workforce is relatively small (at least compared to the number of women or minorities nationwide), and thus we believe that running analyses by job groups or titles is unlikely to provide any meaningful analysis.

With regard to the third question, compliance determinations for paragraph (k) will be made based simply on whether the contractor has documented and maintained the five listed metrics in the final rule. OFCCP Compliance Officers will not be using the applicant and hiring data to conduct underutilization or impact ratio analyses, as is the case under the Executive Order, and enforcement actions will not be brought solely on the basis of statistical disparities between veterans and non-veterans in this data. Compliance officers will look to see whether the contractor has fulfilled its obligations under § 60–300.44(f)(3) to critically analyze and assess the effectiveness of its recruitment efforts, using the data in paragraph (k) as well as any other reasonable criteria the contractor believes is relevant, and has pursued different and/or additional recruitment efforts if the contractor concludes that its efforts were not effective.

Section 60–300.45 Benchmarks for hiring

The NPRM proposed that the contractor establish annual hiring benchmarks by using existing data on veteran availability from five different sources of information: (1) Bureau of Labor Statistics data of the average percentage of veterans in the civilian labor force in the State where the contractor is located; (2) the raw number of protected veterans who participated in the employment service delivery system (*i.e.,* One-Stop Career Centers) in the State where the contractor is located; (3) the referral, applicant, and hire data collected by the contractor pursuant to § 60–300.44(k); (4) the contractor's recent assessments of its outreach and recruitment efforts as set forth in § 60–300.44(f)(3); and (5) any other factors, including but not limited to the nature of the contractor's job openings and/or its location, which would tend to affect the availability of protected veterans. The last of these factors would allow the contractor to take into account other factors unique to its establishment that would tend to affect the availability determination. The NPRM also proposed to require contractors to document the hiring benchmark it established each year, detailing each of the factors that it considered in establishing the hiring benchmark and the relative significance of each of these factors, and required the contractor to retain this document for a period of five years.

OFCCP received a total of 38 comments on the proposed new requirement to establish annual hiring benchmarks for protected veterans. Three comments from organizations representing employee interests, including a disability association and a veterans association, stated that requiring benchmarks using available statistics was an important development, and supported the proposed regulation in general terms. The remaining comments, virtually all of which were from contractors or those representing contractors, opposed the requirement for contractor-established benchmarks as proposed. The reasons set forth for their opposition fell into five general categories: (1) A belief that

the benchmarks were equivalent to ''quotas''; (2) hiring benchmarks for protected veterans would adversely impact women and minorities; (3) the benchmarks as proposed were arbitrary and ineffective given that the data to be relied upon is not specific to veterans protected by VEVRAA and does not correlate to specific job groups, skills, or geographical areas; (4) the proposed five-year recordkeeping requirement conflicts with equivalent requirements in other laws administered by OFCCP; and (5) that setting benchmarks as proposed in the NPRM was unduly burdensome for contractors, and OFCCP underestimated the cost and burden of the proposal. Further, some commenters provided recommendations for how to amend the proposed benchmarks, and others submitted questions seeking clarification of aspects of OFCCP's proposal. As detailed below, the final rule contains a substantial revision, allowing contractors the option of using a benchmark based on national veteran data. This option would substantially decrease the burden on contractors.

Before addressing each of the issues raised by the commenters, providing some further context and explanation for the proposal and how OFCCP envisioned the proposed requirement would work in practice is appropriate.

The primary intent of the benchmark proposal was to provide the contractor a yardstick that could be used to measure progress in employing protected veterans. OFCCP recognized that data demonstrating the availability of protected veterans that is similar to the data used to compute availability and establish goals under the EO 11246 program does not exist. Owing to the imprecise nature of the data upon which benchmarks would be based, OFCCP did not propose additional affirmative action obligations (or OFCCP enforcement actions) if a contractor did not meet the benchmark that it set. To be sure, OFCCP would expect that as part of its annual recruitment and outreach assessment, the contractor would assess why it did not meet the benchmark and adjust its recruitment efforts for the following year based on what it has learned. However, the proposal would not have OFCCP undertake enforcement action solely on the basis of a disparity between the benchmark and the actual percentage of veterans hired.

Further highlighting the difference between the benchmark proposal and the availability and utilization calculations traditionally required under the Executive Order 11246 program, OFCCP designed the benchmark proposal to allow the contractor maximum flexibility to take into account any additional factors it thought would increase or decrease a reasonable benchmark and to weigh these factors in any reasonable manner it saw fit. For instance, the contractor might start with the average veteran population for its state, reduce this number slightly to account for the fact that this data was not limited to protected veterans, average this number with the percentage of protected veteran applicants it had received over the past three years, and increase the resulting percentage slightly in anticipation of additional recruiting efforts it knew it would be doing in the next year. Then, the contractor could adjust this number up or down depending on the overall nature of the work performed at the establishment and how that coincides with experience veterans generally have, whether the contractor knew that there was a particularly high or low number of veterans in the relevant hiring area, or any other reasonable factor. So long as the contractor adequately described and documented the factors it took into account, it would comply with the § 60–300.45 requirement.

Finally, OFCCP intended the benchmark proposal to raise awareness of the significant number of veterans who, having made enormous sacrifices defending our nation on our behalf, nevertheless continue to face considerable difficulties finding work upon their return home. These veterans are highly trained, highly skilled, disciplined, and possess considerable leadership and team-building experience—in other words, excellent candidates for employment. While recent Federal efforts have greatly helped veterans' employment prospects, the service of these veterans to our nation abroad is still too often forgotten, and the lasting contribution they can make to our private sector at home is still too often unfulfilled. The proposed hiring benchmark, therefore, is a tool to address this pressing national issue and the important role Federal contractors have in addressing it.

The purposes and intentions of the benchmark proposal made clear, we turn to the concerns raised by commenters.

Five commenters stated that the proposed benchmarks were the equivalent of a ''quota.'' One commenter stated that the benchmark requirement would make contractors feel the need to meet the data requirements by hiring protected veterans who may not be qualified in order to meet the benchmark. Another believed the benchmarks suggested ''quotas'' because the availability analysis factors proposed do not factor in the approximate percentage of qualified protected veterans by occupational codes or geographical areas. Still another asserted that the proposed benchmarks were ''quotas'' and thus unconstitutional, as they were not ''narrowly tailored'' to ''a compelling governmental interest.''

The proposed benchmarks are not quotas and should not be conceived as quotas. The benchmark is not a rigid and inflexible quota which must be met, nor is it to be considered either a ceiling or a floor for the employment of particular groups. Quotas are expressly forbidden. We hope the discussion in the previous paragraphs clarifying that contractors have significant flexibility to set their own benchmarks, and will not be cited for violations solely for failing to meet the benchmarks they set, allay the fears of these commenters. Further, the omission of breaking down the benchmarks by occupational codes or geographical areas is merely a function of the fact that such data does not exist for protected veterans; it does not evince an intent to set rigid quotas. Finally, we note that the legal standard raised by the final commenter regarding the constitutionality of the benchmarks is incorrect. The ''narrowly tailored to a compelling governmental interest'' standard, otherwise known as ''strict scrutiny,'' is applied to race-based decision making. *See Adarand Constructors, Inc.* v. *Pena,* 515 U.S. 200 (1996). The benchmarks proposed in the VEVRAA regulations are not race-based. Classifications that are based on veteran status are subject to so-called ''rational basis review,'' and are legally permissible so long as the government action—in this case, the setting of benchmarks—is ''rationally related'' to a ''legitimate governmental interest.'' *See, e.g., Sturgell* v. *Creasy,* 640 F.2d 843, 852 (6th Cir. 1981). Clearly, requiring contractors to set benchmarks for the hiring of protected veterans—particularly benchmarks that afford the contractor significant flexibility in their establishment and are not rigidly applied so as to automatically create a violation of the law if they are not met—is rationally related to the legitimate governmental interest of increasing outreach to and employment opportunities for protected veterans.

Six commenters, including individuals, contractor associations, consultants, and human resource management firms, expressed concern that requiring contractors to establish annual hiring benchmarks for protected veterans would adversely impact women and minorities, and thus impede

contractors' nondiscrimination efforts under EO 11246, due to low numbers of minorities and women among protected veterans. One commenter asked for clarity on whether contractor veteran affirmative action efforts could be used as an affirmative defense if those efforts result in adverse impact against women, because a large percentage of protected veterans are men. Finally, a commenter asked whether OFCCP would still require contractors to establish annual hiring benchmarks for protected veterans if women and minorities were underutilized. OFCCP does not agree that contractor-established benchmarks will adversely affect women or minorities. As an initial matter, recent Department of Veterans Affairs (DVA) data indicate that for Gulf War-era I veterans 30.3 percent were minority; Gulf War-era II veterans 33.6 percent were minority; and Vietnam era veterans 16.4 percent were minority.[21] This compares quite closely with the 27 percent national non-white population figure calculated by recent Census data.[22] For this reason alone we do not anticipate any potential effect on minorities. Although the representation of women among veterans is lower than in the civilian labor force, as discussed in more detail below, the employment of women will not be adversely affected by VEVRAA affirmative action requirements.

The purpose of, and requirements related to, VEVRAA benchmarks do not serve to impact the hiring of women or minorities. The purpose of VEVRAA hiring benchmarks is simply to provide the contractor a quantifiable means to measure its progress towards achieving equal employment opportunity for protected veterans. The contractor's obligation under § 60–300.45 is to establish a benchmark and document that it has done so. Contractors will not be subject to an enforcement action or found to be in violation of the VEVRAA regulations for failing to meet the benchmark. Hiring preferences are not required, the rule does not state that contractors will be expected to achieve benchmarks, and the VEVRAA rule does not prescribe actions the contractor must take if the benchmark is not achieved. The benchmark simply provides the contractor a tool to measure its progress in employing protected veterans. Consequently, the VEVRAA enforcement scheme does not provide an incentive for contractors to disfavor non-protected veterans in employment. The point of the benchmark is to encourage contractors to be inclusive of protected veterans rather than to discriminate against nonveterans through preferences or quotas.

OFCCP sees no reason why a contractor's VEVRAA obligations would affect its nondiscrimination obligations under EO 11246 or Title VII. VEVRAA does not require hiring preferences or veteran quotas. Because contractors are not required to meet the VEVRAA benchmark, efforts by contractors to do so would not be a defense to a charge of employment discrimination, including adverse impact, under another law. Further, a contractor's obligations under other civil rights laws will not create a violation of VEVRAA. To avoid this problem § 60–300.1(c)(2) provides that it may be a defense to a charge of violation of VEVRAA regulations that a challenged action is required or necessitated by another Federal law or regulation, or that another Federal law or regulation prohibits an action that would be required by VEVRAA.

Finally, in response to the question about whether a contractor will need to establish a VEVRAA hiring benchmark regardless of its utilization of women and minorities, the answer is yes. The VEVRAA benchmark is to be established annually regardless of the contractor's utilization of any group of employees, including protected veterans. The hiring benchmark is simply a tool to allow contractors to measure their progress in providing equal opportunity to protected veterans.

A number of commenters objected to the proposed benchmarks on the grounds that the data upon which the contractors are required to rely generally is structurally incompatible with the contractor's workplace. For instance, one commenter asserted that it opposes hiring benchmarks because the metrics outlined in the proposal have no relationship at all to the population of qualified candidates eligible for employment. Additionally, an organization argued that just because there may be a high availability of veterans in a specific location, does not mean those same veterans are qualified for the types of jobs available in that same location. Furthermore, commenters in opposition to the proposed rule argued that the benchmark proposal is flawed because it contemplates facility-wide goals. Another organization explains that placement goals for an accounting firm will look very different than the placement goals for a manufacturing company, and the placement goals for entry-level production positions at the manufacturing company will look very different than the placement goals for management positions at the same company.

These comments are well-taken, and we submit that some of these issues are precisely why the benchmarks we proposed allowed the contractor such a significant amount of flexibility in creating them. This would allow, for instance, an accounting firm and a manufacturing firm in the same city to have different hiring benchmarks, depending on the types of positions available and the skill sets required for these positions. The decision to have the regulation require the contractor to create facility-wide benchmarks rather than goals tied to particular job codes or titles is dictated by the limited scope of the veteran data available.

A substantial number of commenters objected to the proposed benchmarks on the grounds that the specific categories of data which the contractors are required to consider are not specific to protected veterans, and otherwise do not provide clear guidance to contractors on how to arrive at an overall benchmark. With regard to the BLS data specified in paragraph (b)(1), commenters argued that relying on such data would inflate benchmarks because data collected by BLS and state employment services reflects all veterans in the civilian labor force—not just protected veterans, and that such data would be based on the entire state rather than a more narrow recruitment area. With regard to the VETS data specified in paragraph (b)(2), commenters contended that this statewide data would have limited relevance to the recruiting that occurs in most companies because contractors may recruit from a very local market for some positions and may recruit on a national basis for other positions. Additionally, commenters argued that to the extent contractors are required to rely on statewide data to inform localized hiring benchmarks, there are no assurances the statewide data is an accurate reflection of the composition of protected veterans in the subject locale. Regarding consideration of the contractor's own referral, applicant and hiring data of protected veterans in paragraph (b)(3), commenters generally questioned the reliability of the data, specifically the referral and applicant data, for reasons that have been

[21] U.S. Department of Veteran Affairs, National Center for Veterans Analysis and Statistics, ''Minority Veterans 2011,'' May 2013, *http://www.va.gov/vetdata/docs/SpecialReports/Minority_Veterans_2011.pdf* (last accessed Aug. 15, 2013).

[22] U.S. Census Bureau, *Overview of Race and Hispanic Origin:2010,* Table 1: Population by Hispanic or Latino Origin and by Race for the United States: 2000 and 2010, Mar. 11, 2011, *http://www.census.gov/prod/cen2010/briefs/c2010br-02.pdf* (last accessed Aug. 15, 2013).

thoroughly addressed in previous sections.

In response to the comments on the proposed data considerations in paragraphs (b)(1) and (b)(2), as previously discussed, OFCCP agrees that precise and statistically meaningful availability data specifically capturing veterans protected under VEVRAA at the local level, divided by job group, would be optimal in setting specific, refined goals. However, such data does not exist. Accordingly, the proposal had contractors consider a variety of sources of data capturing large portions of the relevant population (including actual applicant flow and hiring data from the contractor's establishment), and provided contractors with the flexibility, in the proposed paragraphs (b)(4) and (b)(5), to take into account any other factors which could reasonably affect protected veteran availability. However, commenters also asserted that paragraphs (b)(4) and (b)(5) were unhelpfully vague and introduced a high degree of subjectivity into the entirety of the benchmark setting process that was uncomfortable. Multiple commenters suggested alternative methods for setting benchmarks, including a nationwide goal for hiring protected veterans. One commenter in particular, a consultant to contractors on EEO issues, proposed a mechanism by which aggregate annual VETS–100A data could be used to estimate the number of protected veterans in the civilian workforce, and by dividing this number by the total civilian workforce, arrive at a national goal for protected veterans.

OFCCP does not believe that VETS–100 data, as currently collected and reported, is an appropriate source for establishing benchmarks. However, should the VETS data collection and reporting structures change in the future, the VETS 100–A data may be a source contractors could use when establishing their own benchmarks or that is considered by OFCCP should it revise the national benchmark. First, the structure of the VETS–100 form is such that contractors do not record a total number of protected veteran employees or hires, but rather how many veterans fall within each of the four protected categories. Because a veteran may fall within multiple categories (*e.g.,* a disabled veteran who is also recently separated and earned a campaign badge for his or her service), VETS–100 data can double, triple, or even quadruple-count the number of protected veteran hires and employees. Also, VETS–100 data only reflects those protected veterans employed by Federal contractors, and not the population of protected veterans available for work. Accordingly, if a contractor's protected veteran recruitment efforts were deficient and resulted in an unreasonably small number of protected veteran hires and employees, this deficiency would therefore be incorporated into the contractor's benchmark.

However, in order to address the concerns of those commenters seeking greater clarity and objectivity in setting hiring benchmarks, the final rule contains a significant revision allowing contractors another method for establishing a hiring benchmark: simply using the national percentage of veterans in the civilian labor force, which will be published and updated annually on OFCCP's Web site, as the annual hiring benchmark. As of September 2011, the national percentage of veterans in the civilian labor force was 8.0 percent. OFCCP recognizes that this data captures all veterans, and not just veterans protected by VEVRAA, but OFCCP reiterates that the benchmark is not a quota. It serves primarily as a yardstick by which contractors can measure the effectiveness of their affirmative action efforts, and a tool for contractors to use in the evaluation of their outreach and recruitment efforts. Importantly, as with benchmarks calculated under the five-factor method set forth in the NPRM, contractors will not be cited simply for failing to meet it. For those commenters who asserted that the proposed five-factor approach to setting benchmarks was unduly burdensome, this approach will decrease the burden significantly, as set forth in the Regulatory Procedures section of this final rule.

For those contractors that would rather use the five-factor approach to setting benchmarks proposed in the NPRM, the final rule retains this as an option. This option, however, is modified slightly to eliminate the consideration of referral data, which contractors are no longer required to collect and maintain in the final rule. For those who choose this method of setting benchmarks, OFCCP will provide technical assistance to contractors upon request.

With regard to commenters' concerns about the proposed five-year recordkeeping requirement in paragraph (c) of this section, the final rule reduces this to a three-year requirement, for the reasons set forth in the discussion of § 60–300.80 below and previous sections that had a proposed five-year recordkeeping requirement discussed above.

Some commenters questioned why the term ''benchmarks'' was used in this section as opposed to the term ''goals'' which is used in the EO 11246 program. We proposed a different term to avoid confusion and to highlight the difference in how the two concepts operate. The purposes of the EO 11246 placement goals are twofold: (1) ''to serve as objectives or targets reasonably attainable by means of applying every good faith effort to make all aspects of the entire affirmative action program work'' and (2) ''to measure progress toward achieving equal employment opportunity.'' 41 CFR 60–2.16(a). The benchmarks established under this regulation are intended to serve only the second of these two objectives, that is, they serve as a measure of progress and the effectiveness of a contractor's outreach and recruitment efforts. The Executive Order regulations state goals are ''reasonably attainable'' when sufficiently robust data exists describing the availability of women and minority workers, the groups for which goals may be established under the Executive Order program. As discussed previously in this section, however, we do not believe that the data currently available is sufficiently robust on the issue of the availability of protected veterans. Consequently, the purpose and function of goals established in the Executive Order regulations differ from benchmarks under the VEVRAA regulations. Therefore, we use different terminology to distinguish the terms clearly. To further clarify this difference, the final rule slightly revises the language in paragraph (b) of this section. The proposal defined hiring benchmarks as ''the percentage of total hires that are protected veterans that the contractor will seek to hire. . . .'' The final rule deletes the clause ''that the contractor will seek to hire'' from the text of paragraph (b) given the explanation above.

Finally, one commenter asked if the annual hiring benchmark it sets should be included in the text of the AAP or maintained on-site in the event of an OFCCP audit. It is OFCCP's position that annual hiring benchmarks should be included in both the text of the AAP and maintained on-site in the event of an OFCCP audit, for maximum transparency.

Subpart D—General Enforcement and Complaint Procedures

Section 60–300.60 Compliance evaluations

The proposed rule set forth several changes to the process the contractor and OFCCP will follow in conducting compliance evaluations. These proposals, the comments to these

proposals, and the revisions made to the final rule are discussed in turn below.

• *Paragraph (a)(1): Review of personnel processes*

The NPRM added a sentence to paragraph (a)(1)(i) regarding the temporal scope of desk audits performed by OFCCP, stating that OFCCP ''may extend the temporal scope of the desk audit beyond that set forth in the scheduling letter if OFCCP deems it necessary to carry out its investigation of potential violations of this part.'' Several commenters, including those from individuals, contractors, contractor associations, and law firms, objected to this proposed change and asked that it be withdrawn. These commenters asserted that the language of the proposed rule could result in ''never-ending'' audits for contractors, was contrary to a 2010 Administrative Law Judge (ALJ) decision in the case *OFCCP* v. *Frito-Lay* and would lead to an increased burden for contractors.

As stated in the NPRM, the purpose of this proposal was to clarify that OFCCP may need to examine information after the date of the scheduling letter during the desk audit in order to determine, for instance, if violations are continuing or have been remedied. While the existing VEVRAA provision addresses the authority of the agency to conduct desk audits, it does not expressly state the temporal scope of these audits. It has been OFCCP's longstanding position that the agency has authority to obtain information pertinent to the review for periods after the date of the letter scheduling the review, including during the desk audit. However, in 2010 an ALJ disagreed in a recommended decision in the *Frito-Lay* case, in part because the parallel Executive Order 11246 desk audit regulation at issue in the case does not address the temporal scope of a desk audit. *OFCCP* v. *Frito-Lay, Inc.,* Case No. 2010–OFC–00002, ALJ Recommended Decision and Order (July 23, 2010). On May 8, 2012, the Department's Administrative Review Board (ARB) reversed this recommended decision, concluding that a desk audit authorized by the regulation permitted OFCCP to request additional information relating to periods after the scheduling letter. The ARB concluded that the regulation does not have an inflexible temporal limitation. *OFCCP* v. *Frito-Lay, Inc.,* Case No. 2010–OFC–00002, ARB Final Administrative Order (May 8, 2012). OFCCP views the *Frito-Lay* decision as equally applicable to desk audits concluded under its VEVRAA authority as to those conducted under its EO 11246 authority. Nevertheless, the final rule makes the clarification explicit in the text of the regulation. OFCCP notes that paragraph (a)(1) also authorizes OFCCP to request during the desk audit additional information pertinent to the review after reviewing the initial submission. *See United Space Alliance* v. *Solis,* 824 F.Supp.2d 68, 81–82 (D.D.C. 2011) (holding that agency's interpretation of its desk audit regulation to authorize additional information requests when necessary was entitled to deference).

Finally, commenters' concerns that this revision will lead to ''never-ending'' audits are inapposite. As stated above, the clarifying language set forth in the final rule does not change OFCCP's longstanding policy, or contractors' obligations, regarding the temporal scope of the desk audit. Further, because the clarification does not represent a change, concerns about increases in burden are similarly unfounded.

• *Paragraph (a)(2): Off-site review of records*

The NPRM sought to correct an error in the existing regulations in this paragraph, changing the reference to the ''requirements of the Executive Order'' to the ''requirements of Section 4212.'' We received no comments on this proposed change, but in light of the discussion of § 60–300.2 above, we replace the reference to ''Section 4212'' with ''VEVRAA.''

• *Paragraph (a)(3) and (a)(4): Nature of document production and scope of focused reviews*

The NPRM revised these two paragraphs to allow OFCCP to review documents pursuant to a compliance check and conduct focused reviews either on-site or off-site, at OFCCP's option. We received no comments on these specific paragraphs, and thus adopt the proposed language into the final rule as written.

• *Paragraph (d): Pre-award compliance evaluation*

Finally, the proposed rule added a new paragraph (d) to this section detailing a new procedure for pre-award compliance evaluations under VEVRAA, much like the procedure that currently exists in the Executive Order regulations (*see* 41 CFR 60–1.20(d)). We received one comment on this proposal that supported adding pre-award compliance evaluation options. Accordingly, this paragraph is adopted into the final rule as proposed.

Subpart E—Ancillary Matters

Section 60–300.80 Recordkeeping

Section 60–300.80 describes the recordkeeping requirements that apply to contractors under VEVRAA. The NPRM proposed adding a sentence at the end of paragraph (a) of this section clarifying that the newly proposed recordkeeping requirements set forth in §§ 60–300.44(f)(4) (linkage agreements and other outreach and recruiting efforts), 60–300.44(k) (collection of referral, applicant and hire data), 60–300.45(c) (criteria and conclusions regarding contractor established hiring benchmarks), and paragraph 5 of the EO Clause in § 60–300.5(a) (referral data) must be maintained for five years. OFCCP received twenty-four comments on the proposed provision from an individual, contractors, associations representing veterans or individuals with disabilities, law firms, industry groups, and human resources consulting firms. Twenty-three of the commenters opposed the new requirement, citing burden and inconsistency with existing regulations.

In response to comments regarding the burden associated with maintaining records for five years, the final rule reduces the recordkeeping requirements for §§ 60–300.44(f)(4), 60–300.44(k), and 60–300.45(c) to three years. The final rule also eliminates the recordkeeping requirements for referral data under the proposed paragraph 5 of the EO Clause and § 60–300.44(k). The comments regarding the burden associated with the proposed revisions and OFCCP's response are discussed in further detail in the Regulatory Procedures section.

Commenters also expressed the view that all of the VEVRAA recordkeeping requirements should be consistent with EO 11246, section 503, and other laws that have recordkeeping obligations. Nearly all commenters believed the difference in timeframes would lead to confusion, and ultimately non-compliance, even for the most well-intentioned contractors. One comment asserted that the proposed provision is inconsistent with State laws that require employers to destroy personal information of job seekers after two years when records contain personal information. Several comments indicated that the proposed requirement contradicts the Internet Applicant rule, which sets forth certain requirements for applications received through the internet or related electronic data technologies.

In response to these comments, the final rule includes a three-year recordkeeping requirement, rather than the proposed five-year requirement, for §§ 60–300.44(f)(4), 60–300.44(k), and 60–300.45(c). In order to clearly indicate this, the final rule includes a new paragraph (b) specifying those records that have the three-year requirement, moving paragraphs (b) and (c) in the

existing rule to paragraphs (c) and (d), respectively. OFCCP feels strongly that extending the recordkeeping requirements for these particular provisions, all primarily related to recruitment and outreach, will enable contractors to better determine the effectiveness of their recruitment and outreach activities over time. As noted in the NPRM, the absence of data makes it nearly impossible for contractors and OFCCP to perform even rudimentary evaluations of the availability of protected veterans in the workforce, or to make any quantitative assessments of how effective contractor outreach and recruitment efforts have been in attracting protected veteran candidates. These records will give contactors historical data that can be used for analyzing their compliance efforts. As to conflicts with other laws, particularly the Internet Applicant Rule, as set forth in detail in the discussion of § 60–300.42(a), the final rule harmonizes its requirements with the Internet Applicant Rule in the EO 11246 regulations. With regard to the comment vaguely referencing State law conflicts, generally speaking, State laws have provisions that acknowledge Federal preemption if there is a conflict, and thus we see no reason to change the proposal on that basis.

Commenters were particularly concerned about retaining referral data for five years under paragraph 5 of the EO Clause and § 60–300.44(k). As discussed previously, the final rule eliminates the recordkeeping requirements for referral data, eliminating this concern.

Section 60–300.81 Access to records

The NPRM made two changes to the current regulation. First, it added a sentence requiring the contractor to provide off-site access to materials if requested by OFCCP investigators or officials as part of an evaluation or investigation. Second, it required that the contractor specify to OFCCP all formats (including specific electronic formats) in which its records are available, and produce records to OFCCP in the formats selected by OFCCP. OFCCP received seven comments regarding the proposed § 60–300.81. All seven comments opposed the proposed changes, citing confidentiality and burden concerns.

Commenters expressed concerns about providing records in a format requested by OFCCP. Two commenters requested clarification regarding whether OFCCP will require contractors to convert records into formats requested by the agency. Several commenters stated that contractors should have the discretion to determine the format that is most efficient for records production based on organizational resources and sensitivity of information.

The final rule clarifies the provision regarding OFCCP's ability to request records in specific formats. The final rule states that: ''[t]he contractor must provide records and other information in any of the formats in which they are maintained, as selected by OFCCP.'' The final rule language makes clear that the provision will not require contractors to invest time or resources creating records in a specific format, or to create a documented ''list'' of the formats in which they have documents available. Rather, contractors merely need to inform OFCCP of the formats in which they maintain their records and other information, and allow OFCCP to select the format(s) in which the records or information will be provided. This provision should result in more efficient OFCCP investigations.

Commenters also criticized the proposal to allow OFCCP access to records off-site, particularly as it relates to the security of confidential records. One comment identified an alleged incident where an OFCCP Compliance Officer lost contractor information during a compliance evaluation. In light of this alleged security breach, the comment suggested that contractors should be permitted to determine how records are produced to OFCCP. This commenter did not provide further details of the incident, and OFCCP is unaware of any specific incident such as the one described. Another commenter noted that the language could be interpreted broadly to permit others outside of OFCCP to gain access to vendor data. Yet another comment stated that it may be difficult and time-consuming for contractors to make data accessible to OFCCP off-site.

In order to address the above-referenced concerns, commenters provided several recommendations to modify the proposed language of this section. One comment recommended that OFCCP clarify that the agency is the only entity that may be permitted access to information submitted. Another commenter recommended including language in the final regulation that states that OFCCP is committed to the confidentiality of contractor information and that confidential information related to individual employees is not subject to Freedom of Information Act requests.

The final rule retains the proposed requirement to provide OFCCP off-site access to materials by request. As an initial matter, it is worth noting that access to company records off-site is not a novel approach, as the Executive Order contains no limitation on the location of access for the compliance evaluation, and indeed specifically references off-site access. Thus, this general access regulation conforms to those principles. In light of contractors' increased use of electronic records in multiple locations, OFCCP feels that this change will provide the agency greater flexibility during evaluations and investigations. However, OFCCP modified § 60–300.81 of the final rule in response to comments regarding record confidentiality. Section 60–300.81 now includes the following language: ''OFCCP will treat records provided by the contractor to OFCCP under this section as confidential to the maximum extent the information is exempt from public disclosure under the Freedom of Information Act, 5 U.S.C. 552.'' It is the practice of OFCCP not to release data where the contractor is still in business, and the contractor indicates, and through the Department of Labor review process it is determined, that the data are confidential and sensitive and that release of the data would subject the contractor to commercial harm. This language affirms OFCCP's commitment to ensure confidentiality to the fullest extent allowed by law. Further, all OFCCP Compliance Officers receive training on the importance of keeping records confidential during compliance evaluations and complaint investigations. OFCCP will continue to stress this policy to ensure that contractor records are kept secure by the agency at all times, and will work with contractors to respond to specific data confidentiality concerns they may have.

Appendix A to Part 60–300—Guidelines on a Contractor's Duty To Provide Reasonable Accommodation

The proposed rule included three changes to Appendix A which would mandate activities that previously were only suggested. First, in the third sentence of paragraph 2 and the fourth sentence of paragraph 5, we proposed changing the language to reflect the change to § 60–300.42(d) requiring a contractor to seek the advice of disabled veterans in providing reasonable accommodation. Second, in the last sentence of paragraph 4, the NPRM proposed requiring that disabled veterans, in the event an accommodation would constitute an undue hardship for the contractor, be given the option of providing the accommodation or paying the portion of the cost that constitutes the undue hardship for the contractor, consistent with the change to § 60–300.21(f)(3).

Finally, in the last sentence of paragraph 9, the proposed rule is changed to require that a contractor must consider the totality of the circumstances when determining what constitutes a ''reasonable amount of time'' in the context of available vacant positions.

Comments describing concerns with the first and second proposed changes were addressed in the discussion of §§ 60–300.42(d) and 60–300.21(f)(3), respectively. We received no comments on the third proposed change. Accordingly, Appendix A is incorporated into the final rule as proposed, with small changes to update the references to specific accommodations to reflect current technology and terminology (such as replacing the reference to ''telecommunication devices for the deaf (TDD)'' to the more current ''text telephones (TTYs),'' and including modern technology such as speech activated software, and as set forth in the discussion of paragraph 9 of the EO Clause in § 60–300.5. Consistent with the change to § 60–300.42(c), we also deleted the words ''and wish to benefit under the contractor's affirmative action program'' from paragraph 1.

Appendix B to Part 60–300—Sample Invitation to Self-Identify

The proposed rule amends Appendix B consistent with the proposed changes to the self-identification regulation found at § 60–300.42. The majority of comments pertaining to aspects of Appendix B were addressed in the discussion of § 60–300.42 above. Separately, three commenters stated specifically that the proposed Appendix B would be a useful tool for contractors. One commenter stated that OFCCP should make clear that a goal of a reasonable accommodation is to enable an individual with a disability ''to perform the essential functions of the job,'' as this is the accepted legal standard, while the proposed paragraph 2 of Appendix B uses ''to perform the job properly and safely.'' OFCCP adopts this commenter's language into the final rule. OFCCP also eliminates from paragraph 2 of the sample invitation to self-identify the option to ''choose not to provide this information.'' This option may serve to discourage applicants from self-identifying, and is unnecessary, as applicants who wish not to reveal their protected veteran status may simply choose not to respond to the invitation. Consistent with the change to § 60–300.42(c), paragraph 3 is deleted, and paragraphs 4, 5, and 6 are renumbered, accordingly, as paragraphs 3, 4, and 5. In addition, to address confusion among veterans regarding the scope of the protections afforded by the various veterans' employment rights statutes, the final rule adds clarifying language to paragraph 1 of Appendix B. The new language explains that protected veterans with past, present or future military service, status or obligations may have additional rights under USERRA, including the right to be reemployed by an employer for whom they worked immediately prior to their military service.

Appendix C—Review of Personnel Processes

The NPRM proposed eliminating Appendix C and incorporating relevant parts of it into § 60–300.44(b). However, as stated in the discussion of § 60–300.44(b), we have eliminated the proposal in the NPRM that required specific personnel process reviews. Accordingly, the final rule reinstates Appendix C, but substitutes the updated term ''protected veteran'' in paragraphs 1, 2, and 3, in place of ''disabled veteran, recently separated veteran, other protected veteran, or Armed Forces service medal veteran.''

Regulatory Procedures

Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)

OFCCP is issuing this final rule in conformity with Executive Orders 13563 and 12866, which 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 is economically significant and major as it will have an annual effect on the economy of $100 million or more. EO 12866 § 3(f). OFCCP estimates that first year costs in the rule to be in the range of $177,296,772 to $483,560,138. This includes (1) One-time costs; (2) recurring costs; (3) capital start-up costs; and (4) operations and maintenance costs.[23] The range of recurring costs of the final rule in subsequent years will be approximately $120,386,058 to $347,617,359.[24] This rule was reviewed by the Office of Management and Budget.

A. Introduction

The final regulatory impact analysis is substantially different from the preliminary regulatory impact analysis presented in the VEVRAA NPRM based on comments received during the public and interagency comment period. First, the final rule has been scaled down significantly in order to minimize the costs employers would incur under the rule. Second, OFCCP modified the contractor establishment count to more accurately reflect the number of contractors that would be impacted by the rule. Third, the analysis acknowledges that some establishments and or companies may incur higher costs under the final rule and illustrates a range of costs to implement several provisions.

1. Eliminated Several Provisions in the NPRM

While all the proposals in the NPRM had value, after assessing the comments received on the NPRM published on April 26, 2011, we made several changes in the final rule. OFCCP reconsidered whether the cost of several proposals in the NPRM could be justified by their potential benefits, and whether alternative methods or approaches could achieve comparable or acceptable benefits for less cost or burden. We retain in the final rule those provisions proposed in the NPRM that create greater contractor accountability through enhanced data collection and recordkeeping. Therefore, as an example, the final rule does not require each contractor to establish three ''linkage'' agreements with various veteran service organizations to facilitate recruitment.

Other examples of how the final rule takes a tailored approach include, but are not limited to, eliminating the proposal that contractors reproduce the entire equal opportunity clause in all contracts and subcontracts; the proposal that contractor staff training must cover a list of specific training items; the proposal to mandate annual reviews of personnel policies; and the proposal to mandate that contractors identify the official responsible for the affirmative action program on all communications are also eliminated in the final rule.

2. Increased the Contractor Establishment Count

In light of the comments concerning the size of the Federal contractor

[23] These costs include both establishment and contractor company level costs.

[24] The recurring costs include those related to the recurring substantive provisions and the copying costs identified in the Operations and Maintenance Costs section.

establishment universe, OFCCP reexamined the original number of 108,288 contractor establishments it used in the NPRM. For the final rule, we combined Equal Employment Data System (EEDS) data with several other information sources.[25] We used FY 2009 EEDS data to determine the number of Federal contractor establishments with 50 or more employees; this resulted in a total of 87,013 Federal contractor establishments.[26] An additional 10,518 establishments were identified through a cross-check of other contractor databases for a total of 97,531 establishments. Covered Federal contractors must develop AAPs for all of their establishments, even those with fewer than 50 employees. Therefore, OFCCP added an additional 73,744 establishments, using EEO–1 and FPDS data, for an adjusted total of 171,275 Federal contractor establishments affected by the final rule. This adjustment to the methodology for calculating the number of contractors and contractor establishments results in a 58 percent increase over the earlier estimate used in the NPRM.

We received comments on the estimated number of contractor establishments as well, including recommending an establishment count of 285,390 using the VETS annual report. While OFCCP declines to exclusively rely on the VETS report number, we present an estimated high end for the range of the cost of the rule based on a contractor establishment number of 251,300 for comparison. This number is based on 2010 VETS data from their pending Information Collection Request.[27]

All costs and hours in the burden analysis of this final rule are calculated using adjusted numbers of Federal contractor establishments. Federally assisted construction contractors are not subject to these regulations and, therefore, are not included in this total. *See* section 60–300.2(n) for the definition of ''Government contract.''

3. Revised and Increased Burden Estimates

OFCCP received 55 comments concerning overall burden hours from several employer groups and employers, including 21 form letters. Most stated that OFCCP's overall estimate of dollars and hours was much too low. Some commenters included estimates of their own for dollar costs and burden hours. Several commenters specifically expressed concern about the potential burden on smaller contractors, including smaller construction contractors, veteran owned businesses, and service-disabled veteran owned businesses.

OFCCP acknowledges that estimating the precise amount of time each company will take to engage in certain activities will be difficult. However in response to public comments, the final regulatory impact analysis attempts to account for the fact that smaller contractors may not have the same human resources capabilities as larger contractors. Specifically, OFCCP has provided low and high range estimates for certain requirements either based on the comparison of contractor establishment numbers, assumptions about the use of automated application systems and human resources information systems,[28] and/or other factors.

B. The Need for the Regulation

Some commenters stated that OFCCP did not adhere to the requirements of Executive Order 13563 or Executive Order 12866, which require Federal agencies to identify a specific need for any regulation they promulgate. These commenters asserted that the unemployment rate for veterans was an insufficient basis for such ''extensive regulations.'' Another commenter questioned the need for new regulations and asserted that better enforcement of the current regulations would achieve the same goals. Commenters further stated that the anticipated benefits did not outweigh the overall costs of the NPRM.

The current regulations are simply not sufficient to facilitate the process of connecting veteran job-seekers with Federal contractors seeking to hire qualified employees. The framework articulating a contractor's responsibilities with respect to affirmative action, recruitment, and placement of veterans has remained largely unchanged since the VEVRAA implementing rules were first published in 1976. Meanwhile, veterans are returning from tours of duty in Iraq, Afghanistan, and other places around the world. These veterans possess skills and personal qualities that are highly sought after in the job market. However, veterans face substantial obstacles in finding employment upon leaving the service and returning home. Addressing the barriers our veterans face upon returning to civilian life is the focus of a number of Federal efforts, including these revised VEVRAA regulations.

Although progress has been made in the employment of veterans, the number of unemployed veterans still remains too high, and substantial disparities in unemployment and pay rates continue to persist, especially for some categories of veterans. Annual unemployment rate for post-September 2001 veterans, referred to as ''Gulf War-era II veterans,'' is higher than the rates for all veterans and for non-veterans. In 2012, according to BLS data on the employment situation of veterans for that year, about 2.6 million of the nation's veterans had served during Gulf War era II. The unemployment rate for this category of veterans was 9.9 percent compared to nonveterans at 7.9 percent.[29] In this same year, the unemployment rate for male Gulf War-era II veterans age 18 to 24 was 20.0 percent, higher than the rate for nonveterans of the same age group (16.4 percent).

OFCCP found that process and institutional barriers, and data collection issues are factors contributing to veterans being underutilized in the Federal contractor workforce. We learned much from conducting multiple town hall meetings, webinars, and listening sessions with representatives of the contractor community, state employment services, veterans' organizations and other interested parties to understand those features of the current VEVRAA regulations that work well, those that can be improved, and whether there was a need for new requirements to help effectuate the regulations' goal of increasing

[25] OFCCP determined that the VETS–100 database is not the most appropriate resource for calculating the number of federal contractors and contractor establishments. Among the concerns surrounding this data source are the use of contractor established 12-month reporting timeframes, the degree to which there is overlap or duplication in the VETS–100 and VETS–100A reports, and the absence of an employee threshold for reporting purposes.

[26] A single firm, business, or ''entity'' may have multiple establishments or facilities. Thus, the number of contractor establishments or facilities is significantly greater than the number of parent contractor firms or companies.

[27] OMB Control Number 1293–0005, Federal Contractor Veterans' Employment Report, VETS–100/VETS–100A, *http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201104-1293-003* (last accessed Aug. 13, 2013).

[28] The human resources system low range estimates assume that most contractors have automated application systems and human resources information systems to meet the data collection requirements of the final rule. The high range estimate is based on the assumption that contractors with 50–100 employees may still use manual application or human resources processes. These contractors would likely expend more time conducting the kind of data collection and analysis required under the final rule.

[29] U.S. Bureau of Labor Statistics, Economic News Release: Employment Situation of Veterans Summary, Table A: *Employment status of the civilian noninstitutional population 18 years and over by veteran status, period of service, and sex, 2011–2012 annual averages,* available online at *http://www.bls.gov/news.release/vet.nr0.htm.*

employment opportunities for qualified protected veterans with Federal contractors. We received information indicating that improvements to the regulations were needed to assist protected veterans in gaining and keeping employment. For instance, OFCCP learned that there were significant problems with contractors submitting their job listings to state agencies in usable formats—a requirement in the VEVRAA statute—which would impede the veteran's ability to learn about job openings with Federal contractors and receive priority referral to contractors with available positions. In addition, the lack of veteran applicant data hindered contractors' ability to assess the success of their outreach and recruitment efforts, and whether alternative outreach methods might attract greater numbers of protected veteran into their applicant pools.

Efforts to address veterans' unemployment must be sustained, multi-faceted, and coordinated; these regulations create an enforcement structure that supports long-term monitoring, self-assessment, data collection and accountability by employers doing business with the Federal government. The benchmark created by the regulations provides contractors with an aspirational hiring target against which they can measure the success of their efforts, and identify any impediments to hiring veterans. The regulations also provide more notice or knowledge to subcontractors by requiring prime contractors to include specific, mandated language in their subcontracts alerting subcontractors to their responsibilities as Federal contractors. This supports voluntary compliance by subcontractors and should increase job opportunities for veterans.

The regulations address concerns surrounding process and institutional challenges related to identifying available veteran job applicants. The regulations clarify the contractor's mandatory job listing requirements and the relationship between the contractor, its agents, and the state employment services that provide priority referral of protected veterans; and create flexibility for contractors when they are establishing formal relationships with organizations that provide recruiting or training services to veterans. The relationships or ''linkage agreements'' can be established to meet the contractors' specific needs, while assuring outreach to veterans seeking employment.

C. Discussion of Impacts

In this section, we present a summary of the costs associated with the revisions to part 60–300. The estimated cost to contractors is based on Bureau of Labor Statistics data in the publication ''Employer Costs for Employee Compensation'' (September 2011), which lists total compensation for management, professional, and related occupations as $50.11 per hour and administrative support as $23.72 per hour. OFCCP estimates that 52 percent of the burden hours will be management, professional, and related occupations and 48 percent will be administrative support.

TABLE 1—CONTRACTOR NEW REQUIREMENTS—171,275 ESTABLISHMENTS

Provision	Low cost	High cost
EO Clause, Parag 12	$240,495.10	$240,495.10
EO Clause, Parag 10	534,418.00	534,418.00
300.42	2,101,102.72	2,583,328.54
300.45	2,404,913.60	2,404,913.60
Total	5,280,929.38	5,763,155.20
EO Clause, Parag 4	1,736,859.16	1,736,859.16
300.44(f)(1)	4,328,771.47	4,809,761.68
300.44(f)(3)	3,174,438.00	3,174,438.00
300.44(f)(4)	1,603,263.25	1,603,263.25
300.44(h)	1,068,842.17	1,068,842.17
300.44(k)	3,740,925.75	6,840,549.94
Total	17,256,363.05	20,836,977.45
Reasonable Accommodation	19,010,209.00	19,010,209.00
Capital and Start-up	31,457,911.40	43,429,423.20
Rule Familiarization	8,582,590.25	34,330,361.00
Operations and Maintenance	616,590.00	1,356,498.00
Costs to Companies	80,601,329.83	123,123,360.60

TABLE 2—CONTRACTOR NEW REQUIREMENTS—251,300 ESTABLISHMENTS

Provision	Low cost	High cost
EO Clause, Parag 12	$352,851.59	$352,851.59
EO Clause, Parag 10	784,114.64	784,114.64
300.42	3,102,510.41	3,814,616.30
300.45	3,528,515.87	3,528,515.87
Total	7,767,992.51	8,480,098.40
EO Clause, Parag 4	2,548,372.57	2,548,372.57
300.44(f)(1)	6,351,328.56	7,057,031.73
300.44(f)(3)	4,657.640.94	4,657,640.94
300.44(f)(4)	2,352,343.91	2,352,343.91
300.44(h)	1,568,229.27	1,568,229.27

TABLE 2—CONTRACTOR NEW REQUIREMENTS—251,300 ESTABLISHMENTS—Continued

Provision	Low cost	High cost
300.44(k)	5,488,802.46	10,036,667.35
Total	23,013,764.59	28,267,332.65
Reasonable Accommodation	19,010,209.00	19,010,209.00
Capital and Start-up	46,172,324.20	64,129,119.80
Rule Familiarization	12,592,643.00	50,370,572.00
Operations and Maintenance	904,680.00	1,990,296.00
Costs to Companies	108,650,099.89	171,436,114.44

TABLE 3—COMPLETING PRE-OFFER SELF-IDENTIFICATION

Provision	171,275 Establishments		251,300 Establishments	
	Low cost	High cost	Low cost	High cost
300.42(a)	$96,695,442.00	$212,729,213.00	$141,874,556.25	$312,124,023.75

1. Section 60–300.5 Equal Opportunity Clause

The Equal Opportunity Clause (EO Clause) in the current rule, as well as the VEVRAA statute itself, requires Federal contractors to list their job openings with the state or local employment service delivery system (employment service). *See* 38 U.S.C. 4212(a)(2)(a); 41 CFR 60–300.5(a)(2). Paragraph 2 of the EO Clause in the current regulations does not expressly address the manner in which contractors provide job openings to the employment delivery service system. The NPRM proposed requiring contractors to provide information to the employment service in the manner and format that the employment delivery service system requires. The NPRM estimated that collecting, informing the employment service delivery system and recordkeeping would take 15 minutes per job listing for an average of two listings per year. Some commenters asserted that OFCCP significantly underestimated the number of annual listings or the time required to post a listing, or both.

The final rule clarifies the intent of the provision by stating that contractors need only provide job openings in a format that the employment service delivery system will accept. The clarification in the final rule does not create a new requirement; rather it explains OFCCP's longstanding position regarding the statutory requirement to list job openings. This position is explained in publically available Frequently Asked Questions (FAQs), published several years ago, addressing the various ways contractors must list job openings, the documentation contractors must maintain to demonstrate compliance, what contractors should do if they send an email and it is returned from the state as undeliverable, and how to comply with the job listing requirement by using third parties.[30] Therefore, the final rule does not assess burden for complying with existing requirements concerning listing job openings in a manner permitted by the employment service delivery system. We also do not assess burden for new language clarifying that contractors may utilize privately run third-party services or exchanges to list its jobs, in addition to listing them with the employment service delivery system.

Paragraph 4 of the EO Clause of the current rule requires contractors to provide the appropriate employment service delivery system with the name and location of each of the contractor's hiring locations. *See* 41 CFR 60–300.5(a)(4). The NPRM proposed requiring a contractor to inform the employment service delivery system that: (1) It is a Federal contractor; (2) it is requesting priority referrals of protected veterans; and (3) it is providing the contact information for the hiring official at each location in the state. The NPRM also proposed requiring contractors to provide the employment service with the contact information for each external job search organization used by the contractor. Several contractors use job search and human resources firms to fill job vacancies in the belief that using these firms saves them money, gives them greater staffing flexibility and increases their access to talent. These firms can search for, recruit and even train contractors' employees using human resource software solutions that work independently or that can be integrated into a contractor's own human resources information system. The NPRM estimated that 25 percent of the Federal contractors use job search or similar firms and that 20 minutes would be required to provide the four types of information proposed in the NPRM. The status of the employer as a Federal contractor, the need for priority referrals, the hiring official's contact information and the information identifying the contractor's external job search firm are all pieces of information that should be readily available to the contractor and any job search or human resources firm the contractor uses. Transmission of the information via email or facsimile is not complex or time consuming and can be done from a desktop computer, standalone facsimile or business multi-function printer. We received no comments on this burden estimate.

The final rule adopts proposed paragraph 4 of the EO Clause and further clarifies the unchallenged burden analysis for this provision. OFCCP estimates a total of 15 minutes to ensure that the new information required by the regulation is provided to the employment service. Because submitting job openings is already required by paragraph 2 of the EO Clause, and burden was assessed for that provision, we are only assessing additional burden for including a few lines of text to identify the contractor as a ''Federal contractor, request priority referrals, and identify the contractor's official that is responsible for hiring.

[30] Office of Federal Contract Compliance Programs, Jobs for Veterans Act Frequently Asked Questions, Can a contractor satisfy the job listing requirement by sending to the appropriate employment delivery system a link to a specific job opening posted on the contractor's Web site? *http://www.dol.gov/ofccp/regs/compliance/faqs/jvafaqs.htm#Q20* (last accessed April 16, 2012).

This calculation assumes that the required information is readily available within the contractor's human resources department, or the job search or similar firm used by the contractor, or both. It is also assumed that the language is being incorporated into a job listing template and stored electronically, and that this template or similar form is easily accessible for use and revision, as needed. The minimum recurring burden estimate for this provision is 42,819 hours (171,275 contractor establishments × 15 minutes/60 = 42,819 hours). As in the NPRM, OFCCP estimates that 25 percent of contractors, or 42,819, will use outside job search organizations and incur an additional 5 minute burden to simultaneously notify the employment service of the contact information for its outside job search organizations when submitting the required job posting. The burden for this provision is 3,568 hours (42,819 contractor establishments × 5 minutes/60 = 3,568 hours). The minimum cost for this provision is approximately $1,736,859.[31]

Assuming there are 251,300 establishments that are impacted by the final rule, the recurring burden for updating existing mandatory job listing templates to include the required information would be 62,825 hours (251,300 contractor establishments × 15/60 = 62,825 hours). The burden for providing information regarding job search organizations would be 5,235 hours (251,300 contractor establishments × 25 percent × 5 minutes/60 = 5,235 hours. The cost for this provision would be $2,548,372.

Paragraph 9 of the EO Clause in the final rule clarifies that contractors have a duty to provide notices of employee rights and contractor obligations in a manner that is accessible and understandable to persons with disabilities. The final rule revises the parenthetical at the end of the sentence by replacing the outdated suggestion of ''hav[ing] the notice read to a visually disabled person'' as an accommodation with the suggestion to provide Braille, large print, or other versions that allow persons with disabilities to read the notices themselves. The NPRM estimated that contractors would take 10 minutes to receive this accommodation request, provide the document in an alternative format and maintain a record of its disposition of the request. Upon further consideration, OFCCP determines that there is no additional cost for this provision. We specifically note that the nondiscrimination requirements of VEVRAA currently require contractors to provide reasonable accommodation upon request. *See* 41 CFR 60–300.21(f). Therefore, this modification in the final rule simply updates the examples of possible accommodations that contractors may provide to a visually impaired person, and does not impose a new obligation on contractors.

Paragraph 9 of the final rule also allows, but does not require, contractors to post notices regarding employee rights and its equal employment opportunity obligations electronically if the contractor provides computers that can access the electronic posting to employees working remotely or has actual knowledge the employees have access to the postings. This provision simply provides contractors with another, more expedient, way to meet their existing obligations. OFCCP estimates no additional burden for contractors that opt to post relevant notices electronically.

Paragraph 9 of the final rule requires contractors to electronically post a notice of job applicants' rights if the contractor utilizes an electronic application. The existing regulations require contractors to post notices regarding employee rights and equal employment opportunity obligations in conspicuous places for employees and applicants. *See* 41 CFR 60–300.5(a)(9). The final rule clarifies how contractors can meet this existing obligation for on-line applicants. Therefore, there is no new burden for this provision.

The NPRM proposed adding a new paragraph 13 to the EO Clause that would require contractors to add to their solicitations and advertisements that they are an equal opportunity employer of veterans covered under VEVRAA. Under existing Federal requirements, including EO 11246, contractors are required to state in solicitations and advertisements that the company is an equal opportunity employer. *See* 41 CFR 60–1.4(a)(2). The final rule adopts the proposed requirement, now paragraph 12 of the EO Clause, requiring contractors to state in all solicitations and advertisements that they are equal opportunity employers of protected veterans. The NPRM estimated that it would take contractors 1 minute to comply with this provision. We received one comment from an employer group stating that ads would cost more due to their increased word length. OFCCP acknowledges that some contractors may experience an increased cost in light of this requirement. However, based on the comments that OFCCP received on this issue, there is no indication that this would be a significant problem for a substantial number of contractors. In fact, the cost of some advertisements and solicitations are based on size (i.e., quarter-page, half-page, full-page) or number of lines, and the type of listing. Moreover, the cost of an advertisement will also depend on the publication's circulation and location. The number of words in the text actually appears be a lesser factor when determining cost. After some research, OFCCP determined that the average cost per word nationally is between .10 and .20 cents for a classified advertisement. Therefore, the cost would not be greatly impacted by adding two words, ''protected veterans,'' to the advertisement.

Information from OFCCP field staff indicates that many contractors already include ''veterans'' in their equal employment opportunity statement for solicitations, particularly universities and defense contractors. These entities are often seeking the particular skills and training that veterans receive while in the military. Therefore, based on field experience evaluating contractor practices, OFCCP estimates that approximately 55 percent of contractors, or 94,201, currently comply with this requirement. OFCCP estimates that the remaining 77,074 contractors will have a one-time burden of 5 minutes for amending their existing standard equal employment opportunity statement to include ''protected veterans'' or similar language. Though no commenter specifically objected to the 1 minute estimate of time required to incorporate the reference to veterans into an existing form or template, OFCCP determined that additional time appears justified and adjusted the time required from 1 minute to 5 minutes in the final rule to ensure that the document is revised, saved or uploaded so that it is readily available for use. Therefore, the total burden for this provision is 6,423 hours (77,074 contractor establishments × 5 minutes/60 = 6,423 hours). The total cost of this provision is approximately $240,495.

Assuming there are 251,300 establishments impacted by the final rule, the burden for this provision would be 9,424 hours (113,085 contractor establishments × 5 minutes/60 = 9,424 hours). The total cost of the provision would be $352,852.

Paragraph 10 of the EO Clause in the final rule, originally paragraph 11 in the

[31] All of the estimated costs to contractors is based on Bureau of Labor Statistics data in the publication ''Employer Costs for Employee Compensation'' (September 2011), which lists total compensation for management, professional, and related occupations as $50.11 per hour and administrative support as $23.72 per hour. OFCCP estimates that 52 percent of the burden hours will be management, professional, and related occupations and 48 percent will be administrative support.

NPRM, clarifies that the existing requirement to notify labor unions about a contractor's affirmative action efforts also includes notifying them of the contractor's nondiscrimination obligations. This provision in the NPRM is adopted as proposed. No additional burden is created by this clarification of an existing requirement.

Paragraphs 1, 3, 5–8, and 11–12 of the EO Clause in the final rule remain unchanged from the current rule. Consequently, no burden is created.

Section 41 CFR 60–300.5(d) currently allows contractors to incorporate the EO Clause into contracts by reference. Further, the EO Clause is considered part of every covered contract and subcontract even if it is not physically incorporated into the contract. *See* 41 CFR 60–300.5(e). The NPRM proposed requiring that the entire EO Clause be included verbatim in Federal contracts. The NPRM estimated that it would take 1 minute for contractors to copy and paste the clause into its contracts. We received six comments on the burden created by this paragraph, all opposing the requirement to include the entire EO Clause verbatim in contracts. The commenters stated that this requirement would be too burdensome, as the length of a contract, subcontract, or purchase order would increase greatly in size, causing contracts to be rewritten, and that the EO Clause could not, as we had suggested, be readily cut and pasted into these documents. Commenters requested retaining incorporation by reference, consistent with other statutory and equal opportunity requirements. In light of these comments, the final rule permits incorporation of the EO Clause, with the addition of some additional language that OFCCP has provided in the regulatory text summarizing VEVRAA's purpose. OFCCP estimates that contractors will spend approximately 15 minutes modifying existing contract templates to ensure the additional language is included. The burden for this provision is 14,273 hours (171,275 contractor establishments × 5 minutes/60 = 14,273 hours). The cost for this provision is $534,418.

Assuming there are 251,300 establishments impacted by the final rule, the burden for this provision would be 20,942 hours (251,300 contractor establishments × 5 minutes/60 = 20,942 hours). The cost for this provision would be $784,115.

To align with the incorporation by reference approach in 41 CFR 60–300.5(d), the final rule section 60–300.5(e) reverts back to the current language in the regulations. That language considers the EO Clause a part of the contract whether or not it is physically incorporated into a written contract and whether or not there is a written contract. No new burden is created by reverting back to the existing language.

2. Section 60–300.21 Prohibitions

The NPRM proposed clarifying that an individual who rejects a reasonable accommodation made by the contractor may still be considered a qualified disabled veteran if the individual subsequently provides or pays for a reasonable accommodation. *See* 41 CFR 300.21(f)(3). The final rule retains the proposals in the NPRM; however, no new burden is created.

3. Section 60–300.40 Applicability of the Affirmative Action Program Requirement

The final rule adopts the small change to paragraph (c) of this section. The change specifies that the official designated by the contractor pursuant to § 60–300.44(i) reviews and annually updates the contractor's affirmative action program. This change reflects the intent of the existing language. No burden is generated by this change.

4. Section 60–300.41 Availability of the Affirmative Action Program

Though changes to this section were proposed in the NPRM, OFCCP is not incorporating those proposals into the final rule. Instead, the final rule retains the language in the existing § 60–300.41, with a small adjustment to clarify that contractors do not need to include the data metrics required by § 60–300.44(k) in their AAP, due to commenters' concerns about confidentiality. This small clarification creates no new or additional burden.

5. Section 60–300.42 Invitation to Self-Identify

The current regulation requires the contractor to invite applicants who are disabled veterans, as defined in section 60–300.2, to self-identify only after making an offer of employment, subject to two exceptions. *See* 41 CFR 60–300.42(a). For all other veterans protected by part 60–300, the current regulation requires the contractor to invite the applicant to self-identify ''before the applicant begins his or her employment duties.'' *See* 41 CFR 60–300.42(b).

The final rule retains the mandatory pre-offer invitation to self-identify as a ''protected veteran'' in § 60–300.42(a), but eliminates the language proposed in paragraphs (a)(1) and (a)(2) describing the conditions under which pre-offer invitations of disabled veterans are legally allowed because contractors found this language confusing. The post-offer invitation to self-identify that is in the existing rule remains in the final rule. Finally, instead of requiring contractors to seek input from applicants regarding accommodation, the final rule suggests that they should do so. The NPRM estimated that it would take contractors 1 minute to copy and paste an OFCCP sample invitation to identify into a separate form for electronic and paper applications. The NPRM also estimated burdens for veterans to fill out the self-identification form.

OFCCP received 11 comments opposing the proposed new pre-offer inquiry requirement in section 60–300.42(a). The comments generally stated that the estimated burden was too low because, even with the sample invitations OFCCP included as Appendix B to the regulation, contractors would still need to rewrite existing self-identification forms and modify or update their human resources or applicant tracking systems.

Based on feedback from commenters, OFCCP modified its approach to this calculation. OFCCP's estimate is based on the assumption that modifications to a contractor's application system would be conducted at the parent company level.[32] This estimate distinguishes between contractors with web-based or automated application systems and those relying on manual or paper-based systems. Larger contractors, those with more than 100 employees are more likely to have web-based systems. OFCCP estimates that 72 percent of contractors utilize web-based application systems.[33] Working at the corporate level, contractors will take 1.5 hours to review and retrieve existing sample invitations to self-identify, adopt the sample ''as is'' or make revisions to their existing form, save the invitation to self-identify and incorporate the document in the contractor's application form. This burden estimate

[32] The EEO–1 data base separately identifies contractor entities (companies) and the facilities that comprise them. The FPDS–NG data base, by contrast, identifies contractor facilities, but does not identify the larger entities of which they are a part. OFCCP utilized the ratio (approximately 3.7) of parent companies to number of establishments from the EEO–1 data to determine that among the universe of 171,275 establishments there are approximately 45,996 Federal contractor companies.

[33] Based on EEO–1 data on the number of establishments 100 or fewer employees we determined that 28% were at this level and would likely have manual systems as ''smaller'' establishments. Moreover, we used a 100 employee threshold as a cut-off for small employers for application of the 7% goal at the workforce or EEO–1 job category level.

should be considered in conjunction with the start-up costs associated with this rule. OFCCP allotted 20 hours in the VEVRAA final rule to modify human resources information systems or establish a process to comply with the rules' new data collection requirements. This is in addition to costs specified for incorporating the invitation to self-identify in the application process. Taken together, contractors will have over 21 hours to modify their existing application process. The burden for these contractors would be 49,676 hours (33,117 contractor companies × 1.5 hours = 49,676 hours). The remaining contractors would simply have to incorporate the invitation to self-identify in paper applications. OFCCP estimates this will take approximately 30 minutes. The burden for these contractors would be 6,440 hours (12,879 contractor companies × 30 minutes/60 = 6,440 hours). The minimum cost for this provision is approximately $2,101,103.

If all contractors used a web-based application the one-time burden of preparing the form and making the IT changes for this provision is 68,994 hours (45,996 contractor companies × 90 minutes/60 = 68,994 hours). The maximum cost for this provision is $2,583,328.

Assuming there are 251,300 establishments, or 67,919 contractor companies,[34] in OFCCP's jurisdiction, contractors working at the corporate level will take 1.5 hours to review and retrieve existing sample invitations to self-identify, adopt the sample ''as is'' or make revisions to their existing form, save the invitation to self-identify and incorporate the document in the contractor's application form. The burden for these contractors would be 73,352 hours (48,901 contractor companies × 1.5 hours = 73,352 hours). The remaining contractors would simply have to incorporate the invitation to self-identify in paper applications. OFCCP estimates this will take approximately 30 minutes. The burden for these contractors would be 9,509 hours (19,017 contractor companies × 30 minutes/60 = 9,509 hours). The minimum cost for this provision would be approximately $3,102,510.

If all contractors used a web-based application, the one-time burden of preparing the form and making the IT changes for this provision is 101,879 hours (67,919 contractor companies × 90 minutes/60 = 101,879 hours). The maximum cost for this provision would be approximately $3,814,616.

Applicants for available positions with covered Federal contractors will have a minimal burden complying with section 60–300.42(a) in the course of completing their application for employment with the contractor. Section 60–300.42(a), on pre-offer self-identification, requires contractors to invite all applicants to self-identify whether or not they are a protected veteran. OFCCP estimates that there will be a minimum of 15 applicants per job vacancy for on average 15 vacancies per year. OFCCP further estimates that it will take applicants approximately 5 minutes to complete the form. The burden for this provision is 3,211,406 hours (171,275 contractors × 15 listings × 15 applicants × 5 minutes/60 = 3,211,406 hours). The minimum costs for this provision is $96,695,442. OFCCP estimates that there will be a maximum of approximately 33 applicants per job vacancy for on average 15 vacancies per year per establishment. OFCCP further estimates that it will take applicants approximately 5 minutes to fill out the self-identification form. The burden for this provision is 7,065,093 hours (171,275 contractors × 15 listings × 33 applicants × 5 minutes/60 = 7,065,093 hours). The maximum costs for this provision would be $212,729,213.

Assuming there were 251,300 establishments impacted by the final rule, the minimum burden for this provision would be 4,711,875 hours (251,300 contractors × 15 listings × 15 applicants × 5 minutes/60 = 4,711,875 hours). The minimum costs for this provision would be $141,874,556. OFCCP estimates that there will be a maximum of approximately 33 applicants per job vacancy for on average 15 vacancies per year per establishment. OFCCP further estimates that it will take applicants approximately 5 minutes to fill out the self-identification form. The burden for this provision is 10,366,125 hours (251,300 contractors × 15 listings × 15 applicants × 5 minutes/60 = 10,366,125 hours). The maximum costs for this provision would be $312,124,024.

Several other changes to section 60–300.42 do not create new burdens or costs to contractors. Section 60–300.42(b) of the final rule carries forward the existing requirement that contractors invite voluntary self-identification of all applicants post-offer. Section 60–300.42(c) of the final rule revises paragraph (c) of this section by deleting the second sentence of the parenthetical at the end of the paragraph. Neither of these provisions includes a new substantive requirement.

Section 60–300.42(d) of the final rule does not incorporate the proposal in the NPRM that would have required contractors to ask disabled veterans whether any necessary reasonable accommodation is needed, and if so, engage in an ''interactive process'' regarding reasonable accommodation. Instead, the final rule retains the language in the existing rules which is permissive and also eliminates the parenthetical text that provides an example of when a contractor could make an inquiry about a reasonable accommodation. The text is unnecessary and likely confusing. We note that several comments suggested that the proposed change in the NPRM does not take into account the administrative burden associated with ascertaining whether an individual is legally entitled to an accommodation and to research alternative sources of funding for requested accommodations when the accommodation is financially burdensome. We are using the existing regulatory language in the final rule and, therefore, are no longer creating a new burden.

6. Section 60.300.43 Affirmative Action Policy

The final rule clarifies that the nondiscrimination requirements of VEVRAA are limited to protected veterans and that claims of reverse discrimination may not be brought by individuals who do not fall into one of the ''protected veteran'' categories. No burden is incurred by this clarification because the final rule merely deleted the phrase ''. . . because of status as a . . .''

7. Section 60–300.44 Required Contents of the Affirmative Action Program

Section 60–300.44(a) Policy Statement

Section 60–300.44(a) of the final rule clarifies the contractor's duty to make the equal opportunity policy statement accessible to all employees. The final rule revises the parenthetical at the end of the sentence by replacing the outdated suggestion of ''hav[ing] the notice read to a visually disabled person'' as an accommodation with the suggestion to provide Braille, large print, or other versions that allow persons with disabilities to read the notices themselves. It also requires the policy statement to include the attitude of the top United States executive, such as the Chief Executive Officer (CEO) or the President of the United States Division of a foreign company, toward

[34] OFCCP utilized the same ratio (approximately 3.7) of parent companies to number of establishments from the EEO–1 data to determine that among the universe of 251,300 establishments there are approximately 67,919 Federal contractor companies

the contractor's affirmative action program.

The NPRM estimated that it would take contractors 10 minutes to receive the request, provide the document in an alternative format, and maintain records of compliance. OFCCP determines that there is no additional cost for this provision in the final rule. The nondiscrimination requirements of OFCCP's regulations currently require contractors to provide reasonable accommodation upon request. *See* 41 CFR 60–300.21(f). This modification simply updates the example of a possible accommodation that contractors may provide to a visually impaired person, and does not impose a new obligation on contractors. Similarly, no burden is associated with requiring that the contractor indicate the CEO's support for the affirmative action program rather than his or her ''attitude on the subject matter.''

Section 60–300.44(b) Review of Personnel Processes

Section 60–300.44(b) currently outlines the requirements for reviewing personnel processes to ensure that they provide for consideration of protected veteran applicants. The NPRM proposed requiring contractors to review their personnel processes on an annual basis to ensure that their obligations are being met, and mandated several steps that contractors must take as part of the review process, including: (1) Identifying the vacancies and training programs for which protected veteran applicants and employees were considered; (2) providing a statement of reasons explaining the circumstances for rejecting protected veterans for vacancies and training programs; and (3) describing the nature and type of accommodations for special disabled veterans who were selected for hire, promotion, or training programs. The NPRM estimated that it would take contractors 15 minutes per listing to identify vacancies; 15 minutes to identify training programs; 30 minutes to provide a statement of the reasons for rejecting protected veterans for vacancies and training programs; and 30 minutes per accommodation request. Commenters stated that the burden for performing this review would be significantly higher than OFCCP estimated since contractors would have to update human resources information systems to track the relevant data.

In response to the comments received, the final rule does not adopt the proposals in the NPRM but retains the existing language in 60–300.42(b) and no new burden is created.

Section 60–300.44(c) Physical and Mental Qualifications

The current rule requires contractors to ''periodically'' review physical and mental job qualification standards to ensure that, to the extent the qualification standards screen out qualified, disabled veterans, they are job-related for the position in question and are consistent with business necessity. *See* 41 CFR 60–300.44(c)(1). The NPRM proposed modifying this section to require the reviews annually and contractors to document the methods used to complete the review, the results of the review, and any actions taken in response to the review.

We received several comments regarding this provision expressing concern that the revision would require contractors to review every job on an annual basis whether or not changes occurred, and that OFCCP underestimated the burden. In order to minimize the burden, the final rule retains the existing language in 41 CFR 60–300.44(c)(1). Therefore, there is no new burden for this provision.

Section 60–300.44(c)(3) of the final rule requires contractors to document the specific reasons behind its belief that the ''direct threat'' defense applies and maintain this document as a confidential medical record. The existing regulations allow contractors to use as a defense to an allegation that a job qualification screened out a disabled veteran that the disabled veteran poses a ''direct threat'' to the health or safety of the individual or others in the workplace. *See* 41 CFR 60–300.22. A contractor seeking to establish such a defense would have to document its rationale in order to do so. The final rule requires that the contractor create and maintain a summary of the statement of reasons for its direct threat finding. As contractors would already normally document these instances, we assess no burden for this provision.

Section 60–300.44(f) External Dissemination of Policy, Outreach and Positive Recruitment

Section 300.44(f)(1) of the current rule suggests a number of outreach and recruitment activities that a contractor can undertake in order to increase employment opportunities for protected veterans. The NPRM proposed requiring contractors to enter into linkage agreements with three veterans' recruitment sources: (1) The Local Veterans' Employment Representative (LVERs) in the local employment service office nearest the contractor's establishment; (2) one of several other listed organizations and agencies; and (3) one of the veterans' service organizations listed in the National Resource Directory (NRD). The NPRM estimated that it would take an average of 1.5 hours to establish one new linkage agreement for contractors obtaining OFCCP Compliance Officer assistance. The NPRM further estimated that it would take contractors an average of 5.5 hours to establish a linkage agreement without such assistance.

We received 12 comments regarding the potential burden of this requirement. Commenters asserted that this requirement was more burdensome than we had projected. Commenters also asserted that the NPRM's requirement to enter into local agreements would not be practical for many establishments, especially for contractors that recruit in multiple states or nationally, and for contractors in remote locations. In addition, commenters expressed concern about how the proposed provision would impact existing linkages with organizations that may not be included among OFCCP's listed resources. Others objected to the five (5) year recordkeeping requirements.

In response to the comments, OFCCP revised the final rule in several ways. First, OFCCP eliminated the requirement to establish three linkage agreements. The final rule retains the existing language of § 60–300.44(f)(1)(i) which requires that the contractor undertake ''appropriate outreach and positive recruitment activities,'' and then provides a number of suggested resources. No burden is created in the final rule by this provision.

Section 60–300.44(f)(1)(ii) of the final rule requires contractors to send written notification of the company's affirmative action program policies to subcontractors, vendors, and suppliers. The NPRM estimated that it would take contractors 5 minutes to prepare the notification and provide it to its subcontractors via the Internet in a group email and 1 minute to add or subtract any additions or deletions to the email group. The final rule recalculates the estimated burden of this provision. The existing regulations recommend that contractors send written notification of the company's affirmative action policies to subcontractors, vendors, and suppliers. *See* 41 CFR 60–300.44(f)(6). OFCCP's consultation with field staff indicates that approximately 10 percent of contractors, or 17,128, currently implement this recommendation so no additional burden is calculated for this population. At a minimum, OFCCP estimates that the remaining 154,147 contractors will take 15 minutes to prepare the notification and send it to

subcontractors, vendors, and suppliers, and an additional 15 minutes to execute the email address changes in the company's email system. The recurring burden for preparing the notice is 38,537 hours (154,147 contractor establishments × 15 minutes/60 = 38,537 hours). Likewise, the IT burden is estimated at 38,537 hours (154,147 contractor establishments × 15 minutes/60 = 38,537 hours). The minimum cost for this provision is $4,328,771. Assuming that all 171,275 establishments incurred the combined 45 minute burden, the maximum cost of this provision is $4,809,762.

Assuming 251,300 establishments would be impacted by the final rule, OFCCP estimates that 226,170 contractors will take 45 minutes to prepare the notification and send it to subcontractors, vendors, and suppliers. The burden for this provision would be 169,628 hours (226,170 contractor establishments × 15 minutes/60 = 169,628 hours). The minimum cost for this provision would be $6,351,328. Assuming that all 251,300 establishments incurred the combined 45 minute burden, the burden would be 188,475 hours (251,300 × 45 minutes/60 = 188,475 ours). The maximum cost for the provision would be $7,057,032.

Section 60–300.44(f)(2)(ii) in the final rule sets forth additional suggested outreach efforts that contractors could engage in to increase its recruitment efforts. The final rule adds an additional resource to paragraph (f)(2)(ii) that contractors are suggested to use, and that is the Veterans Job Bank. No burden is created by this change.

Section 60–300.44(f)(2)(ii)(F) in the final rule is different than in the NPRM, reverting back to the language in the existing regulation. The NPRM stated that contractors ''must consider'' protected veteran applicants for jobs other than the one for which they applied. The final rule states that contractors ''should consider applicants . . .'' and the final rule amends the NPRM in that regard. No burden is created by this provision.

Section 60–300.44(f)(3) of the final rule requires the contractor to review the effectiveness of its outreach and recruitment efforts annually. In response to comments that OFCCP underestimated the time necessary to conduct the annual review, the final rule increases the time to comply with this provision from 20 to 30 minutes. OFCCP expects that contractors will conduct this assessment in conjunction with the correlating assessments required under EO 11246 and section 503 of the Rehabilitation Act (section 503). OFCCP believes that if a contractor has been complying with its recruitment, outreach, data collection, and recordkeeping responsibilities throughout the affirmative action program year, as well as its general obligation under § 60–300.40(c) to review and update its affirmative action program on an annual basis (which includes its outreach and recruitment efforts, *see* § 60–300.44(f)), it will take an average of 30 additional minutes for the contractor to conduct the specific effectiveness assessment of its outreach and recruitment efforts, which would include a simple comparison of the annual raw data on applicants and hires that contractors collect pursuant to § 60–300.44(k) to previous years' data, as well as their hiring benchmark, and determining in light of these numbers and any other relevant circumstances whether adjustments in their outreach efforts is necessary. OFCCP estimates that 1 percent of contractors are first-time contractors during an abbreviated affirmative action program year and will be unable to complete the review. The recurring burden for this provision is 84,781 hours (169,562 contractor establishments × 30 minutes/60 = 84,781 hours). The estimated cost for this provision is $3,174,438.

Assuming that 251,300 establishments would be impacted by the final rule, the burden for this provision would be 124,394 hours (248,787 contractor establishments × 30 minutes/60 = 124,394 hours). The cost for this provision would be $4,657,641.

Section 60–300.44(f)(4) of the final rule is a recordkeeping provision. In the final rule, this provision requires contractors to document all the outreach and recruitment activities they undertake to comply with the obligations of this paragraph, and retain these documents for a period of 3 years. Under the existing regulations, contractors are required to establish meaningful outreach and recruitment contacts. Consequently, contractors' outreach and recruitment should already be the subject of some documentation. This documentation may take several forms. It may include, for example, the numbers and types of outreach and recruitment events, the targeted groups(s) or types of participants for each event, the dates or timeframes, location of the events, and who conducted and participated in the outreach and recruitment on behalf of the contractor. OFCCP estimates that it will take contractors 15 minutes to maintain this basic outreach and recruitment documentation, much of which would typically be generated as a result of their obligations pursuant to other provisions in the regulations. This includes IT time to make the software configuration needed to tell the system to store the data for an additional year. The recurring burden for this provision is 42,819 hours (171,275 contractor establishments × 15 minutes/60 = 42,819 hours). The estimated cost for this provision is $1,603,263. Assuming there are 251,300 establishments impacted by the final rule, the burden for this provision would be 62,825 hours (251,300 contractor establishments × 15 minutes/60 = 62,825 hours). The cost for this provision would be $2,352,344.

Section 60–300.44(g) Internal Dissemination of Policy

The final rule adopts the proposed language in section 60–300.44(g)(1) without change. This section requires contractors to develop the internal procedures listed in paragraph (g)(2) of this section to communicate to employees its obligation to engage in affirmative action efforts to employ and advance in employment qualified protected veterans. No additional burden is assessed here because the existing regulations require the development of internal dissemination procedures.

The NPRM proposed, in paragraph (g)(2), making a number of currently suggested actions in this section mandatory, including incorporating the affirmative action policy in company policy manuals, informing all applicants and employees of the contractor's affirmative action obligations, and conducting meetings with management and company leadership to ensure they are informed about the contractor's obligations. The NPRM also proposed requiring contractors to hold meetings with employees at least once a year to discuss the company's affirmative action policy. The NPRM estimated that it would take contractors 15 minutes to download an OFCCP training module or 10 hours for contractors to develop their own training that communicates the company's affirmative action obligations.

We received 12 comments concerning the potential burden associated with this paragraph. Commenters asserted that the burden calculation was too low because it did not account for the cost of materials, class time and lost productivity. In order to decrease the cost of the provision, commenters suggested: (1) Allowing contractors to conduct the training during other existing meetings related to equal employment opportunity; (2) training managers only, who can then disseminate the information to their staff; or (3) specifically allowing

contractors to use Internet based training to satisfy the requirement.

The final rule narrows the scope of the internal dissemination efforts that will be required of contractors from that set forth in the NPRM in section 60–300.44(g)(2)(i). Two of the five elements that the NPRM proposed to require are maintained as requirements in paragraph (g)(2) of the final rule. The two provisions require (1) including the policy in the contractor's policy manual; and (2) notifying union officials of the policy and requesting their cooperation, if the contractor is party to a collecting bargaining agreement. We assume that the majority of Federal contractors have employee manuals and other information stored and available electronically, and thus we believe no additional burden stems from this requirement. Further, the EO Clause currently requires contractors to notify unions of their affirmative action policy so there is no new burden associated with this requirement. *See* § 60–300.5, EO Clause paragraph 10 of the final rule. Section 60–300.44(g)(3) of the final rule suggests, but does not require, the elements that were proposed as requirements in the NPRM. Elements that were suggested in the existing rule remain in paragraph (g)(3) as suggestions in the final rule, with the exception of the recordkeeping provision, which has been eliminated. The provisions in the final rule are in the existing regulation so no new burden is created.

Section 60–300.44(h) Audit and Reporting System

The proposals in the NPRM for § 60–300.44(h) outline the contractor's responsibility for designing and implementing an audit and reporting system for the company's AAP. The only change proposed in the NPRM was for the contractor to document the actions taken to comply with the obligations set forth in this section and to maintain these documents subject to the requirements of § 60–300.80. This would allow both the contractor and OFCCP to evaluate the effectiveness of its audit and reporting system. The final rule adopts the proposal in the NPRM. Under the existing rule, most contractors should document and maintain their analysis of the AAPs as a normal part of their review and assessment process. Compliance officers report that, on request, they review or are provided a range of documents related to the analysis including, for example, reports, summaries and data. In many regards, this provision merely acknowledges and formalizes a current contractor practice. OFCCP estimates that it will take contractors 10 minutes to document the actions taken to comply with section 60–300.44(h) and retain those documents. The recurring burden for this provision is 28,546 hours (171,275 contractor establishments × 10 minutes/60 = 28,546 hours). The estimated cost of this provision is $1,068,842. Assuming there are 251,300 establishments impacted by the final rule, the burden for this provision would be 41,833 hours (251,300 establishments × 10 minutes/60 = 41,833 hours). The cost for this provision would be $1,568,229.

Section 60–300.44(h)(2) requires contractors to undertake action necessary for bringing the program into compliance. This is an existing provision and generates no additional burden.

Section 60–300.44(i) Responsibility for Implementation

The final rule does not incorporate the proposal in the NPRM and the language in the existing regulation that contractors should, but are not required, to take this step is retained. Therefore, no burden is created.

Section 60–300.44(j) Training

The final rule restores the existing regulatory requirements. The final rule does not incorporate the portion of the proposed rule listing specific training items that must be covered by contractors or the specific recordkeeping requirement. However, it does retain the existing rule's general requirement that ''[a]ll personnel involved in the recruitment, screening, selection, promotion, disciplinary, and related processes'' be trained to ensure that the contractor's affirmative action commitments are implemented. Accordingly, no new burden is created by this provision in the final rule.

Section 60–300.44(k) Data Collection and Analysis

The NPRM proposed adding a new section 60–300.44(k) that would require contractors to maintain several quantitative measurements and comparisons regarding protected veterans who have been referred by state employment services, have applied for positions with the contractor, and those that were hired by the contractor. The final rule retains the NPRM's proposal for contractors to document and maintain applicant and hire data, but eliminates from the final rule the requirement for contractors to collect, maintain, and analyze information on the number of referrals and the ratio of priority referrals of veterans to total referrals, *i.e.,* paragraphs (k)(1), (k)(2), and (k)(3) in the NPRM. The final rule also does not require contractors to calculate applicant, hiring, and job fill ratios in this provision. This eliminates many of the concerns commenters had with regard to this paragraph, and also serves to decrease the burden on contractors. The other calculations mentioned in this section are already required by other sections of part 60–300 or by EO 11246. In response to the comments, OFCCP accounts for the costs of modifying human resources information systems in the Initial Capital and Start-up Costs section, *infra.*

Based on feedback received from public comments expressing concerns about the costs of modifying human resources information systems, OFCCP believes that most contractors will have the capability to conduct the required calculations electronically. Therefore, OFCCP estimates that it will, at a minimum, take contractors 25 minutes to tabulate the applicant data using an electronic database that is integrated with the contractors' human resources information database where the data is typically stored. In addition, we estimate that an additional 10 minutes is required to electronically or otherwise store the records (e.g., the report or other written documentation generated by the calculations that explain the methodology, the data used, and the findings and conclusions; the data used to conduct the calculations for subsequent validation of the results; and other material used by the contractor for the calculations). The recurring burden for this provision is 99,910 hours (171,275 contractor establishments × 35 minutes/60 = 99,910 hours). The minimum cost for this provision is approximately $3,740,926.

However, some commenters noted that companies may have to calculate this information manually. Commenters stated that these calculations could take more than 6 hours. OFCCP declines to adopt the 6 hour estimate for manual calculations in large part because the estimate and the requirements of this section are significantly scaled back from the proposed rule, as the final rule does not require contractors to tabulate referral data or applicant and hiring ratios. Accordingly, starting with the 6 hour estimate and scaling it back given the reduced burden of the final rule, OFCCP estimates that establishments without web-based application systems would take approximately 3 hours to tabulate the information required by this section. The burden for these establishments would be 102,765 hours (34,255 contractor establishments × 3 hours = 102,765). The remaining establishments would incur the 35

minute burden, for a total of 79,928 hours (137,020 contractor establishments × 35 minutes/60 = 79,928 hours). The maximum cost for this provision would be approximately $6,840,550.

Assuming there are 251,300 establishments impacted by the final rule, OFCCP estimates that it will, at a minimum, take contractors 25 minutes to tabulate the applicant data using an electronic database and an additional 10 minutes to electronically or otherwise store the records (e.g., the report or other written documentation generated by the calculations that explain the methodology, the data used, and the findings and conclusions; the data used to conduct the calculations for subsequent validation of the results; and other material used by the contractor for the calculations). The recurring burden for this provision would be 146,592 hours (251,300 contractor establishments × 35 minutes/60 = 146,592 hours). The minimum cost for this provision would be approximately $5,488,802.

OFCCP estimates that establishments without web-based application systems would take approximately 3 hours to tabulate the information required by this section. The burden for these establishments would be 150,780 hours (50,260 contractor establishments × 3 hours = 150,780 hours). The remaining establishments would incur the 35 minute burden, for a total of 117,273 hours (201,040 contractor establishments × 35 minutes/60 = 117,723 hours). The maximum cost for this provision would be approximately $10,036,667.

The NPRM also proposed requiring contractors to maintain that data for 5 years. In response to the comments, the final rule reduces the record retention requirement for section 60–300.44(k) to 3 years. Since some of the data calculations are already required by the implementing regulations for EO 11246, the NPRM estimated that it would take contractors 6 minutes to comply with the additional requirements of this provision. We received nine comments concerning section 60–300.44(k). Generally, these commenters asserted that OFCCP's burden estimate was too low. More specifically, some commenters asserted that OFCCP did not include the costs of new software to collect the data. No new software needs are anticipated; however, a software switch or configuration may be required to tell the system to retain the records for the additional time period. According to an IT professional, this is a simple configuration and should take about 15 minutes to execute. No new burden is added because the change required by the § 60–300.44(f)(4) recordkeeping provision would include this IT change and they would benefit from the economy of scale.

8. *Section 60–300.45 Benchmarks for Hiring*

The NPRM proposed requiring contractors to establish annual hiring benchmarks, expressed as the percent of total hires who are protected veterans that the contractor seeks to hire in the following year. The NPRM proposed allowing contractors to consult a number of different data sources to develop benchmarks that reflect the contractor's unique hiring circumstances. It also required contractors to document the annual hiring benchmark and detail the factors they considered when establishing the benchmark and significance of each of the factors. The NPRM proposed requiring that contractors retain these records for five years.

The NPRM estimated a total of 1 hour per contractor establishment for compliance with this requirement. The NPRM further estimated that it would take contractors 30 minutes to maintain records of the benchmark calculation. We received 10 comments on the proposed requirement. Some commenters asserted that OFCCP significantly underestimated the burden hours and dollar costs of this provision. Commenters stated that OFCCP did not account for the number of openings per contractor per year, costs for software, and data storage. One commenter stated that the burden would be lower than for EO 11246 because OFCCP did not propose to require availability or utilization analysis.

The final rule, in consideration of the comments received, requires the contractor to establish benchmarks in one of two ways. A contractor may use the national percentage of veterans in the civilian labor force as the benchmark, or, the contractor may establish its own benchmark using the method proposed in the NPRM that fits the company's specific needs. OFCCP will provide, and periodically update on its public Web site, the national percentage of veterans in the civilian labor force.

In light of the significant revisions to this section in the final rule, we revised the burden estimate. OFCCP estimates that 90 percent of contractors, or 154,147, will use the national benchmark provided on the OFCCP Web site because it is the easiest approach. The remaining 10 percent of contractors, or 17,128, will likely opt to develop their own benchmarks using the various data sources described in the final rule. We estimate that it will take 5 minutes to access, view and print the national benchmark we will make available on the OFCCP Web site, and another 5 minutes to maintain the relevant documentation for the 90 percent of contractors that use the national average provided by OFCCP. The relevant documentation could, for example, include but is not limited to any information showing the official adoption of the national benchmark by the appropriate officials and how that was communicated to the appropriate staff. We propose creating a specific Web page to make locating the information easy for contractors; moreover, updating the information is the responsibility of OFCCP and not the contractors.

The one-time burden for using the national benchmark is 12,846 hours (154,147 contractor establishments × 5 minutes/60 = 12,846 hours). The burden for maintaining the relevant documentation is 12,846 hours (154,147 contractor establishments × 5 minutes/60 = 12,846 hours).

OFCCP further estimates that it will take the remaining 10 percent of contractors 2 hours to establish their own benchmark and 15 minutes to maintain documentation demonstrating how the benchmark was determined. We expect that this type of documentation would ordinarily be generated during the process of establishing the contractor's benchmark and obtaining its approval by the appropriate internal officials. The amount of detail included in this documentation remains in the discretion of the contractors, but OFCCP suggests that the documentation provide adequate information as to how the benchmark was developed, approved and communicated to the appropriate officials and staff. The one-time burden for these contractors is 34,256 hours (17,128 contractor establishments × 2 hours = 34,256 hours). The burden for maintaining the associated documentation is 4,282 hours (17,128 contractor establishments × 15 minutes/60 = 4,282 hours). The total cost for this provision is approximately $2,404,914.

Assuming that 251,300 establishments would be impacted by the final rule, one-time burden for using the national benchmark would be 37,695 hours (226,170 contractor establishments × 10 minutes/60 = 37,695 hours). The burden for contractors that choose to establish their own benchmarks would be 56,543 hours (25,130 contractor establishments × 2.25 hours = 34,256 hours). The total cost for this provision would be $3,528,516.

Veterans make up 7.25 percent of the employed population.[35] Under the rule, contractors have the option of establishing their own benchmark for employing protected veterans or meeting a benchmark set by OFCCP, currently 8 percent. Assuming all contractors will choose to meet the OFCCP benchmark, OFCCP estimates that Federal contractors would need to hire an additional 205,500 protected veterans.[36] This amounts to approximately one veteran per establishment or three veterans per company. According to research conducted by the Job Accommodation Network (JAN), employers in the study reported that a high percentage (57 percent) of accommodations cost absolutely nothing. For the remaining 43 percent, the typical cost of providing a reasonable accommodation was approximately $500.[37] Assuming that disabled veteran hiring will be consistent with their share of the disabled labor force that consists of individuals with disabilities, then we estimate that 36,330 veterans with disabilities may need accommodations with a total cost of $19,010,209 in the year the target is met and $8,037,516 in recurring costs. The cost of providing these reasonable accommodations is included in the cost of this rule.

9. Section 60–300.60 Compliance Evaluations

The proposed rule set forth several changes to the process the contractor and OFCCP will follow in conducting compliance evaluations. The NPRM added a sentence to paragraph 60–300.60 (a)(1)(i) regarding the temporal scope of desk audits performed by OFCCP, stating that OFCCP ''may extend the temporal scope of the desk audit beyond that set forth in the scheduling letter if OFCCP deems it necessary to carry out its investigation of potential violations of this part.'' The final rule adopts this proposal. No burden is created by this provision, as it merely clarifies existing agency policy to ensure that it is understood and interpreted correctly.

The NPRM, in § 60–300.60(a)(2), proposed correcting an error in the existing regulations in this paragraph, changing the reference from the ''requirements of the Executive Order'' to the ''requirements of Section 4212.'' The final rule adopts this proposal and replaces the reference to ''Section 4212'' with ''VEVRAA.'' No burden is created by this change.

Sections 60–300.60(a)(3) and (a)(4) in the NPRM revised these two paragraphs to allow OFCCP to review documents pursuant to a compliance check and conduct focused reviews either on-site or off-site, at OFCCP's option. The proposals are adopted in the final rule but no burden is created.

The NPRM proposed adding a new paragraph (d) to § 60–300.60 detailing a new procedure for pre-award compliance evaluations under VEVRAA, much like the procedure that currently exists in the Executive Order regulations (*see* 41 CFR 60–1.20(d)). This proposal is adopted in the final rule without creation of additional burden.

10. Section 60–300.80 Recordkeeping

Section 60–300.80 describes the recordkeeping requirements that apply to contractors under VEVRAA. The final rule also eliminates the recordkeeping requirements for referral data under the proposed paragraph 5 of the EO Clause and § 60–300.44(k). Consequently, we assess no burden for these provisions.

The final rule includes a three-year recordkeeping requirement, rather than the proposed five-year requirement, for §§ 60–300.44(f)(4), 60–300.44(k), and 60–300.45(c). No new burden is assessed under this section because it is carried under the burden assessed for §§ 60–300.44(f)(4) and 60–300.44(k) and the contractors benefit from the economy of scale. In that section, we determined that no new software needs are anticipated; however, a software switch or configuration may be required to tell the system to retain the records for the additional time period.

11. Section 60–300.81 Access to Records

Section 60–300.81 of the final rule requires contractors to specify all available records formats and allow OFCCP to select preferred record formats from those identified by the contractor during a compliance evaluation. OFCCP completed 4,014 compliance evaluations in Fiscal Year 2011. We estimate fewer evaluations for Fiscal Year 2012. Upon request, the contractor must provide OFCCP information about all format(s), including specific electronic formats, in which the contractor maintains its records and other information. No burden is assessed as there are no recordkeeping or document production requirements.

Commenters criticized the proposal to allow OFCCP access to records off-site, particularly as it relates to the security of confidential records. The final rule retains the proposed requirement to provide OFCCP off-site access to materials by request. However, OFCCP modified § 60–300.81 of the final rule in response to comments regarding record confidentiality.

12. Appendix A, Guidelines on Reasonable Accommodation

We received one comment from an employer association that asserted contractors would have a burden if they were to be assessed liability and costs associated with accommodations to be determined by employees.

Although an individual's preference for a particular reasonable accommodation should be given primary consideration, a contractor is not obligated to provide an employee with the accommodation of his or her choice, as long as the accommodation the contractor provides is effective. Nor does a contractor have to provide an employee with an accommodation that would impose an undue hardship on its operations, create a ''direct threat'' for the employee or others, or result in a violation of another Federal law. Accordingly, no additional burden is created as asserted by the commenter.

Appendix A is incorporated into the final rule as proposed, with small changes to update the references to specific accommodations to reflect current technology and terminology (such as replacing the reference to ''telecommunication devices for the deaf (TDD)'' with the more current ''text telephones (TTYs),'' and including modern technology such as speech activated software, and as set forth in the discussion of paragraph 9 of the EO Clause in § 60–300.5). Consistent with the change to § 60–300.42(c), we also deleted the words ''and wish to benefit under the contractor's affirmative action program'' from paragraph 1. Because it does not contain new requirements there is no burden associated with Appendix A.

13. Initial Capital or Start-up Costs

Human Resource Information Systems

Several commenters noted that the new data collection requirements in the

[35] Calculation based on unpublished table, *Employment status of persons 18 years and over by veteran status, period of service, sex, race, Hispanic or Latino ethnicity, and disability status, Annual Average 2012* (Source: Current Population Survey). (10,233/141,050)*100=7.25%. The table is available on request from the Bureau of Labor Statistics at the Department of Labor. BLS does not release some tables for a variety of reasons, such as sample size or possibility of confusion. Finally, this estimate includes all veterans, not only the protected veterans.

[36] Based on data from the Bureau of Labor Statistics Quarterly Census of Employment and Wages, OFFCP estimates that approximately 27.4 million employees could be affected.

[37] Job Accommodation Network, ''Workplace Accommodations: Low Cost, High Impact,'' Sept. 1, 2012. *Accommodation and Compliance Series, http://askjan.org/media/lowcosthighimpact.html* (last accessed Aug. 9, 2013).

proposed rule would require modifications to existing human resources information systems (HRIS). In order to estimate the start-up costs for the final rule, OFCCP considered what would be required to modify existing HRIS to track the number of protected veteran applicants and hires. Because contractors must already maintain information on their employees by race/ethnicity and sex, contractors should have some mechanism in place to track the newly required information.

OFCCP assumes that modifications to contractor HRIS will be done at the parent company level. The minimum cost for modifying HRIS is based on the estimate that 72 percent of contractors utilize this kind of electronic system.[38] Based on information from IT professionals, OFCCP estimates it would take each contractor company on average 20 hours to make the needed systems modifications to track applicant and hiring information for protected veterans. This includes IT and administrative professionals to make the changes. The estimated costs for these modifications are based on data from the Bureau of Labor Statistics in the publication ''Employer Costs for Employee Compensation'' (September 2011), which lists total compensation for a professional of $47.21 per hour. Therefore, the minimum estimated burden for the capital and start-up costs is 666,340 hours (33,317 contractor companies × 20 hours = 666,340 hours). We calculate the total minimum estimated start-up costs as $31,457,911.40 (666,340 hours × $47.21/hour = $31,457,911.40) or $944 per parent company. Assuming all contractor companies utilize HRIS, the maximum burden would be 919,920 hours (45,996 contractor companies × 20 hours = 919,920 hours). We calculate the total maximum estimated start-up costs as $43,429,423 (919,920 hours × $47.21/hour = $43,429,423) or $944 per parent company.

Assuming there are 251,300 establishments in OFCCP's jurisdiction, or 67,919 companies, the minimum estimated burden for the capital and start-up costs would be 978,020 hours (48,901 contractor companies × 20 hours = 978,020 hours). The total minimum estimated start-up costs would be $46,172,324 (978,020 hours × $47.21/hour = $46,172,324) or $944 per parent company. Assuming all contractor companies utilize HRIS, the maximum burden would be 1,358,380 hours (67,919 contractor companies × 20 hours = 1,358,380 hours). We calculate the total maximum estimated start-up costs as $64,129,120 (1,358,380 hours × $47.21/hour = $64,129,120) or $944 per parent company.

5 CFR 1320.3(b)(1)(i)—Reviewing Instructions

Several commenters noted that the proposed rule did not quantify the burden of reading and understanding the VEVRAA revisions on contractors. OFCCP acknowledges that 5 CFR 1320.3(b)(1)(i) requires agencies to include in the burden analysis for new information collection requirements the estimated time it takes for contractors to review and understand the instructions for compliance. In order to minimize the burden, OFCCP will publish several compliance assistance materials including factsheets and ''Frequently Asked Questions.'' OFCCP will also host webinars for the contractor community that will describe the key provisions in the final rule.

OFCCP estimates it will take, at a minimum, 1 hour to have a management professional at each establishment either read compliance assistance materials provided by OFCCP or participate in an OFCCP webinar to learn about the new requirements of the final rule. OFCCP believes that this is a reasonable estimate since there are substantially fewer new requirements in the final rule than proposed in the NPRM. The estimated cost of this burden is based on data from the Bureau of Labor Statistics in the publication ''Employer Costs for Employee Compensation'' (September 2011), which lists total compensation for a management professional at $50.11. Therefore, the estimated burden for rule familiarization is 171,275 hours (171,275 contractor establishments × 1 hour = 171,275 hours). We calculate the total estimated minimum start-up costs as $8,582,590 (171,275 hours × $50.11/hour = $8,582,590) or $50 per establishment.

Commenters suggested that reviewing the requirements of the final rule would take up to 6 hours. OFCCP declines to adopt this calculation since it is based reviewing the proposed rule which included a significant number of additional requirements that are not in the final rule. Therefore, OFCCP estimates the maximum for reviewing the rule would be 4 hours for a total of 685,100 (171,275 contractor establishments × 4 hour = 685,100 hours). We calculate the total maximum estimated start-up costs as $34,330,361 (685,100 × $50.11/hour = $34,330,361) or $200 per establishment.

Assuming there are 251,300 establishments impacted by the final rule, the estimated minimum burden for the capital and start-up costs would be 251,300 hours (251,300 contractor establishments × 1 hour = 251,300 hours). The total estimated minimum costs would be $12,592,643 (251,300 hours × $50.11/hour = $12,592,643) or $50 per establishment. OFCCP estimates the maximum for reviewing the rule would be 4 hours for a total of 1,005,200 hours (251,300 contractor establishments × 4 hour = 1,005,200 hours). The total maximum estimated maximum costs would be $50,370,572 (1,005,200 hours × $50.11/hour = $50,370,572) or $200 per establishment.

Operations and Maintenance Costs

OFCCP estimates that the contractor will have some operations and maintenance costs in addition to the burden calculated above.

60–300.42 Invitation to Self Identify

OFCCP estimates that the contractor will have some operations and maintenance costs associated with the invitations to self-identify. The contractor must invite all applicants to self-identify at both the pre-offer and post-offer stage of the employment process. Given the increasingly widespread use of electronic applications, any contractor that uses such applications to invite self-identification would not incur copy costs. However, to account for contractors who may still choose to use paper applications, we are including printing and/or copying costs. Therefore, we estimate a single one page form for both the pre- and post-offer invitation. The final rule reduced the number of forms to one instead of two to make the self-identification process less paperwork intensive and to reduce costs. We also estimate an average copying cost of $.08 per page. Assuming contractors using a paper-based application system, used 15 applications for an average of 15 listings per establishment, the minimum estimated total cost to contractors will be $616,590 (34,255 establishments × 225 copies × $.08 = $616,590). Assuming contractors using a paper-based application system, used 33 applications for an average of 15 listings per establishment, the maximum estimated cost to contractors will be $1,356,498 (34,255 establishments × 495 copies × $.08 = $1,356,498).

Assuming that 50,260 of 251,300 establishments with a paper-based application system, used 15 applications for an average of 15 listings per establishment, the minimum

[38] Utilizing EEO–1 data, OFCCP estimates that 72 percent of regulated contractor companies have greater than 100 employees and will likely use an electronic human resources system.

estimated total cost to contractors will be $904,680 (50,260 contractor establishments × 225 copies × $.08 = $904,680). Assuming contractors using a paper-based application system, used 33 applications for an average of 15 listings per establishment, the maximum estimated cost to contractors will be $1,990,296 (50,260 contractor establishments × 495 copies × $.08 = $1,990,296).

D. Summary of Benefits

OFCCP's analysis of the benefits of this proposal emphasizes the non-monetary benefits. Pursuant to Executive Order 13563, agencies ''may consider (and discuss qualitatively) values that are difficult or impossible to quantify, including equity* * *'' in their analysis of the costs and benefits of a proposed regulation. E.O. 13563 § 1(c).

As revised, the final rule creates a number of benefits that will further the equal employment opportunity and affirmative action objectives of VEVRAA. First, the final rule will facilitate the connection of job-seeking veterans with contractors looking to hire. The final rule clarifies the mandatory job listing requirements and requires the contractor to provide additional, regularly updated information to employment service delivery systems to ensure its job openings are listed accurately. This clarification will help to ensure that veterans can easily learn about all available jobs with Federal contractors in their state.

Second, the final rule will ensure that the contractor understands and effectively communicates its affirmative action obligations to its workforce and the other entities with which it does business. This, in turn, will facilitate a greater understanding of the purpose of the affirmative action policies among the contractor's employees and business associates and promote their active support for the contractor's affirmative action efforts.

The final rule also provides increased tools with which the contractor can assess its affirmative action efforts. Until now, the contractor had few objective criteria by which it could measure the effectiveness of its affirmative action efforts. To that end, the final rule requires the contractor to collect data that will enable the contractor and OFCCP to more accurately assess the contractor's efforts. This includes collecting data about applicants so the contractor knows how many protected veterans it is reaching. The final rule also calls for the establishment of a benchmark that can serve as a tool to help the contractor objectively evaluate its recruitment efforts and determine which ones are fruitful in attracting qualified protected veteran candidates, and which ones need to be changed.

Finally, the final rule modifies requirements regarding the manner in which OFCCP conducts its compliance reviews of contractor establishments. These changes include a greater emphasis on OFCCP review of available electronic data, greater flexibility in where reviews take place, and a new procedure for a pre-award compliance review like that currently contained in the EO 11246 regulations. These revisions will allow OFCCP to conduct contractor compliance reviews far more efficiently.

E. Conclusion

OFCCP concludes in the final regulatory impact analysis that the costs of the final rule will range and likely exceed $100 million annually. The variations in costs depend on the number of establishments impacted by the final rule and applicants who respond to the pre-offer invitation to self-identify. Costs will also vary by company depending on their existing infrastructure. We estimate that the lower end costs would be $177,296,772 assuming that there are approximately 171,275 establishments impacted by the final rule. The lower end estimate also relies on the assumption that many of these establishments have some form of electronic application and human resources information systems that would make complying with the rules requirements more efficient. The higher end estimate of $483,560,138 assumes that there are 251,300 establishments impacted by the final rule. The higher end further assumes that a portion of those contractors, primarily smaller ones with fewer employees, would have to expend more personnel time complying with the rules requirements. Therefore, the rule will have a significant economic impact. However, OFCCP believes that the final rule will have extensive benefits for veterans who are prospective and current employees of Federal contractors and Federal contractors. As such, OFCCP concludes that the benefits of the rule justify the costs.

Regulatory Flexibility Act and Executive Order 13272 (Consideration of Small Entities)

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.,* requires agencies promulgating rules to consider the impact they are likely to have on small entities. More specifically, the RFA requires agencies to ''review rules to assess and take appropriate account of the potential impact on small businesses, small governmental jurisdictions, and small organizations.'' If a rule is expected to have a ''significant economic impact on a substantial number of small entities,'' the agency must prepare an initial regulatory flexibility analysis (IRFA). If, however, a rule is not expected to have a significant economic impact on a substantial number of small entities, the agency may so certify, and need not perform an IRFA.

Based on the analysis below, in which OFCCP has estimated the impact on small entities that are covered contractors of complying with the requirements contained in this rule, OFCCP certifies that this rule will not have a significant economic impact on a substantial number of small entities.

In making this certification, OFCCP first determined the approximate number of small regulated entities that would be subject to the rule. OFCCP's review of the FY 2009 EEO–1 data revealed that the final rule directly impacts 20,490 Federal contractors with between 50 and 500 employees.[39] OFCCP also analyzed the number of small entities impacted by the rule as compared to the agency's entire universe of regulated entities of approximately 45,996 Federal contractors.[40] OFCCP estimates that approximately 44 percent of the total number of Federal contractors, or 20,490, are small entities with between 50 and 500 employees. OFCCP further refined the analysis to compare the impacted small entities to just the universe of 21,541 small entities in OFCCP's jurisdiction. Under this scenario, approximately 95 percent of small entities would be impacted by the requirements of the rule. Utilizing these comparisons, the final rule may have an impact on a substantial number of small entities.

OFCCP has determined, though, that the impact on entities affected by the

[39] The Small Business Administration (SBA) Office of Advocacy reports that there are 27.4 million small entities in the United States. Since Federal contracts are not limited to specific industries, OFCCP assessed the impact of this final rule on small entities overall. If OFCCP used this approach, the final rule will impact less than .07% of non-employer firms and .34% of employer firms nationwide.

[40] The EEO–1 data base separately identifies contractor entities (companies) and the facilities that comprise them. The FPDS–NG data base, by contrast, identifies contractor facilities, but does not identify the larger entities of which they are a part. OFCCP utilized the ratio (approximately 3.7) of parent companies to number of establishments from the EEO–1 data to determine that among the universe of 171,275 establishments there are approximately 45,996 Federal contractor companies.

final rule would not be significant. In order to further inform our analysis of the economic impact of this rule on small entities, we considered the cost impact of the rule on 2 sizes of entities. We estimated the compliance costs of the final rule on Federal contractors with 50 to 100 employees and 100 to 500 employees. Contractors with less than 50 employees will not be subject to the new affirmative action requirements in subpart C of the final rule. OFCCP's analysis of the impact on small entities compared the estimated cost of compliance with the final rule for small entities to the estimated annual receipts of these entities as provided by the SBA. If the estimated compliance costs are less than 1 percent of the estimated revenues, OFCCP considers it appropriate to conclude that there is no significant economic impact.[41]

Contractors with 50–100 Employees

We estimate the first year cost of this rule to a contractor with 50 to 100 employees to be approximately $1536. The first year cost of the rule is the year with the highest compliance cost as the contractor is incurring the start-up costs of the rule. This primarily includes the time contractors will expend reviewing the new requirements of the rule and the costs of any reasonable accommodations provided to newly hired disabled veterans.

In order to estimate the cost of this rule on an entity with 50 to 100 employees, we are applying the same type of compliance cost structure previously described in the above cost analysis. However, for this small contractor, we assume they would have a manual application process and not require costly human resources information systems changes. We further assume these contractors would expend: 3 hours manually conducting the data analysis required by the new 41 CFR 60–300.44(k); 2 hours establishing their own benchmark; 4 hours having a manager review the new requirements of the rule; and incur approximately $40 in copying costs in order to print out the newly required pre-offer invitation to self-identify for applicants. This also includes a cost of approximately $1,000 for providing reasonable accommodation to two newly hired disabled veterans.[42]

Utilizing data from the SBA Office of Advocacy regarding average receipts for firms, OFCCP determined that entities with 50 to 100 employees average receipts of approximately $14,079,844 per year.[43] The $1,536 costs of compliance with the final rule in the first year would be approximately .01 percent of the average value of receipts for these entities. Therefore, there is not a significant economic impact on contractors with 50 to 100 employees.

Contractors with 100–500 Employees

We estimate the first year cost of this rule to contractors with 100 to 500 employees to be approximately $2,518. The first year cost is the year with the highest compliance cost as the contractor is incurring the start-up costs of the rule. The start-up for contractors with 100 to 500 employees primarily includes modifying any existing web-based application and human resources information systems to include the pre-offer invitation to self-identify, becoming familiar with the new requirements of the rule, and providing reasonable accommodations to any newly hired disabled veterans.

In order to estimate the cost of this rule on contractors with 100 to 500 employees, we are applying the same type of compliance cost structure previously described in the above cost analysis. However, for this small contractor, we assume they may incur more costs analyzing data, establishing benchmarks, and modifying human resources information systems. Specifically, we assume these contractors would expend: 3 hours manually conducting the data analysis required by the new 41 CFR 60–300.44(k); 2 hours establishing their own benchmark; 4 hours having a manager review the new requirements of the rule; and incur approximately $40 in copying costs in order to print out the newly required pre-offer invitation to self-identify for applicants. We further assume these contractors will spend approximately $994 modifying their human resources information systems to accommodate the new pre-offer invitation to self-identify. OFCCP estimates that these contractors would spend approximately $1,000 providing reasonable accommodations to approximately two newly hired disabled veterans.

Utilizing data from the SBA Office of Advocacy regarding average receipts for firms, OFCCP determined that entities with 100 to 500 employees average receipts of approximately $43,547,170 per year.[44] The $2,518 costs of compliance with the final rule in the first year would be approximately .005 percent of the average value of receipts for these entities. Therefore, there is not a significant economic impact on contractors with 50 to 500 employees.

Notwithstanding our determination that there is not a significant impact as a result of this rule, OFCCP considered and implemented a number of alternatives in the final rule as compared to what was proposed in the NPRM. As noted in the preamble, the final rule no longer requires linkage agreements, increased review of personnel processes, increased review of physical and mental job qualifications, and prescribed training on the nondiscrimination and affirmative action obligations for veterans. These changes were made in large part to substantially decrease the burden on small entities.

The significant benefits to covered veterans, as well as to contractors, are discussed extensively in the Section-by-Section and Executive Order 12866 analyses of the final rule. Although the primary objective of the final rule is to strengthen the affirmative action requirements of VEVRAA to employ and advance in employment protected veterans, the rule will benefit both veterans and contractors. As modified, the final rule provides contractors mechanisms for collecting data on protected veteran applicants and employees and promotes accountability by requiring contractors to review the effectiveness of their affirmative action efforts. The benefits of proactive recruitment particularly will accrue to veterans who may face significant barriers in returning to civilian employment. The revisions will also

[41] *Id.* at 18: "The impact could be significant if the costs of compliance with the rule "exceeds 1% of the gross revenues of the entities in a particular sector."

[42] To close the current gap that exists between the target rate of employment as proposed in VEVRAA for veterans and the actual rate, firms would need to hire an additional 205,000 veterans. This amounts to approximately 1 veteran per establishment or 3 veterans per company, assuming 251,300 establishments and 67,919 companies. Moreover, 14.21% of disabled workers in the labor force are veterans. According to research conducted by the Job Accommodation Network (JAN), employers in the study reported that a high percentage (57%) of accommodations cost absolutely nothing. For the remaining 43%, the typical cost of providing a reasonable accommodation was approximately $500.

[43] In order to calculate this figure, OFCCP averaged the total receipts of firms with 50 to 99 employees provided by the SBA, Office of Advocacy. See Firm Size Data, available at *www.sba.gov/advo/research/data.html#us.* Since the data was issued in 2007, OFCCP utilized a compound 2007–2008 Consumer Price Index inflation rate equaling 6.8% (1.0285 × 1.0385) to calculate the 2009 average receipts of $14,079,844 per year.

[44] In order to calculate this figure, OFCCP averaged the total receipts of firms with 100 to 499 employees provided by the SBA, Office of Advocacy. See Firm Size Data, available at *www.sba.gov/advo/research/data.html#us.* Since the data was issued in 2007, OFCCP utilized a compound 2007–2008 Consumer Price Index inflation rate equaling 6.8% (1.0285 × 1.0385) to calculate the 2009 average receipts of $43,547,170 per year.

promote access to a well-trained, job-ready employment pool for contractors.

Paperwork Reduction Act

DATES: Effective Date: This final rule is effective _____.

Compliance Dates: Affected parties do not have to comply with the new information collection requirements in §§ 60–300.5(a)(4); 60–300.42; 60–300.44(f)(4); 60–300.44(g)(3); 60–300.44(k); 60.300.45; and 60–300.80(a) (requirement to maintain records under sections 60–300.44(f)(4), 60–300.44(k), and 60–300.45(c)) until the Department publishes a Notice in the **Federal Register** stating that the Office of Management and Budget (OMB) has approved these information collection requirements under the Paperwork Reduction Act of 1995 (PRA), or until this rule otherwise takes effect, whichever date is later.

The Department notes that no person is required to respond to a collection of information request unless the collection of information has a valid OMB Control Number. The new collections of information contained in this rulemaking have been submitted for review to OMB, in accordance with the PRA, under Control Number 1250–0004. That review is ongoing; consequently, the Control Number has not been activated. OFCCP will publish a Notice in the **Federal Register** announcing the results of OMB's review and the date the information collection requirements will take effect.

The information collection requirements in this final rule relate to the information required to be maintained by contractors regarding their nondiscrimination and affirmative action obligations concerning protected veterans and disclosures workers may make to their employers.

Sections 60–300.40 through 60–300.44 contain currently approved collections of information. Section 60–300.40 requires contractors with 50 or more employees (and contracts of $100,000 or more entered into or modified after December 1, 2003, as set forth in § 60–300.1(b)) to develop a VEVRAA affirmative action program. An affirmative action program is a written program in which contractors annually outline the steps the contractor will take and has already taken to ensure equal employment opportunity for protected veterans. Section 60–300.41 describes a contractor's responsibility to make the affirmative action program available to all employees. Section 60–300.42 outlines the contractor's responsibilities and the process through which applicants are invited to self-identify as a veteran protected under the part 60–300 regulations. Section 60–300.43 describes the breadth of the contractor's affirmative action obligation required by VEVRAA.

Section 60–300.44 outlines the required contents of the affirmative action program. Contractors must develop and include an equal opportunity policy statement in the program. Contractors must also periodically review their personnel processes to ensure that qualified, protected veterans are provided equal opportunity and that the contractor is engaged in outreach to recruitment sources. Further, contractors must develop procedures for disseminating the policy internally and externally and establish an audit and reporting system to measure the effectiveness of the affirmative action program.

The currently approved collections of information for these sections are OMB Control Numbers 1250–0001 (construction) and 1250–0003 (supply and service).[45] Information collection package 1250–0001 covers the construction aspects of OFCCP's EO 11246, VEVRAA, and section 503 programs. The construction information collection package estimates that first-time contractors will take 18 hours to develop and document a joint section 503/VEVRAA written affirmative action program. It estimates that existing contractors take 7.5 hours to document and maintain material evidence of annually updating the affirmative action program. These estimates are based on previously approved information collection requests that quantified the estimated time to develop and maintain a joint section 503/VEVRAA written affirmative action program. Information collection 1250–0003 covers the supply and service aspects of OFCCP's program. This package outlines the burden required for contractors to develop and maintain an affirmative action program for women and minorities based on the contractor's number of employees, and also references the current VEVRAA requirements. The burden for first-time contractors to develop a written affirmative action program is between 73 and 186 hours. The burden for all other contractors to maintain documentation of annually updating the affirmative action program is between 18 and 105 hours. The VEVRAA portion of these information collections will be eliminated from these control numbers once the final rule becomes effective.

Paperwork Burden Hours and Related Costs

OFCCP's new information collection request under Control Number 1250–0004 for VEVRAA includes the burden hours and costs for the existing regulations and the new information collection requirements outlined in the final rule. This presentation separately states existing requirements currently approved under other OMB Control Numbers that will now be included under the 1250–0004 Control Number.

A. Number of Respondents

In light of the comments received on the VERAA NPRM regarding the ''Federal contractor establishment universe, OFCCP reexamined the original number of 108,288 contractor establishments it used in the NPRM. For the final rule and this information collection request, we combined Equal Employment Data System (EEDS) data with several other information sources.[46] We used FY 2009 EEDS data to determine the number of Federal contractor establishments with 50 or more employees; this resulted in a total of 87,013 Federal contractor establishments.[47] An additional 10,518 establishments were identified through a cross-check of other contractor databases for a total of 97,531 establishments. Covered Federal contractors must develop AAPs for all of their establishments, even those with fewer than 50 employees. Therefore, OFCCP added an additional 73,744 establishments, using EEO–1 and FPDS data, for an adjusted total of 171,275 Federal contractor establishments affected by the final rule. This adjustment to the methodology for calculating the number of contractors and contractor establishments results in a 58 percent increase over the earlier estimate used in the NPRM.

However, OFCCP received comments on the estimated number of contractor establishments as well, including recommending an establishment count of 285,390 using the Veterans

[45] OMB Control Number 1250–0001 for construction is approved through December 31, 2014. OMB Control Number 1250–0003 is currently on a month-to-month renewal and is approved through April 30, 2012.

[46] OFCCP determined that the VET–100 database is not the most appropriate resource for calculating the number of federal contractors and contractor establishments. Among the concerns surrounding this data source are the use of contractor established 12-month reporting timeframes, the degree to which there is overlap or duplication in the VETS–100 and VETS–100A reports, and the absence of an employee threshold for reporting purposes.

[47] A single firm, business, or ''entity'' may have multiple establishments or facilities. Thus, the number of contractor establishments or facilities is significantly greater than the number of parent contractor firms or companies.

Employment Training Services (VETS) annual report. While OFCCP declines to exclusively rely on the VETS report number, we present an estimated high end for the range of the cost of the rule based on a contractor establishment number of 251,300. This number is based on 2010 VETS data from their pending information collection request.[48]

For the purposes of this information collection request, OFCCP averaged the 171,275 and 251,300 establishment figures to come up with a total of 211,287 establishments that will have to respond to the information collection requirements. All costs and hours in the burden analysis of this final rule are calculated using this adjusted number of Federal contractor establishments. Further, the burden for several information collection requirements in the final rule is presented in ranges. These estimates are also averaged for this information collection request.

B. Information Collections

Section 60–300.5 Equal Opportunity Clause

Paragraph 2 of the Equal Opportunity Clause (EO Clause) requires contractors to list their job openings with the state or local employment service delivery system (employment service). OFCCP estimates that gathering records and providing the job listing to the employment service will take 25 minutes for approximately 15 listings per year. The burden for this third-party disclosure is 1,320,544 hours (211,287 contractor establishments × 25 minutes × 15 listings/60 = 1,320,544 hours). This is a third-party disclosure.

Paragraph 4 of the EO Clause requires contractors to provide the appropriate employment service with the name and location of each of the contractor's hiring locations, a statement of its status as a Federal contractor, the contact information for the hiring official at each location in the state, and a request for priority referrals of protected veterans. Paragraph 4 also requires contractors that use job search organizations to provide the employment service with the contact information for each job search organization. OFCCP estimates a total of 15 minutes to ensure that the information newly required by this regulation is provided to the employment service. The annual burden for this provision is 52,822 hours (211,287 contractor establishments × 15 minutes/60 = 52,822 hours). OFCCP further estimates that 25 percent of contractors, or 52,821, will use outside job search organizations and incur an additional 5-minute burden to notify the employment service of the contact information for its outside job search organizations. The annual burden for this provision is 4,402 hours (52,821 contractor establishments × 5 minutes/60 = 4,402 hours). This is a third-party disclosure.

Section 60–300.42 Invitation to Self-Identify

Section 60–300.42(a) requires contractors to extend a pre-offer invitation to self-identify as a ''protected veteran.'' OFCCP estimates that contractors working at the company level will take 1.5 hours to review and retrieve existing sample invitations to self-identify, adopt the sample ''as is'' or make revisions to their existing form, save the invitation to self-identify and incorporate the document in the contractor's application form. The burden for this provision is 85,656 hours (57,104 contractor companies × 1.5 hours = 85,656 hours).

Applicants for available positions with covered Federal contractors will have a minimal burden complying with § 60–300.42(a) in the course of completing their application for employment with the contractor. Section 60–300.42(a), on pre-offer self-identification, requires contractors to invite all applicants to self-identify whether or not they are a protected veteran. OFCCP estimates that there will be an average of 24 applicants per job vacancy for on average 15 vacancies per year. OFCCP further estimates that it will take applicants approximately 5 minutes to complete the form. The burden for this provision is 6,388,610 hours (211,287 contractor establishments × 15 listings × 15 applicants × 5 minutes/60 = 6,388,610 hours). This a third-party disclosure.

Section 60–300.44 Required Contents of the Affirmative Action Program

OFCCP estimates that it takes existing contractors, or 209,174, approximately 7.5 hours to document and maintain material evidence of annually updating a joint section 503 and VEVRAA affirmative action program. The burden for this requirement is 1,568,805 hours (209,174 contractor establishments × 7.5 hours = 1,568,805 hours).

OFCCP estimates that 1 percent of all contractors, or 2,112, are new contractors that will need to initially develop a joint section 503 and VEVRAA affirmative action program. OFCCP estimates that it takes approximately 18 hours to document and maintain material evidence of developing the program. Therefore, the recordkeeping burden for this provision is 38,016 hours (2,112 contractor establishments × 18 hours = 38,016 hours).

Section 60–300.44(f) External Dissemination of Policy, Outreach and Positive Recruitment

Section 60–300.44(f)(1)(ii) of the final rule requires contractors to send written notification of the company's affirmative action program policies to subcontractors, vendors, and suppliers. The existing regulations recommend that contractors send written notification of the company's affirmative action policies to subcontractors, vendors, and suppliers. *See* 41 CFR 60–300.44(f)(6). OFCCP estimates that contractors will take 15 minutes to prepare the notification and send it to subcontractors, vendors, and suppliers, and an additional 15 minutes to execute the email address changes in the company's email system. Likewise, the burden for any information technology assistance needed to send the written communication is estimated at 15 minutes. The burden for this request is 158,465 hours (211,287 contractor establishments × 45 minutes/60 = 158,465 hours).

Section 60–300.44(f)(4) of the final rule requires contractors to document all activities it undertakes to comply with the obligations of this paragraph, and retain these documents for a period of 3 years. OFCCP estimates that it will take contractors 15 minutes to retain the required documentation. Retaining these records means storing the records generated either electronically or in hardcopy, consistent with the contractor's existing business practices for how to store records. The annual recordkeeping burden for this provision is 52,822 hours (211,287 contractor establishments × 15 minutes/60 = 52,822 hour).

Section 60–300.44(h) Audit and Reporting System

Section 60–300.44(h)(1)(vi) requires contractors to document the actions taken to meet the requirements of 60–300.44(h), as mandated in the current regulations. OFCCP estimates that it will take contractors 10 minutes to document compliance with this existing provision to create an audit and reporting system. Documentation may include, as an example, the standard operating procedure of the system including roles and responsibilities, and audit and reporting timeframes and

[48] OMB Control Number 1293–0005, Federal Contractor Veterans' Employment Report, VETS–100/VETS–100A, *http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201104-1293-003* (last accessed Aug. 13, 2013).

lifecycles. Because contractors are currently required to have an audit and reporting system, it is expected that some documentation of the process and operation of the system audit already exists. The annual recordkeeping burden of this provision is 35,215 hours (211,287 contractor establishments × 10 minutes/60 = 35,215 hours).

Section 60–300.44(k) Data Collection and Analysis

Section 60–300(k) of the final rule requires contractors to collect and analyze certain categories of data.

Based on feedback received from public comments expressing concerns about the costs of modifying human resources information systems, OFCCP believes that most contractors will have the capability to conduct the required calculations electronically. However, some companies may have to calculate this information manually. Therefore, OFCCP estimates that the average time to conduct the analysis and maintain the relevant documentation would be 1 hour 25 minutes. Relevant documentation could include the report or other written documentation generated by the calculations that explain the methodology, the data used, and the findings and conclusions; the data used to conduct the calculations for subsequent validation of the results; and other material used by the contractor for the calculations. The recurring burden for this provision is 299,233 hours (251,300 contractor establishments × 85 minutes/60 = 299,233 hours).

No new software needs are anticipated for compliance with section 60–300.44(k); however, a software switch or configuration may be required to tell the system to retain the records for the additional required time period. The estimated time needed for making this switch is included with the burden estimate for section 60–300.44(f)(4).

Section 60–300.45 Benchmarks for Hiring

The final rule requires the contractor to establish benchmarks in one of two ways. A contractor may use as its benchmark the national average number of veterans in the civilian labor force, which OFCCP will provide (and periodically update) on its public Web site. Or, alternatively, the contractor may establish its own individual benchmark using the five-factor method proposed in the NPRM (and retained in the final rule) to develop a benchmark that fits the company's specific needs. OFCCP estimates that it will take contractors on average 10 minutes to maintain material evidence of compliance with this provision. The burden of this provision would be 35,215 hours (211,287 establishments × 10 minutes/60 = 35,215 hours).

Section 60–300.81 Access to Records

Section 60–300.81 of the final rule requires contractors who are the subject of a compliance evaluation or complaint investigation to specify all available record formats and allow OFCCP to select preferred record formats from those identified by the contractor during a compliance evaluation. Pursuant to 5 CFR 1320.4(a)(2), this information collection is excluded from the PRA requirements because it is related to an ''administrative action, investigation, or audit involving an agency against specific individuals or entities.''

C. Summary of Costs

The estimated cost to contractors is based on Bureau of Labor Statistics data in the publication ''Employer Costs for Employee Compensation'' (September 2011), which lists total compensation for management, professional, and related occupations as $50.11 per hour and administrative support as $23.72 per hour. OFCCP estimates that 52 percent of the burden hours will be management, professional, and related occupations and 48 percent will be administrative support.

TABLE 1—TOTAL BURDEN FOR §§ 60–300.5; 60–300.42; 60–300.44; AND 60–300.45

Recordkeeping Burden Hours	2,029,395
Reporting Burden Hours	0
Third Party Disclosure Burden Hours	7,960,499
Total Burden Hours	9,989,894

TABLE 2—SUMMARY OF BURDEN HOURS AND COSTS FOR CONTRACTORS

Existing requirements	Burden hours	Total
EO Clause, Parag 2 (Mandatory Job Listing)	1,320,544	$49,444,855.52
Current Existing Contractors (Written Affirmative Action Program)	1,568,805	58,740,451.85
Current New Contractors (Written Affirmative Action Program)	38,016	1,423,425.48
Total	2,927,365	109,608,732.86
New requirements	**Burden hours**	**Burden costs**
EO Clause, Parag 4 (Mandatory Job Listing)	52,822	1,977,794.22
EO Clause, Parag 4 (Mandatory Job Listing)	4,402	164,813.84
300.42 (Invitation to Self-Identify)	85,656	2,342,234.35
300.44(f)(1) (Notice to Subcontractors, etc.)	158,465	5,933,382.66
300.44(f)(4) (Outreach and Recruitment Recordkeeping)	52,822	1,977,794.22
300.44(h) (Affirmative Action Program Audit Recordkeeping)	35,215	1,318,529.48
300.44(k) (Data Collection Analysis)	299,323	11,207,500.59
300.45 (Benchmarks Recordkeeping)	35,215	1,318,529.48
Total	3,651,284	135,849,311.71

TABLE 3—SUMMARY OF NON-CONTRACTOR BURDEN HOURS AND COSTS

Existing requirement	Burden hours	Burden costs
Section 60–300.42 (Self-Identification)	6,338,610	$190,855,547

The total estimated cost for applicants to fill out the self-identification form is based on Bureau of Labor Statistics data in the publication ''Employer Costs for Employee Compensation'' (September 2011), which lists an average total compensation for all civilian workers as $30.11.

D. Initial Capital or Start-up Costs

Human Resources Information Systems

OFCCP estimates on average it will take each contractor, working at the company level, on average 20 hours to have a professional make the needed systems modifications to track applicant and hiring information for protected veterans. This includes IT and administrative professionals to make any necessary changes. The estimated costs for these modifications are based on data from the Bureau of Labor Statistics in the publication ''Employer Costs for Employee Compensation'' (September 2011), which lists total compensation for a professional of $47.21 per hour. The cost for these modifications is $53,917,597 (57,104 contractor companies × $47.21 = $53,917,597).

5 CFR 1320.3(b)(1)(i)—Reviewing Instructions

Several commenters noted that the proposed rule did not quantify the burden of reading and understanding the VEVRAA revisions on contractors. OFCCP acknowledges that 5 CFR 1320.3(b)(1)(i) requires agencies to include in the burden analysis for new information collection requirements the estimated time it takes for contractors to review and understand the instructions for compliance. In order to minimize the burden, OFCCP will publish several compliance assistance materials including factsheets and ''Frequently Asked Questions.'' OFCCP will also host webinars for the contractor community that will describe the key provisions in the final rule.

OFCCP estimates it will take, on average, 2.5 hours to have a management professional at each establishment either read compliance assistance materials provided by OFCCP or participate in an OFCCP webinar to learn about the new requirements of the final rule. The estimated cost of this burden is based on data from the Bureau of Labor Statistics in the publication ''Employer Costs for Employee Compensation'' (September 2011), which lists total compensation for a management professional at $50.11. Therefore, the estimated burden for rule familiarization is 528,217 hours (211,287 contractor establishments × 2.5 hours = 528,217 hours). We calculate the total estimated cost for rule familiarization as $26,468,979 (528,217 hours × $50.11/hour = $26,468,979).

Operations and Maintenance Costs

OFCCP estimates that the contractor will have some operations and maintenance costs in addition to the burden calculated above.

60–300.42 Invitation to Self Identify

OFCCP estimates that the contractor will have some operations and maintenance cost associated with the invitations to self-identify. The contractor must invite all applicants to self-identify at both the pre-offer and post-offer stage of the employment process. Given the increasingly widespread use of electronic applications, any contractor that uses such applications would not incur copy costs. However, to account for contractors who may still choose to use paper applications, we are including printing and/or copying costs. Therefore, we estimate a single one page form for both the pre- and post-offer invitation. Assuming contractors using a paper-based application system, used 24 applications for an average of 15 listings per establishment, the minimum estimated total cost to contractors will be $1,217,002 (42,257 establishments × 360 copies × $.08 = $1,217,002).

E. Transfer of Burden From OMB Control Numbers 1250–0001 and 1250–0003 to 1250–0004

As a result of the final rule, the information collection requirements of VEVRAA will be placed under a separate information collection package. OMB Control Numbers 1250–0001 for the agency's construction enforcement program and 1250–0003 for its supply and service program currently include the annual burden hours and related costs for the time contractors take to document the contents of the written affirmative action program under VEVRAA. When the information collection requirements in this Final Rule become effective, the Department will submit non-substantive change requests for Control Numbers 1250–0001 and 1250–0003 to reflect the fact that the VEVRAA portions of burden hours and costs are included in this separate information collection package, OMB Control Number 1250–0004.

These paperwork burden estimates are summarized as follows:

Type of Review: New collection.

Agency: Office of Federal Contract Compliance Programs, Department of Labor.

Title: Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended by the Jobs for Veterans Act of 2002, 38 U.S.C. 4212 (VEVRAA).

OMB ICR Reference Number: 1250–0004.

Affected Public: Business or other for-profit; individuals.

Estimated Number of Annual Responses: xxxx.

Frequency of Response: On occasion.

Estimated Total Annual Burden Hours: 9,989,894.

Estimated Total Initial and Other Costs: $408,308,436.

The estimated $408,308,436 is the total of the PRA costs resulting from the existing requirements of part 60–300 and the new requirements of this final rule.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule may result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

Unfunded Mandates Reform Act of 1995

For purposes of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, this final rule includes a Federal mandate that may result in excess of $100 million in expenditures in the private sector in any one year. Accordingly, in compliance with 2 U.S.C. 1532, OFCCP provides the following written statement. All references to other sections of this final rule are incorporated by reference pursuant to 2 U.S.C. 1532(c).

(1) The final rule is authorized by the Vietnam Era Veterans' Readjustment Assistance Act, as amended, 38 U.S.C. 4212.

(2) A qualitative and quantitative assessment of the anticipated costs and benefits of this rule, including the costs and benefits to the private sector, are set forth in the Regulatory Procedures section of the final rule (specifically the sections describing Executive Orders 12866 and 13563, the Regulatory Flexibility Act, and the Paperwork Reduction Act) and the Section-by-Section Analysis in the preamble to the final rule. OFCCP anticipates no effect of the final rule on health, safety, and the natural environment not otherwise

discussed in the sections set forth above.

(3) Estimates of future compliance costs are set forth in the Regulatory Procedures section of the final rule (specifically the sections describing Executive Orders 12866 and 13563, the Regulatory Flexibility Act, and the Paperwork Reduction Act). OFCCP anticipates none of the disproportionate budgetary effects of the rule set forth in 2 U.S.C. 1532(a)(3)(B).

(4) To the extent feasible and relevant, OFCCP has estimated the effect of the rule on the national economy in the Regulatory Procedures section of the final rule (specifically the sections describing Executive Orders 12866 and 13563, the Regulatory Flexibility Act, and the Paperwork Reduction Act).

(5) The provisions of 2 U.S.C. 1532(a)(5) do not apply to this final rule.

Finally, OFCCP identified, considered, and implemented a reasonable number of regulatory alternatives that were the least burdensome alternative. In those cases where OFCCP did not select the least burdensome alternative, it has provided an explanation of the reasons these suggestions were not adopted in the corresponding section of the Section-by-Section Analysis in the preamble to the final rule and/or the Regulatory Procedures section of the final rule (specifically the sections describing Executive Orders 12866 and 13563, the Regulatory Flexibility Act, and the Paperwork Reduction Act).

Executive Order 13132 (Federalism)

OFCCP has reviewed this final rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' This rule will not ''have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This final rule does not have tribal implications under Executive Order 13175 that requires a tribal summary impact statement. The final rule does not 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.

Effects on Families

The undersigned hereby certifies that the final rule would not adversely affect the well-being of families, as discussed under section 654 of the Treasury and General Government Appropriations Act, 1999.

Executive Order 13045 (Protection of Children)

This final rule would have no environmental health risk or safety risk that may disproportionately affect children.

Environmental Impact Assessment

A review of this final rule in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.;* the regulations of the Council on Environmental Quality, 40 CFR 1500 et seq.; and DOL NEPA procedures, 29 CFR part 11, indicates the final rule would not have a significant impact on the quality of the human environment. There is, thus, no corresponding environmental assessment or an environmental impact statement.

Executive Order 13211 (Energy Supply)

This final rule is not subject to Executive Order 13211. It will not have a significant adverse effect on the supply, distribution, or use of energy.

Executive Order 12630 (Constitutionally Protected Property Rights)

This final rule is not subject to Executive Order 12630 because it does not involve implementation of a policy that has takings implications or that could impose limitations on private property use.

Executive Order 12988 (Civil Justice Reform Analysis)

This final rule was drafted and reviewed in accordance with Executive Order 12988 and will not unduly burden the Federal court system. The final rule was: (1) Reviewed to eliminate drafting errors and ambiguities; (2) written to minimize litigation; and (3) written to provide a clear legal standard for affected conduct and to promote burden reduction.

List of Subjects in 41 CFR Part 60–300

Administrative practice and procedure, Civil rights, Employment, Equal employment opportunity, Government contracts, Government procurement, Individuals with disabilities, Investigations, Reporting and recordkeeping requirements, and Veterans.

Patricia A. Shiu,

Director, Office of Federal Contract Compliance Programs.

Accordingly, under authority of 38 U.S.C. 4212, Title 41 of the Code of Federal Regulations, Chapter 60, is amended to read as follows:

PART 60–250 [REMOVED]

■ 1. Remove Part 60–250

■ 2. Revise Part 60–300 to read as follows:

PART 60–300—AFFIRMATIVE ACTION AND NONDISCRIMINATION OBLIGATIONS OF FEDERAL CONTRACTORS AND SUBCONTRACTORS REGARDING DISABLED VETERANS, RECENTLY SEPARATED VETERANS, ACTIVE DUTY WARTIME OR CAMPAIGN BADGE VETERANS, AND ARMED FORCES SERVICE MEDAL VETERANS

Subpart A—Preliminary Matters, Equal Opportunity Clause

Sec.
60–300.1 Purpose, applicability and construction.
60–300.2 Definitions.
60–300.3 [Reserved].
60–300.4 Coverage and waivers.
60–300.5 Equal opportunity clause.

Subpart B—Discrimination Prohibited

60–300.20 Covered employment activities.
60–300.21 Prohibitions.
60–300.22 Direct threat defense.
60–300.23 Medical examinations and inquiries.
60–300.24 Drugs and alcohol.
60–300.25 Health insurance, life insurance and other benefit plans.

Subpart C—Affirmative Action Program

60–300.40 Applicability of the affirmative action program requirement.
60–300.41 Availability of affirmative action program.
60–300.42 Invitation to self-identify.
60–300.43 Affirmative action policy.
60–300.44 Required contents of affirmative action programs.
60–300.45 Benchmarks for hiring.

Subpart D—General Enforcement and Complaint Procedures

60–300.60 Compliance evaluations.
60–300.61 Complaint procedures.
60–300.62 Conciliation agreements.
60–300.63 Violation of conciliation agreements.
60–300.64 Show cause notices.
60–300.65 Enforcement proceedings.
60–300.66 Sanctions and penalties.
60–300.67 Notification of agencies.
60–300.68 Reinstatement of ineligible contractors.
60–300.69 Intimidation and interference.
60–300.70 Disputed matters related to compliance with the Act.

Subpart E—Ancillary Matters

60–300.80 Recordkeeping.
60–300.81 Access to records.
60–300.82 Labor organizations and recruiting and training agencies.
60–300.83 Rulings and interpretations.
60–300.84 Responsibilities of appropriate employment service delivery system.

Appendix A to Part 60–300—Guidelines on a Contractor's Duty to Provide Reasonable Accommodation

Appendix B to Part 60–300—Sample Invitation to Self-Identify

Appendix C to Part 60–300—Review of Personnel Processes

Authority: 29 U.S.C. 793; 38 U.S.C. 4211 and 4212; E.O. 11758 (3 CFR, 1971–1975 Comp., p. 841).

Subpart A—Preliminary Matters, Equal Opportunity Clause

§ 60–300.1 Purpose, applicability and construction.

(a) *Purpose.* The purpose of the regulations in this part is to set forth the standards for compliance with the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212, (VEVRAA), which prohibits discrimination against protected veterans and pre-JVA veterans as defined in this part, and requires Government contractors and subcontractors to take affirmative action to employ and advance in employment qualified protected veterans.

Disabled veterans, recently separated veterans, active duty wartime or campaign badge veterans, and Armed Forces service medal veterans are protected veterans under VEVRAA.

(b) *Applicability.* This part applies to any Government contract or subcontract of $100,000 or more, entered into or modified on or after December 1, 2003, for the purchase, sale or use of personal property or nonpersonal services (including construction): Provided, that subpart C of this part applies only as described in § 60–300.40(a); and that the non-discrimination protections in § 60–300.21 and the right to file complaints alleging discriminatory conduct set forth in § 60–300.61 also apply to ''pre-JVA veterans'' as defined in § 60–300.2, who are applicants or employees of a contractor with a Government contract of $25,000 or more entered into prior to December 1, 2003, and unmodified since to a contract amount of $100,000. Compliance by the contractor with the provisions of this part will not necessarily determine its compliance with other statutes, and compliance with other statutes will not necessarily determine its compliance with this part.

(c) *Construction*—(1) *In general.* The Interpretive Guidance on Title I of the Americans with Disabilities Act (ADA) (42 U.S.C. 12101, *et seq.*) set out as an appendix to 29 CFR part 1630 issued pursuant to Title I may be relied upon for guidance in interpreting the parallel provisions of this part.

(2) *Relationship to other laws.* This part does not invalidate or limit the remedies, rights, and procedures under any Federal law or the law of any state or political subdivision that provides greater or equal protection for the rights of disabled veterans, recently separated veterans, active duty wartime or campaign badge veterans, or Armed Forces service medal protected veterans as compared to the protection afforded by this part. It may be a defense to a charge of violation of this part that a challenged action is required or necessitated by another Federal law or regulation, or that another Federal law or regulation prohibits an action (including the provision of a particular reasonable accommodation) that would otherwise be required by this part.

(i) *Uniformed Services Employment and Reemployment Rights Act.* This part does not invalidate or limit the obligations, responsibilities, and requirements of the contractor pursuant to the Uniformed Services Employment and Reemployment Rights Act (USERRA) (38 U.S.C. 4301, *et seq.*). This includes the obligation under USERRA to reemploy employees of the contractor following qualifying service in the uniformed services in the position the employee would have obtained with reasonable certainty had the employee been continuously employed during the period of uniformed service. Compliance by the contractor with the provisions of this part will not necessarily determine its compliance with USERRA, and compliance with USERRA will not necessarily determine its compliance with this part.

§ 60–300.2 Definitions.

For the purpose of this part:

(a) *Act* means the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212, also referred to throughout this regulation as ''VEVRAA.''

(b) *Active duty wartime or campaign badge veteran* means a veteran who served on active duty in the U.S. military, ground, naval or air service during a war or in a campaign or expedition for which a campaign badge has been authorized, under the laws administered by the Department of Defense.

(c) *Armed Forces service medal veteran* means any veteran who, while serving on active duty in the U.S. military, ground, naval or air service, participated in a United States military operation for which an Armed Forces service medal was awarded pursuant to Executive Order 12985 (61 FR 1209).

(d) *Compliance evaluation* means any one or combination of actions OFCCP may take to examine a Federal contractor's or subcontractor's compliance with one or more of the requirements of the Act.

(e) *Contract* means any Government contract or subcontract.

(f) *Contractor* means, unless otherwise indicated, a prime contractor or subcontractor holding a contract of $100,000 or more.

(g) *Direct threat* means a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation. The determination that an individual poses a direct threat shall be based on an individualized assessment of the individual's present ability to perform safely the essential functions of the job. This assessment shall be based on a reasonable medical judgment that relies on the most current medical knowledge and/or on the best available objective evidence. In determining whether an individual would pose a direct threat, the factors to be considered include:

(1) The duration of the risk;

(2) The nature and severity of the potential harm;

(3) The likelihood that the potential harm will occur; and

(4) The imminence of the potential harm.

(h) *Director* means the Director, Office of Federal Contract Compliance Programs of the United States Department of Labor, or his or her designee.

(i) *Disabled veteran* means:

(1) A veteran of the U.S. military, ground, naval or air service who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Secretary of Veterans Affairs, or

(2) A person who was discharged or released from active duty because of a service-connected disability.

(j) *Employment service delivery system* means a service delivery system at which or through which labor exchange services, including employment, training, and placement services, are offered in accordance with the Wagner-Peyser Act. The Wagner-Peyser Act requires that these services be provided as part of the One-Stop delivery system established by the

States under Section 134 of the Workforce Investment Act of 1998.

(k) *Equal opportunity clause* means the contract provisions set forth in § 60–300.5, ''Equal opportunity clause.''

(l) *Essential functions*—(1) *In general.* The term essential functions means fundamental job duties of the employment position the disabled veteran holds or is seeking. The term essential functions does not include the marginal functions of the position.

(2) A job function may be considered essential for any of several reasons, including, but not limited to, the following:

(i) The function may be essential because the reason the position exists is to perform that function;

(ii) The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed; and/or

(iii) The function may be highly specialized so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

(3) Evidence of whether a particular function is essential includes, but is not limited to:

(i) The contractor's judgment as to which functions are essential;

(ii) Written job descriptions prepared before advertising or interviewing applicants for the job;

(iii) The amount of time spent on the job performing the function;

(iv) The consequences of not requiring the incumbent to perform the function;

(v) The terms of a collective bargaining agreement;

(vi) The work experience of past incumbents in the job; and/or

(vii) The current work experience of incumbents in similar jobs.

(m) *Government* means the Government of the United States of America.

(n) *Government contract* means any agreement or modification thereof between any contracting agency and any person for the purchase, sale or use of personal property or nonpersonal services (including construction). The term *Government contract* does not include agreements in which the parties stand in the relationship of employer and employee, and federally assisted contracts.

(1) *Construction,* as used in the definition of Government contract and subcontract of this section, means the construction, rehabilitation, alteration, conversion, extension, demolition, or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other on-site functions incidental to the actual construction.

(2) *Contracting agency* means any department, agency, establishment or instrumentality of the United States, including any wholly owned Government corporation, which enters into contracts.

(3) *Modification* means any alteration in the terms and conditions of a contract, including supplemental agreements, amendments and extensions.

(4) *Nonpersonal services,* as used in the definition of Government contract and subcontract of this section, includes, but is not limited to, the following: Utility, construction, transportation, research, insurance, and fund depository.

(5) *Person,* as used in the definition of Government contract and subcontract of this section, means any natural person, corporation, partnership or joint venture, unincorporated association, state or local government, and any agency, instrumentality, or subdivision of such a government.

(6) *Personal property,* as used in the definition of Government contract and subcontract of this section, includes supplies and contracts for the use of real property (such as lease arrangements), unless the contract for the use of real property itself constitutes real property (such as easements).

(o) *Pre-JVA veteran* means an individual who is an employee of or applicant to a contractor with a contract of $25,000 or more entered into prior to December 1, 2003 and unmodified since to $100,000 or more, and who is a special disabled veteran, veteran of the Vietnam era, pre-JVA recently separated veteran, or other protected veteran, as defined below:

(1) *Special disabled veteran* means:

(i) A veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans Affairs for a disability:

(A) Rated at 30 percent or more; or

(B) Rated at 10 or 20 percent in the case of a veteran who has been determined under 38 U.S.C. 3106 to have a serious employment handicap; or

(ii) A person who was discharged or released from active duty because of a service-connected disability.

(2) Veteran of the Vietnam Era means a person who:

(i) Served on active duty for a period of more than 180 days, and was discharged or released therefrom with other than a dishonorable discharge, if any part of such active duty occurred:

(A) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or

(B) Between August 5, 1964, and May 7, 1975, in all other cases; or

(ii) Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed:

(A) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or

(B) Between August 5, 1964, and May 7, 1975, in all other cases.

(3) Pre-JVA recently separated veteran means a pre-JVA veteran during the one-year period beginning on the date of the pre-JVA veteran's discharge or release from active duty.

(4) Other protected veteran means a person who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized, under the laws administered by the Department of Defense.

(p) *Prime contractor* means any person holding a contract of $100,000 or more, and, for the purposes of subpart D of this part, ''General Enforcement and Complaint Procedures,'' includes any person who has held a contract subject to the Act.

(q) *Protected veteran* means a veteran who is protected under the non-discrimination and affirmative action provisions of the Act; specifically, a veteran who may be classified as a ''disabled veteran,'' ''recently separated veteran,'' ''active duty wartime or campaign badge veteran,'' or an ''Armed Forces service medal veteran,'' as defined by this section.

(r) *Qualification standards* means the personal and professional attributes including the skill, experience, education, physical, medical, safety and other requirements established by the contractor as requirements which an individual must meet in order to be eligible for the position held or desired.

(s) *Qualified disabled veteran* means a disabled veteran who has the ability to perform the essential functions of the employment position with or without reasonable accommodation.

(t) *Reasonable accommodation*—(1) The term *reasonable accommodation* means:

(i) Modifications or adjustments to a job application process that enable a qualified applicant who is a disabled veteran to be considered for the position such applicant desires; [1] or

[1] A contractor's duty to provide a reasonable accommodation with respect to applicants who are

(ii) Modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified disabled veteran to perform the essential functions of that position; or

(iii) Modifications or adjustments that enable the contractor's employee who is a disabled veteran to enjoy equal benefits and privileges of employment as are enjoyed by the contractor's other similarly situated employees who are not disabled veterans.

(2) Reasonable accommodation may include but is not limited to:

(i) Making existing facilities used by employees readily accessible to and usable by disabled veterans; and

(ii) Job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modifications of equipment or devices; appropriate adjustment or modifications of examinations, training materials, or policies; the provision of qualified readers or interpreters; and other similar accommodations for disabled veterans.

(3) To determine the appropriate reasonable accommodation it may be necessary for the contractor to initiate an informal, interactive process with the qualified disabled veteran in need of the accommodation.[2] This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations. (Appendix A of this part provides guidance on a contractor's duty to provide reasonable accommodation.)

(u) *Recently separated veteran* means any veteran during the three-year period beginning on the date of such veteran's discharge or release from active duty in the U.S. military, ground, naval or air service.

(v) *Recruiting and training agency* means any person who refers workers to any contractor, or who provides or supervises apprenticeship or training for employment by any contractor.

(w) *Secretary* means the Secretary of Labor, United States Department of Labor, or his or her designee.

(x) *Subcontract* means any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of an employer and an employee):

(1) For the purchase, sale or use of personal property or nonpersonal services (including construction) which, in whole or in part, is necessary to the performance of any one or more contracts; or

(2) Under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken, or assumed.

(y) *Subcontractor* means any person holding a subcontract of $100,000 or more and, for the purposes of subpart D of this part, ''General Enforcement and Complaint Procedures,'' any person who has held a subcontract subject to the Act.

(z) *TAP* means the Department of Defense's Transition Assistance Program, or any successor programs thereto. The TAP was designed to smooth the transition of military personnel and family members leaving active duty via employment workshops and individualized employment assistance and training.

(aa) *Undue hardship*—(1) *In general. Undue hardship* means, with respect to the provision of an accommodation, significant difficulty or expense incurred by the contractor, when considered in light of the factors set forth in paragraph (2) of this section.

(2) *Factors to be considered.* In determining whether an accommodation would impose an undue hardship on the contractor, factors to be considered include:

(i) The nature and net cost of the accommodation needed, taking into consideration the availability of tax credits and deductions, and/or outside funding;

(ii) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at such facility, and the effect on expenses and resources;

(iii) The overall financial resources of the contractor, the overall size of the business of the contractor with respect to the number of its employees, and the number, type and location of its facilities;

(iv) The type of operation or operations of the contractor, including the composition, structure and functions of the work force of such contractor, and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the contractor; and

(v) The impact of the accommodation upon the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the facility's ability to conduct business.

(bb) *United States,* as used in this part, shall include the several States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and Wake Island.

(cc) *Veteran* means a person who served in the active military, naval, or air service of the United States, and who was discharged or released therefrom under conditions other than dishonorable.

§ 60–300.3 [Reserved]

§ 60–300.4 Coverage and waivers.

(a) *General*—(1) *Contracts and subcontracts of $100,000 or more.* Contracts and subcontracts of $100,000 or more are covered by this part. No contracting agency or contractor shall procure supplies or services in less than usual quantities to avoid the applicability of the equal opportunity clause.

(2) *Contracts for indefinite quantities.* With respect to indefinite delivery-type contracts (including, but not limited to, open end contracts, requirement-type contracts, Federal Supply Schedule contracts, ''call-type'' contracts, and purchase notice agreements), the equal opportunity clause shall be included unless the contracting agency has reason to believe that the amount to be ordered in any year under such contract will be less than $100,000. The applicability of the equal opportunity clause shall be determined at the time of award for the first year, and annually thereafter for succeeding years, if any. Notwithstanding the above, the equal opportunity clause shall be applied to such contract whenever the amount of a single order is $100,000 or more. Once the equal opportunity clause is determined to be applicable, the contract shall continue to be subject to such clause for its duration, regardless of the amounts ordered, or reasonably expected to be ordered in any year.

(3) *Employment activities within the United States.* This part applies only to employment activities within the United States and not to employment activities abroad. The term ''employment activities within the United States'' includes actual employment within the United States, and decisions of the contractor made

disabled veterans is not limited to those who ultimately demonstrate that they are qualified to perform the job in issue. Disabled veteran applicants must be provided a reasonable accommodation with respect to the application process if they are qualified with respect to that process (*e.g.,* if they present themselves at the correct location and time to fill out an application).

[2] Contractors must engage in such an interactive process with a disabled veteran, whether or not a reasonable accommodation ultimately is identified that will make the person a qualified individual. Contractors must engage in the interactive process because, until they have done so, they may be unable to determine whether a reasonable accommodation exists that will result in the person being qualified.

within the United States pertaining to the contractor's applicants and employees who are within the United States, regarding employment opportunities abroad (such as recruiting and hiring within the United States for employment abroad, or transfer of persons employed in the United States to contractor establishments abroad).

(4) *Contracts with State or local governments.* The requirements of the equal opportunity clause in any contract or subcontract with a State or local government (or any agency, instrumentality or subdivision thereof) shall not be applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract or subcontract.

(b) *Waivers*—(1) *Specific contracts and classes of contracts.* The Director may waive the application to any contract of the equal opportunity clause in whole or part when he or she deems that special circumstances in the national interest so require. The Director may also grant such waivers to groups or categories of contracts: Where it is in the national interest; where it is found impracticable to act upon each request individually; and where such waiver will substantially contribute to convenience in administration of the Act. When a waiver has been granted for any class of contracts, the Director may withdraw the waiver for a specific contract or group of contracts to be awarded, when in his or her judgment such action is necessary or appropriate to achieve the purposes of the Act. The withdrawal shall not apply to contracts awarded prior to the withdrawal, except that in procurements entered into by formal advertising, or the various forms of restricted formal advertising, such withdrawal shall not apply unless the withdrawal is made more than 10 calendar days before the date set for the opening of the bids.

(2) *National security.* Any requirement set forth in the regulations of this part shall not apply to any contract whenever the head of the contracting agency determines that such contract is essential to the national security and that its award without complying with such requirements is necessary to the national security. Upon making such a determination, the head of the contracting agency will notify the Director in writing within 30 days.

(3) *Facilities not connected with contracts.* The Director may waive the requirements of the equal opportunity clause with respect to any of a contractor's facilities which he or she finds to be in all respects separate and distinct from activities of the contractor related to the performance of the contract, provided that he or she also finds that such a waiver will not interfere with or impede the effectuation of the Act. Such waivers shall be considered only upon the request of the contractor.

§ 60–300.5 Equal opportunity clause.

(a) *Government contracts.* Each contracting agency and each contractor shall include the following equal opportunity clause in each of its covered Government contracts or subcontracts (and modifications, renewals, or extensions thereof if not included in the original contract):

EQUAL OPPORTUNITY FOR VEVRAA PROTECTED VETERANS [3]

1. The contractor will not discriminate against any employee or applicant for employment because he or she is a disabled veteran, recently separated veteran, active duty wartime or campaign badge veteran, or Armed Forces service medal veteran (hereinafter collectively referred to as ''protected veteran(s)'') in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals without discrimination based on their status as a protected veteran in all employment practices, including the following:

i. Recruitment, advertising, and job application procedures.

ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring.

iii. Rates of pay or any other form of compensation and changes in compensation.

iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists.

v. Leaves of absence, sick leave, or any other leave.

vi. Fringe benefits available by virtue of employment, whether or not administered by the contractor.

vii. Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training.

viii. Activities sponsored by the contractor including social or recreational programs.

ix. Any other term, condition, or privilege of employment.

2. The contractor agrees to immediately list all employment openings which exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract and including those occurring at an establishment of the contractor other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, with the appropriate employment service delivery system where the opening occurs. Listing employment openings with the state workforce agency job bank or with the local employment service delivery system where the opening occurs will satisfy the requirement to list jobs with the appropriate employment service delivery system. In order to satisfy the listing requirement described herein, contractors must provide information about the job vacancy in any manner and format permitted by the appropriate employment service delivery system which will allow that system to provide priority referral of veterans protected by VEVRAA for that job vacancy. Providing information on employment openings to a privately run job service or exchange will satisfy the contractor's listing obligation if the privately run job service or exchange provides the information to the appropriate employment service delivery system in any manner and format that the employment service delivery system permits which will allow that system to provide priority referral of protected veterans.

3. Listing of employment openings with the appropriate employment service delivery system pursuant to this clause shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which attach to the placing of a *bona fide* job order, including the acceptance of referrals of veterans and nonveterans. The listing of employment openings does not require the hiring of any particular job applicants or from any particular group of job applicants, and nothing herein is intended to relieve the contractor from any requirements in Executive orders or regulations regarding nondiscrimination in employment.

4. Whenever a contractor, other than a state or local governmental contractor, becomes contractually bound to the listing provisions in paragraphs 2 and 3 of this clause, it shall advise the employment service delivery system in each state where it has establishments that: (a) It is a Federal contractor, so that the employment service delivery systems are able to identify them as such; and (b) it desires priority referrals from the state of protected veterans for job openings at all locations within the state. The contractor shall also provide to the employment service delivery system the name and location of each hiring location within the state and the contact information for the contractor official responsible for hiring at each location. The ''contractor official'' may be a chief hiring official, a Human Resources contact, a senior management contact, or any other manager for the contractor that can verify the information set forth in the job listing and receive priority referrals from employment service delivery systems. In the event that the contractor uses any external job search organizations to assist in its hiring, the contractor shall also provide to the employment service delivery system the contact information for the job search organization(s). The disclosures required by this paragraph shall be made simultaneously

[3] The definitions set forth in 41 CFR 60–300.2 apply to the terms used throughout this Clause, and they are incorporated herein by reference.

with the contractor's first job listing at each employment service delivery system location after the effective date of this final rule. Should any of the information in the disclosures change since it was last reported to the employment service delivery system location, the contractor shall provide updated information simultaneously with its next job listing. As long as the contractor is contractually bound to these provisions and has so advised the employment service delivery system, there is no need to advise the employment service delivery system of subsequent contracts. The contractor may advise the employment service delivery system when it is no longer bound by this contract clause.

5. The provisions of paragraphs 2 and 3 of this clause do not apply to the listing of employment openings which occur and are filled outside of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, Wake Island, and the Trust Territories of the Pacific Islands.

6. As used in this clause: i. *All employment openings* includes all positions except executive and senior management, those positions that will be filled from within the contractor's organization, and positions lasting three days or less. This term includes full-time employment, temporary employment of more than three days' duration, and part-time employment.

ii. *Executive and senior management* means: (1) Any employee (a) compensated on a salary basis at a rate of not less than $455 per week (or $380 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities; (b) whose primary duty is management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof; (c) who customarily and regularly directs the work of two or more other employees; and (d) who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight; or (2) any employee who owns at least a bona fide 20-percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization, and who is actively engaged in its management.

iii. *Positions that will be filled from within the contractor's organization* means employment openings for which no consideration will be given to persons outside the contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings which the contractor proposes to fill from regularly established ''recall'' lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of his or her own organization.

7. The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

8. In the event of the contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

9. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are protected veterans. The contractor must ensure that applicants or employees who are disabled veterans are provided the notice in a form that is accessible and understandable to the disabled veteran (e.g., providing Braille or large print versions of the notice, posting the notice for visual accessibility to persons in wheelchairs, providing the notice electronically or on computer disc, or other versions). With respect to employees who do not work at a physical location of the contractor, a contractor will satisfy its posting obligations by posting such notices in an electronic format, provided that the contractor provides computers that can access the electronic posting to such employees, or the contractor has actual knowledge that such employees otherwise are able to access the electronically posted notices. Electronic notices for employees must be posted in a conspicuous location and format on the company's intranet or sent by electronic mail to employees. An electronic posting must be used by the contractor to notify job applicants of their rights if the contractor utilizes an electronic application process. Such electronic applicant notice must be conspicuously stored with, or as part of, the electronic application.

10. The contractor will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding that the contractor is bound by the terms of VEVRAA, and is committed to take affirmative action to employ and advance in employment, and shall not discriminate against, protected veterans.

11. The contractor will include the provisions of this clause in every subcontract or purchase order of $100,000 or more, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to VEVRAA so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Director, Office of Federal Contract Compliance Programs, may direct to enforce such provisions, including action for noncompliance.

12. The contractor must, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to their protected veteran status.

[End of Clause]

(b) *Subcontracts.* Each contractor shall include the equal opportunity clause in each of its subcontracts subject to this part.

(c) *Adaptation of language.* Such necessary changes in language may be made to the equal opportunity clause as must be appropriate to identify properly the parties and their undertakings.

(d) *Inclusion of the equal opportunity clause in the contract.* It is not necessary to include the equal opportunity clause verbatim in the contract. The clause shall be made a part of the contract by citation to 41 CFR 60–300.5(a) and inclusion of the following language, in bold text, after the citation: **''This contractor and subcontractor shall abide by the requirements of 41 CFR 60–300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.''**

(e) *Incorporation by operation of the Act.* By operation of the Act, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the Act and the regulations in this part to include such a clause, whether or not it is physically incorporated in such contract and whether or not there is a written contract between the agency and the contractor.

(f) *Duties of contracting agencies.* Each contracting agency shall cooperate with the Director and the Secretary in the performance of their responsibilities under the Act. Such cooperation shall include insuring that the equal opportunity clause is included in all covered Government contracts and that contractors are fully informed of their obligations under the Act and this part, providing the Director with any information which comes to the agency's attention that a contractor is not in compliance with the Act or this part, responding to requests for information from the Director, and taking such actions for noncompliance as are set forth in § 60–300.66 as may be ordered by the Secretary or the Director.

Subpart B—Discrimination Prohibited

§ 60–300.20 Covered employment activities.

The prohibition against discrimination in this part applies to the following employment activities:

(a) Recruitment, advertising, and job application procedures;

(b) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(c) Rates of pay or any other form of compensation and changes in compensation;

(d) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(e) Leaves of absence, sick leave, or any other leave;

(f) Fringe benefits available by virtue of employment, whether or not administered by the contractor;

(g) Selection and financial support for training, including, apprenticeships, professional meetings, conferences and other related activities, and selection for leaves of absence to pursue training;

(h) Activities sponsored by the contractor including social and recreational programs; and

(i) Any other term, condition, or privilege of employment.

§ 60–300.21 Prohibitions.

The term discrimination includes, but is not limited to, the acts described in this section and § 60–300.23.

(a) *Disparate treatment.* It is unlawful for the contractor to deny an employment opportunity or benefit or otherwise to discriminate against a qualified individual because of that individual's status as a protected veteran or pre-JVA veteran.

(b) *Limiting, segregating and classifying.* Unless otherwise permitted by this part, it is unlawful for the contractor to limit, segregate, or classify a job applicant or employee in a way that adversely affects his or her employment opportunities or status on the basis of that individual's status as a protected veteran or pre-JVA veteran. For example, the contractor may not segregate protected veterans as a whole, or any classification of protected veterans or pre-JVA veterans, into separate work areas or into separate lines of advancement.

(c) *Contractual or other arrangements*—(1) *In general.* It is unlawful for the contractor to participate in a contractual or other arrangement or relationship that has the effect of subjecting the contractor's own qualified applicant or employee who is a protected veteran or pre-JVA veteran to the discrimination prohibited by this part.

(2) *Contractual or other arrangement defined.* The phrase ''contractual or other arrangement or relationship'' includes, but is not limited to, a relationship with: an employment or referral agency; a labor organization, including a collective bargaining agreement; an organization providing fringe benefits to an employee of the contractor; or an organization providing training and apprenticeship programs.

(3) *Application.* This paragraph (c) applies to the contractor, with respect to its own applicants or employees, whether the contractor offered the contract or initiated the relationship, or whether the contractor accepted the contract or acceded to the relationship. The contractor is not liable for the actions of the other party or parties to the contract which only affect that other party's employees or applicants.

(d) *Standards, criteria or methods of administration.* It is unlawful for the contractor to use standards, criteria, or methods of administration, that are not job-related and consistent with business necessity, and that:

(1) Have the effect of discriminating on the basis of status as a protected veteran or pre-JVA veteran; or

(2) Perpetuate the discrimination of others who are subject to common administrative control.

(e) *Relationship or association with a protected veteran.* It is unlawful for the contractor to exclude or deny equal jobs or benefits to, or otherwise discriminate against, a qualified individual because of the known protected veteran or pre-JVA veteran status of an individual with whom the qualified individual is known to have a family, business, social or other relationship or association.

(f) *Not making reasonable accommodation.* (1) It is unlawful for the contractor to fail to make reasonable accommodation to the known physical or mental limitations of an applicant or employee who is a qualified disabled veteran or pre-JVA special disabled veteran, unless such contractor can demonstrate that the accommodation would impose an undue hardship on the operation of its business.

(2) It is unlawful for the contractor to deny employment opportunities to an applicant or employee who is a qualified disabled veteran or pre-JVA special disabled veteran based on the need of such contractor to make reasonable accommodation to such an individual's physical or mental impairments.

(3) A qualified disabled veteran or pre-JVA special disabled veteran is not required to accept an accommodation, aid, service, opportunity or benefit which such qualified individual chooses not to accept. However, if such individual rejects a reasonable accommodation, aid, service, opportunity or benefit that is necessary to enable the individual to perform the essential functions of the position held or desired, and cannot, as a result of that rejection, perform the essential functions of the position, the individual will not be considered a qualified disabled veteran or pre-JVA special disabled veteran.

(g) *Qualification standards, tests and other selection criteria*—(1) *In general.* It is unlawful for the contractor to use qualification standards, employment tests or other selection criteria that screen out or tend to screen out individuals on the basis of their status as protected veterans or pre-JVA veterans unless the standard, test or other selection criterion, as used by the contractor, is shown to be job-related for the position in question and is consistent with business necessity. Selection criteria that concern an essential function may not be used to exclude a disabled veteran if that individual could satisfy the criteria with provision of a reasonable accommodation. Selection criteria that exclude or tend to exclude individuals on the basis of their status as protected veterans or pre-JVA veterans but concern only marginal functions of the job would not be consistent with business necessity. The contractor may not refuse to hire an applicant who is a disabled veteran or pre-JVA special disabled veteran because the applicant's disability prevents him or her from performing marginal functions. When considering a protected veteran or pre-JVA veteran for an employment opportunity, the contractor may not rely on portions of such veteran's military record, including his or her discharge papers, which are not relevant to the qualification requirements of the opportunity in issue.

(2) The Uniform Guidelines on Employee Selection Procedures, 41 CFR part 60–3, do not apply to 38 U.S.C. 4212 and are similarly inapplicable to this part.

(h) *Administration of tests.* It is unlawful for the contractor to fail to select and administer tests concerning employment in the most effective manner to ensure that, when a test is administered to a job applicant or employee who is a disabled veteran or pre-JVA special disabled veteran with a disability that impairs sensory, manual, or speaking skills, the test results accurately reflect the skills, aptitude, or whatever other factor of the applicant or employee that the test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant, except where such skills are the factors that the test purports to measure.

(i) *Compensation.* In offering employment or promotions to protected veterans or pre-JVA veterans, it is unlawful for the contractor to reduce the amount of compensation offered

because of any income based upon a disability-related and/or military-service-related pension or other disability-related and/or military-service-related benefit the applicant or employee receives from another source.

§ 60–300.22 Direct threat defense.

The contractor may use as a qualification standard the requirement that an individual be able to perform the essential functions of the position held or desired without posing a direct threat to the health or safety of the individual or others in the workplace. (See § 60–300.2(g) defining *direct threat.*).

§ 60–300.23 Medical examinations and inquiries.

(a) *Prohibited medical examinations or inquiries.* Except as stated in paragraphs (b) and (c) of this section, it is unlawful for the contractor to require a medical examination of an applicant or employee or to make inquiries as to whether an applicant or employee is a disabled veteran or as to the nature or severity of such a veteran's disability.

(b) *Permitted medical examinations and inquiries*—(1) *Acceptable pre-employment inquiry.* The contractor may make pre-employment inquiries into the ability of an applicant to perform job-related functions, and/or may ask an applicant to describe or to demonstrate how, with or without reasonable accommodation, the applicant will be able to perform job-related functions.

(2) *Employment entrance examination.* The contractor may require a medical examination (and/or inquiry) after making an offer of employment to a job applicant and before the applicant begins his or her employment duties, and may condition an offer of employment on the results of such examination (and/or inquiry), if all entering employees in the same job category are subjected to such an examination (and/or inquiry) regardless of their status as a disabled veteran.

(3) *Examination of employees.* The contractor may require a medical examination (and/or inquiry) of an employee that is job-related and consistent with business necessity. The contractor may make inquiries into the ability of an employee to perform job-related functions.

(4) *Other acceptable examinations and inquiries.* The contractor may conduct voluntary medical examinations and activities, including voluntary medical histories, which are part of an employee health program available to employees at the work site.

(5) Medical examinations conducted in accordance with paragraphs (b)(2) and (b)(4) of this section do not have to be job-related and consistent with business necessity. However, if certain criteria are used to screen out an applicant or applicants or an employee or employees who are disabled veterans as a result of such examinations or inquiries, the contractor must demonstrate that the exclusionary criteria are job-related and consistent with business necessity, and that performance of the essential job functions cannot be accomplished with reasonable accommodations as required in this part.

(c) *Invitation to self-identify.* The contractor shall invite applicants to self-identify as being covered by the Act, as specified in § 60–300.42.

(d) *Confidentiality and use of medical information.* (1) Information obtained under this section regarding the medical condition or history of any applicant or employee shall be collected and maintained on separate forms and in separate medical files and treated as a confidential medical record, except that:

(i) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the applicant or employee and necessary accommodations;

(ii) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) Government officials engaged in enforcing the laws administered by OFCCP, including this part, or enforcing the Americans with Disabilities Act, shall be provided relevant information on request.

(2) Information obtained under this section regarding the medical condition or history of any applicant or employee shall not be used for any purpose inconsistent with this part.

§ 60–300.24 Drugs and alcohol.

(a) *Specific activities permitted.* The contractor: (1) May prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees;

(2) May require that employees not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace;

(3) May require that all employees behave in conformance with the requirements established under the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*);

(4) May hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior to which the contractor holds its other employees, even if any unsatisfactory performance or behavior is related to the employee's drug use or alcoholism;

(5) May require that its employees employed in an industry subject to such regulations comply with the standards established in the regulations (if any) of the Departments of Defense and Transportation, and of the Nuclear Regulatory Commission, and other Federal agencies regarding alcohol and the illegal use of drugs; and

(6) May require that employees employed in sensitive positions comply with the regulations (if any) of the Departments of Defense and Transportation, and of the Nuclear Regulatory Commission, and other Federal agencies that apply to employment in sensitive positions subject to such regulations.

(b) *Drug testing*—(1) *General policy.* For purposes of this part, a test to determine the illegal use of drugs is not considered a medical examination. Thus, the administration of such drug tests by the contractor to its job applicants or employees is not a violation of § 60–300.23. Nothing in this part shall be construed to encourage, prohibit, or authorize the contractor to conduct drug tests of job applicants or employees to determine the illegal use of drugs or to make employment decisions based on such test results.

(2) *Transportation employees.* Nothing in this part shall be construed to encourage, prohibit, or authorize the otherwise lawful exercise by contractors subject to the jurisdiction of the Department of Transportation of authority to test employees in, and applicants for, positions involving safety-sensitive duties for the illegal use of drugs or for on-duty impairment by alcohol; and remove from safety-sensitive positions persons who test positive for illegal use of drugs or on-duty impairment by alcohol pursuant to paragraph (b)(1) of this section.

(3) Any information regarding the medical condition or history of any employee or applicant obtained from a test to determine the illegal use of drugs, except information regarding the illegal use of drugs, is subject to the requirements of §§ 60–300.23(b)(5) and 60–300.23(d)(2).

§ 60–300.25 Health insurance, life insurance and other benefit plans.

(a) An insurer, hospital, or medical service company, health maintenance organization, or any agent or entity that administers benefit plans, or similar organizations may underwrite risks, classify risks, or administer such risks that are based on or not inconsistent with state law.

(b) The contractor may establish, sponsor, observe or administer the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with state law.

(c) The contractor may establish, sponsor, observe, or administer the terms of a bona fide benefit plan that is not subject to state laws that regulate insurance.

(d) The contractor shall not deny a qualified disabled veteran equal access to insurance or subject a qualified disabled veteran to different terms or conditions of insurance based on disability alone, if the disability does not pose increased risks.

(e) The activities described in paragraphs (a), (b) and (c) of this section are permitted unless these activities are used as a subterfuge to evade the purposes of this part.

Subpart C—Affirmative Action Program

§ 60–300.40 Applicability of the affirmative action program requirement.

(a) The requirements of this subpart apply to every Government contractor that has 50 or more employees and a contract of $100,000 or more.

(b) Contractors described in paragraph (a) of this section shall, within 120 days of the commencement of a contract, prepare and maintain an affirmative action program at each establishment. The affirmative action program shall set forth the contractor's policies and procedures in accordance with this part. This program may be integrated into or kept separate from other affirmative action programs.

(c) The affirmative action program shall be reviewed and updated annually by the official designated by the contractor pursuant to § 60–300.44(i).

(d) The contractor shall submit the affirmative action program within 30 days of a request from OFCCP, unless the request provides for a different time. The contractor also shall make the affirmative action program promptly available on-site upon OFCCP's request.

§ 60–300.41 Availability of affirmative action program.

The full affirmative action program, absent the data metrics required by § 60–300.44(k), shall be made available to any employee or applicant for employment for inspection upon request. The location and hours during which the program may be obtained shall be posted at each establishment.

§ 60–300.42 Invitation to self-identify.

(a) *Pre-offer.* The contractor shall invite applicants to inform the contractor whether the applicant believes that he or she is a protected veteran who may be covered by the Act. This invitation may be included in the application materials for the position, but in any circumstance shall be provided to applicants prior to making an offer of employment to a job applicant.

(b) *Post-offer.* In addition to the invitation in paragraph (a) of this section, the contractor shall invite applicants to inform the contractor whether the applicant believes that he or she belongs to one or more of the specific categories of protected veteran for which the contractor is required to report pursuant to 41 CFR part 61–300. Such an invitation shall be made at any time after the offer of employment but before the applicant begins his or her job duties.

(c) The invitations referenced in paragraphs (a) and (b) of this section shall state that the contractor is a Federal contractor required to take affirmative action to employ and advance in employment protected veterans pursuant to the Act. The invitations also shall summarize the relevant portions of the Act and the contractor's affirmative action program. Furthermore, the invitations shall state that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will not be used in a manner inconsistent with the act. (An acceptable form for such an invitation is set forth in Appendix B of this part.)

(d) If an applicant identifies himself or herself as a disabled veteran in the post-offer self-identification detailed in paragraph (b) of this section, the contractor should inquire of the applicant whether an accommodation is necessary, and if so, should engage with the applicant regarding reasonable accommodation. The contractor may make such inquiries to the extent they are consistent with the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101, *et seq.* The contractor shall maintain a separate file in accordance with § 60–300.23(d) on persons who have self-identified as disabled veterans.

(e) The contractor shall keep all information on self-identification confidential. The contractor shall provide the information to OFCCP upon request. This information may be used only in accordance with this part.

(f) Nothing in this section relieves the contractor of its obligation to take affirmative action with respect to those applicants or employees who are known to the contractor to be protected veterans.

(g) Nothing in this section relieves the contractor from liability for discrimination under the Act.

§ 60–300.43 Affirmative action policy.

Under the affirmative action obligations imposed by the Act, contractors shall not discriminate against protected veterans, and shall take affirmative action to employ and advance in employment qualified protected veterans at all levels of employment, including the executive level. Such action shall apply to all employment activities set forth in § 60–300.20.

§ 60–300.44 Required contents of affirmative action programs.

Acceptable affirmative action programs shall contain, but not necessarily be limited to, the following elements:

(a) *Policy statement.* The contractor shall include an equal opportunity policy statement in its affirmative action program, and shall post the policy statement on company bulletin boards. The contractor must ensure that applicants and employees who are disabled veterans are provided the notice in a form that is accessible and understandable to the disabled veteran (e.g., providing Braille or large print versions of the notice, or posting the notice for visual accessibility to persons in wheelchairs). The policy statement shall indicate the top United States executive's (such as the Chief Executive Officer or the President of the United States Division of a foreign company) support for the contractor's affirmative action program, provide for an audit and reporting system (see paragraph (h) of this section) and assign overall responsibility for the implementation of affirmative action activities required under this part (see paragraph (i) of this section). Additionally, the policy shall state, among other things, that the contractor will: recruit, hire, train and promote persons in all job titles, and ensure that all other personnel actions are administered, without regard to protected veteran status; and ensure that all employment decisions are based only on valid job requirements. The policy shall state that employees and applicants shall not be subjected to harassment, intimidation, threats, coercion or discrimination because they have engaged in or may engage in any of the following activities:

(1) Filing a complaint;

(2) Assisting or participating in an investigation, compliance evaluation, hearing, or any other activity related to the administration of the affirmative action provisions of VEVRAA or any other Federal, state or local law requiring equal opportunity for protected veterans;

(3) Opposing any act or practice made unlawful by VEVRAA or its implementing regulations in this part or any other Federal, state or local law requiring equal opportunity for protected veterans; or

(4) Exercising any other right protected by VEVRAA or its implementing regulations in this part.

(b) *Review of personnel processes.* The contractor shall ensure that its personnel processes provide for careful, thorough, and systematic consideration of the job qualifications of applicants and employees who are known protected veterans for job vacancies filled either by hiring or promotion, and for all training opportunities offered or available. The contractor shall ensure that when a protected veteran is considered for employment opportunities, the contractor relies only on that portion of the individual's military record, including his or her discharge papers, relevant to the requirements of the opportunity in issue. The contractor shall ensure that its personnel processes do not stereotype protected veterans in a manner which limits their access to all jobs for which they are qualified. The contractor shall periodically review such processes and make any necessary modifications to ensure that these obligations are carried out. A description of the review and any necessary modifications to personnel processes or development of new processes shall be included in any affirmative action programs required under this part. The contractor must design procedures that facilitate a review of the implementation of this requirement by the contractor and the Government (Appendix C of this part is an example of an appropriate set of procedures. The procedures in Appendix C are not required and contractors may develop other procedures appropriate to their circumstances.)

(c) *Physical and mental qualifications.* (1) The contractor shall provide in its affirmative action program, and shall adhere to, a schedule for the periodic review of all physical and mental job qualification standards to ensure that, to the extent qualification standards tend to screen out qualified disabled veterans, they are job-related for the position in question and are consistent with business necessity. (2) Whenever the contractor applies physical or mental qualification standards in the selection of applicants or employees for employment or other change in employment status such as promotion, demotion or training, to the extent that qualification standards tend to screen out qualified disabled veterans, the standards shall be related to the specific job or jobs for which the individual is being considered and consistent with business necessity. The contractor has the burden to demonstrate that it has complied with the requirements of this paragraph (c)(2).

(3) The contractor may use as a defense to an allegation of a violation of paragraph (c)(2) of this section that an individual poses a direct threat to the health or safety of the individual or others in the workplace. (See § 60–300.2(g) defining direct threat.) (d) *Reasonable accommodation to physical and mental limitations.* As is provided in § 60–300.21(f), as a matter of nondiscrimination the contractor must make reasonable accommodation to the known physical or mental limitations of an otherwise qualified disabled veteran unless it can demonstrate that the accommodation would impose an undue hardship on the operation of its business. As a matter of affirmative action, if an employee who is known to be a disabled veteran is having significant difficulty performing his or her job and it is reasonable to conclude that the performance problem may be related to the known disability, the contractor shall confidentially notify the employee of the performance problem and inquire whether the problem is related to the employee's disability; if the employee responds affirmatively, the contractor shall confidentially inquire whether the employee is in need of a reasonable accommodation.

(e) *Harassment.* The contractor must develop and implement procedures to ensure that its employees are not harassed because of their status as a protected veteran.

(f) *External dissemination of policy, outreach and positive recruitment.*

(1) *Required outreach efforts.*

(i) The contractor shall undertake appropriate outreach and positive recruitment activities such as those listed in paragraph (f)(2) of this section that are reasonably designed to effectively recruit protected veterans. It is not contemplated that the contractor will necessarily undertake all the activities listed in paragraph (f)(2) of this section or that its activities will be limited to those listed. The scope of the contractor's efforts shall depend upon all the circumstances, including the contractor's size and resources and the extent to which existing employment practices are adequate.

(ii) The contractor must send written notification of company policy related to its affirmative action efforts to all subcontractors, including subcontracting vendors and suppliers, requesting appropriate action on their part.

(2) *Examples of outreach and recruitment activities* . Below are examples of outreach and positive recruitment activities referred to in paragraph (f)(1) of this section. This is an illustrative list, and contractors may choose from these or other activities, as appropriate to their circumstances.

(i) Enlisting the assistance and support of the following persons and organizations in recruiting, and developing on-the-job training opportunities for veterans, in order to fulfill its commitment to provide meaningful employment opportunities for such veterans:

(A) The Local Veterans' Employment Representative in the local employment service office (i.e., the One-Stop) nearest the contractor's establishment;

(B) The Department of Veterans Affairs Regional Office nearest the contractor's establishment;

(C) The veterans' counselors and coordinators (''Vet-Reps'') on college campuses;

(D) The service officers of the national veterans' groups active in the area of the contractor's establishment;

(E) Local veterans' groups and veterans' service centers near the contractor's establishment;

(F) The Department of Defense Transition Assistance Program (TAP), or any subsequent program that, in whole or in part, might replace TAP; and

(G) Any organization listed in the Employer Resources section of the National Resource Directory (*http://www.nationalresourcedirectory.gov/*), or any future service that replaces or complements it.

(ii) The contractor should also consider taking the actions listed below, as appropriate, to fulfill its commitment to provide meaningful employment opportunities to protected veterans:

(A) Formal briefing sessions should be held, preferably on company premises, with representatives from recruiting sources. Contractor facility tours, clear and concise explanations of current and future job openings, position descriptions, worker specifications, explanations of the company's selection process, and recruiting literature should be an integral part of the briefing. At any

such briefing sessions, the company official in charge of the contractor's affirmative action program should be in attendance when possible. Formal arrangements should be made for referral of applicants, follow up with sources, and feedback on disposition of applicants.

(B) The contractor's recruitment efforts at all educational institutions should incorporate special efforts to reach students who are protected veterans.

(C) An effort should be made to participate in work-study programs with Department of Veterans Affairs rehabilitation facilities which specialize in training or educating disabled veterans.

(D) Protected veterans should be made available for participation in career days, youth motivation programs, and related activities in their communities.

(E) The contractor should take any other positive steps it deems necessary to attract qualified protected veterans not currently in the work force who have requisite skills and can be recruited through affirmative action measures. These persons may be located through the local chapters of organizations of and for any of the classifications of protected veterans.

(F) The contractor, in making hiring decisions, should consider applicants who are known protected veterans for all available positions for which they may be qualified when the position(s) applied for is unavailable.

(G) The contractor should consider listing its job openings with the National Resource Directory's Veterans Job Bank, or any future service that replaces or complements it.

(3) *Assessment of external outreach and recruitment efforts.* The contractor shall, on an annual basis, review the outreach and recruitment efforts it has taken over the previous twelve months to evaluate their effectiveness in identifying and recruiting qualified protected veterans. The contractor shall document each evaluation, including at a minimum the criteria it used to evaluate the effectiveness of each effort and the contractor's conclusion as to whether each effort was effective. Among these criteria shall be the data collected pursuant to paragraph (k) of this section for the current year and the two most recent previous years. The contractor's conclusion as to the effectiveness of its outreach efforts must be reasonable as determined by OFCCP in light of these regulations. If the contractor concludes the totality of its efforts were not effective in identifying and recruiting qualified protected veterans, it shall identify and implement alternative efforts listed in paragraphs (f)(1) or (f)(2) of this section in order to fulfill its obligations.

(4) *Recordkeeping obligation.* The contractor shall document all activities it undertakes to comply with the obligations of this section, and retain these documents for a period of three (3) years.

(g) *Internal dissemination of policy.* (1) A strong outreach program will be ineffective without adequate internal support from supervisory and management personnel and other employees. In order to assure greater employee cooperation and participation in the contractor's efforts, the contractor shall develop the internal procedures listed in paragraph (g)(2) of this section for communication of its obligation to engage in affirmative action efforts to employ and advance in employment qualified protected veterans. It is not contemplated that the contractor's activities will be limited to those listed. These procedures shall be designed to foster understanding, acceptance and support among the contractor's executive, management, supervisory and other employees and to encourage such persons to take the necessary actions to aid the contractor in meeting this obligation.

(2) The contractor shall implement and disseminate this policy internally as follows:

(i) Include it in the contractor's policy manual or otherwise make the policy available to employees;

(ii) If the contractor is party to a collective bargaining agreement, it shall notify union officials and/or employee representatives to inform them of the contractor's policy, and request their cooperation;

(3) The contractor is encouraged to additionally implement and disseminate this policy internally as follows:

(i) Inform all employees and prospective employees of its commitment to engage in affirmative action to increase employment opportunities for protected veterans;

(ii) Publicize it in the company newspaper, magazine, annual report and other media;

(iii) Conduct special meetings with executive, management, and supervisory personnel to explain the intent of the policy and individual responsibility for effective implementation, making clear the chief executive officer's support for the affirmative action policy;

(iv) Discuss the policy thoroughly in both employee orientation and management training programs;

(v) When employees are featured in employee handbooks or similar publications for employees, include disabled veterans.

(h) *Audit and reporting system.* (1) The contractor shall design and implement an audit and reporting system that will:

(i) Measure the effectiveness of the contractor's affirmative action program;

(ii) Indicate any need for remedial action;

(iii) Determine the degree to which the contractor's objectives have been attained;

(iv) Determine whether known protected veterans have had the opportunity to participate in all company sponsored educational, training, recreational and social activities;

(v) Measure the contractor's compliance with the affirmative action program's specific obligations; and

(vi) Document the actions taken to comply with the obligations of paragraphs (i) through (v) above, and retain these documents as employment records subject to the recordkeeping requirements of § 60–300.80.

(2) Where the affirmative action program is found to be deficient, the contractor shall undertake necessary action to bring the program into compliance.

(i) *Responsibility for implementation.* An official of the contractor shall be assigned responsibility for implementation of the contractor's affirmative action activities under this part. His or her identity should appear on all internal and external communications regarding the company's affirmative action program. This official shall be given necessary senior management support and staff to manage the implementation of this program.

(j) *Training.* All personnel involved in the recruitment, screening, selection, promotion, disciplinary, and related processes shall be trained to ensure that the commitments in the contractor's affirmative action program are implemented.

(k) *Data collection analysis.* The contractor shall document the following computations or comparisons pertaining to applicants and hires on an annual basis and maintain them for a period of three (3) years:

(1) The number of applicants who self-identified as protected veterans pursuant to § 60–300.42(a), or who are otherwise known as protected veterans;

(2) The total number of job openings and total number of jobs filled;

(3) The total number of applicants for all jobs;

(4) The number of protected veteran applicants hired; and

(5) The total number of applicants hired.

§ 60–300.45 Benchmarks for hiring.

The benchmark is not a rigid and inflexible quota which must be met, nor is it to be considered either a ceiling or a floor for the employment of particular groups. Quotas are expressly forbidden.

(a) *Purpose:* The purpose of establishing benchmarks is to create a quantifiable method by which the contractor can measure its progress toward achieving equal employment opportunity for protected veterans.

(b) Hiring benchmarks shall be set by the contractor on an annual basis. Benchmarks shall be set using one of the two mechanisms described below:

(1) Establish a benchmark equaling the national percentage of veterans in the civilian labor force, which will be published and updated annually on the OFCCP Web site; or

(2) Establish a benchmark by taking into account:

(i) The average percentage of veterans in the civilian labor force in the State(s) where the contractor is located over the preceding three years, as calculated by the Bureau of Labor Statistics and published on the OFCCP Web site;

(ii) The number of veterans, over the previous four quarters, who were participants in the employment service delivery system in the State where the contractor is located, as tabulated by the Veterans' Employment and Training Service and published on the OFCCP Web site;

(iii) The applicant ratio and hiring ratio for the previous year, based on the data collected pursuant to § 60–300.44(k);

(iv) The contractor's recent assessments of the effectiveness of its external outreach and recruitment efforts, as set forth in § 60–300.44(f)(3); and

(v) Any other factors, including but not limited to the nature of the contractor's job openings and/or its location, which would tend to affect the availability of qualified protected veterans.

(c) The contractor shall document the hiring benchmark it has established each year. If the contractor sets its benchmark using the procedure in paragraph (b)(2) of this section, it shall document each of the factors that it considered in establishing the hiring benchmark and the relative significance of each of these factors. The contractor shall retain these records for a period of three (3) years.

Subpart D—General Enforcement and Complaint Procedures

§ 60–300.60 Compliance evaluations.

(a) OFCCP may conduct compliance evaluations to determine if the contractor is taking affirmative action to employ, advance in employment and otherwise treat qualified individuals without discrimination based on their status as a protected veteran in all employment practices. A compliance evaluation may consist of any one or any combination of the following investigative procedures:

(1) *Compliance review.* A comprehensive analysis and evaluation of the hiring and employment practices of the contractor, the written affirmative action program, and the results of the affirmative action efforts undertaken by the contractor. A compliance review may proceed in three stages:

(i) A desk audit of the written affirmative action program and supporting documentation to determine whether all elements required by the regulations in this part are included, whether the affirmative action program meets agency standards of reasonableness, and whether the affirmative action program and supporting documentation satisfy agency standards of acceptability. OFCCP may extend the temporal scope of the desk audit beyond that set forth in the scheduling letter if OFCCP deems it necessary to carry out its investigation of potential violations of this part. The desk audit is conducted at OFCCP offices;

(ii) An on-site review, conducted at the contractor's establishment to investigate unresolved problem areas identified in the affirmative action program and supporting documentation during the desk audit, to verify that the contractor has implemented the affirmative action program and has complied with those regulatory obligations not required to be included in the affirmative action program, and to examine potential instances or issues of discrimination. An on-site review normally will involve an examination of the contractor's personnel and employment policies, inspection and copying of documents related to employment actions, and interviews with employees, supervisors, managers, hiring officials; and

(iii) Where necessary, an off-site analysis of information supplied by the contractor or otherwise gathered during or pursuant to the on-site review;

(2) *Off-site review of records.* An analysis and evaluation of the affirmative action program (or any part thereof) and supporting documentation, and other documents related to the contractor's personnel policies and employment actions that may be relevant to a determination of whether the contractor has complied with the requirements of VEVRAA and its regulations;

(3) *Compliance check.* A determination of whether the contractor has maintained records consistent with § 60–300.80; OFCCP may request the documents be provided either on-site or off-site; or

(4) *Focused review.* A review restricted to one or more components of the contractor's organization or one or more aspects of the contractor's employment practices.

(b) Where deficiencies are found to exist, reasonable efforts shall be made to secure compliance through conciliation and persuasion pursuant to § 60–300.62.

(c) *Reporting requirements.* During a compliance evaluation, OFCCP may verify whether the contractor has complied with applicable reporting requirements required under regulations promulgated by the Veterans' Employment and Training Service (VETS). If the contractor has not complied with any such reporting requirement, OFCCP will notify VETS.

(d) *Pre-award compliance evaluations.* Each agency will include in the invitation for bids for each formally advertised nonconstruction contract or state at the outset of negotiations for each negotiated contract, that if the award, when let, should total $10 million or more, the prospective contractor and its known first-tier subcontractors with subcontracts of $10 million or more will be subject to a compliance evaluation before the award of the contract unless OFCCP has conducted an evaluation and found them to be in compliance with VEVRAA within the preceding 24 months. The awarding agency will notify OFCCP and request appropriate action and findings in accordance with this subsection. Within 15 days of the notice OFCCP will inform the awarding agency of its intention to conduct a pre-award compliance evaluation. If OFCCP does not inform the awarding agency within that period of its intention to conduct a pre-award compliance evaluation, clearance shall be presumed and the awarding agency is authorized to proceed with the award. If OFCCP informs the awarding agency of its intention to conduct a pre-award compliance evaluation, OFCCP will be allowed an additional 20 days after the date that it so informs the awarding agency to provide its conclusions. If OFCCP does not provide the awarding agency with its conclusions within that

period, clearance will be presumed and the awarding agency is authorized to proceed with the award.

§ 60–300.61 Complaint procedures.

(a) *Place and time of filing.* Any applicant for employment with a contractor or any employee of a contractor may, personally, or by an authorized representative, file a written complaint alleging a violation of the Act or the regulations in this part. The complaint may allege individual or class-wide violation(s). Such complaint must be filed within 300 days of the date of the alleged violation, unless the time for filing is extended by OFCCP for good cause shown. Complaints may be submitted to OFCCP, 200 Constitution Avenue NW., Washington, DC 20210, or to any OFCCP regional, district, or area office. Complaints may also be submitted to the Veterans' Employment and Training Service of the Department of Labor directly, or through the Local Veterans' Employment Representative (LVER) at the local employment service office. Such parties will assist veterans in preparing complaints, promptly refer such complaints to OFCCP, and maintain a record of all complaints which they receive and forward. OFCCP shall inform the party forwarding the complaint of the progress and results of its complaint investigation. The state employment service delivery system shall cooperate with the Director in the investigation of any complaint.

(b) *Contents of complaints.*—(1) *In general.* A complaint must be signed by the complainant or his or her authorized representative and must contain the following information:

(i) Name and address (including telephone number) of the complainant;

(ii) Name and address of the contractor who committed the alleged violation;

(iii) Documentation showing that the individual is a protected veteran or pre-JVA veteran. Such documentation must include a copy of the veteran's form DD–214, and, where applicable, a copy of the veteran's Benefits Award Letter, or similar Department of Veterans Affairs certification, updated within one year prior to the date the complaint is filed;

(iv) A description of the act or acts considered to be a violation, including the pertinent dates (in the case of an alleged continuing violation, the earliest and most recent date that the alleged violation occurred should be stated); and

(v) Other pertinent information available which will assist in the investigation and resolution of the complaint, including the name of any known Federal agency with which the employer has contracted.

(2) *Third party complaints.* A complaint filed by an authorized representative need not identify by name the person on whose behalf it is filed. The person filing the complaint, however, shall provide OFCCP with the name, address and telephone number of the person on whose behalf it is made, and the other information specified in paragraph (b)(1) of this section. OFCCP shall verify the authorization of such a complaint by the person on whose behalf the complaint is made. Any such person may request that OFCCP keep his or her identity confidential, and OFCCP will protect the individual's confidentiality wherever that is possible given the facts and circumstances in the complaint.

(c) *Incomplete information.* Where a complaint contains incomplete information, OFCCP shall seek the needed information from the complainant. If the information is not furnished to OFCCP within 60 days of the date of such request, the case may be closed.

(d) *Investigations.* The Department of Labor shall institute a prompt investigation of each complaint.

(e) *Resolution of matters.* (1) If the complaint investigation finds no violation of the Act or this part, or if the Director decides not to refer the matter to the Solicitor of Labor for enforcement proceedings against the contractor pursuant to § 60–300.65(a)(1), the complainant and contractor shall be so notified. The Director, on his or her own initiative, may reconsider his or her determination or the determination of any of his or her designated officers who have authority to issue Notifications of Results of Investigation.

(2) The Director will review all determinations of no violation that involve complaints that are not also cognizable under Title I of the Americans with Disabilities Act.

(3) In cases where the Director decides to reconsider the determination of a Notification of Results of Investigation, the Director shall provide prompt notification of his or her intent to reconsider, which is effective upon issuance, and his or her final determination after reconsideration, to the person claiming to be aggrieved, the person making the complaint on behalf of such person, if any, and the contractor.

(4) If the investigation finds a violation of the Act or this part, OFCCP shall invite the contractor to participate in conciliation discussions pursuant to § 60–300.62.

§ 60–300.62 Conciliation agreements.

If a compliance evaluation, complaint investigation or other review by OFCCP finds a material violation of the Act or this part, and if the contractor is willing to correct the violations and/or deficiencies, and if OFCCP determines that settlement on that basis (rather than referral for consideration of formal enforcement) is appropriate, a written conciliation agreement shall be required. The agreement shall provide for such remedial action as may be necessary to correct the violations and/or deficiencies noted, including, where appropriate (but not necessarily limited to) such make whole remedies as back pay and retroactive seniority. The agreement shall also specify the time period for completion of the remedial action; the period shall be no longer than the minimum period necessary to complete the action.

§ 60–300.63 Violation of conciliation agreements.

(a) When OFCCP believes that a conciliation agreement has been violated, the following procedures are applicable:

(1) A written notice shall be sent to the contractor setting forth the violation alleged and summarizing the supporting evidence. The contractor shall have 15 days from receipt of the notice to respond, except in those cases in which OFCCP asserts that such a delay would result in irreparable injury to the employment rights of affected employees or applicants.

(2) During the 15-day period the contractor may demonstrate in writing that it has not violated its commitments.

(b) In those cases in which OFCCP asserts that a delay would result in irreparable injury to the employment rights of affected employees or applicants, enforcement proceedings may be initiated immediately without proceeding through any other requirement contained in this chapter.

(c) In any proceedings involving an alleged violation of a conciliation agreement OFCCP may seek enforcement of the agreement itself and shall not be required to present proof of the underlying violations resolved by the agreement.

§ 60–300.64 Show cause notices.

When the Director has reasonable cause to believe that the contractor has violated the Act or this part, he or she may issue a notice requiring the contractor to show cause, within 30 days, why monitoring, enforcement proceedings or other appropriate action to ensure compliance should not be instituted. The issuance of such a notice

is not a prerequisite to instituting enforcement proceedings (see § 60–300.65).

§ 60–300.65 Enforcement proceedings.

(a) *General.* (1) If a compliance evaluation, complaint investigation or other review by OFCCP finds a violation of the Act or this part, and the violation has not been corrected in accordance with the conciliation procedures in this part, or OFCCP determines that referral for consideration of formal enforcement (rather than settlement) is appropriate, OFCCP may refer the matter to the Solicitor of Labor with a recommendation for the institution of enforcement proceedings to enjoin the violations, to seek appropriate relief, and to impose appropriate sanctions, or any of the above in this sentence. OFCCP may seek back pay and other make whole relief for aggrieved individuals identified during a complaint investigation or compliance evaluation. Such individuals need not have filed a complaint as a prerequisite to OFCCP seeking such relief on their behalf. Interest on back pay shall be calculated from the date of the loss and compounded quarterly at the percentage rate established by the Internal Revenue Service for the underpayment of taxes.

(2) In addition to the administrative proceedings set forth in this section, the Director may, within the limitations of applicable law, seek appropriate judicial action to enforce the contractual provisions set forth in § 60–300.5, including appropriate injunctive relief.

(b) *Hearing practice and procedure.* (1) In administrative enforcement proceedings the contractor shall be provided an opportunity for a formal hearing. All hearings conducted under the Act and this part shall be governed by the Rules of Practice for Administrative Proceedings to Enforce Equal Opportunity Under Executive Order 11246 contained in 41 CFR part 60–30 and the Rules of Evidence set out in the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges contained in 29 CFR part 18, subpart B: *Provided,* That a final administrative order shall be issued within one year from the date of the issuance of the recommended findings, conclusions and decision of the Administrative Law Judge, or the submission of exceptions and responses to exceptions to such decision (if any), whichever is later.

(2) Complaints may be filed by the Solicitor, the Associate Solicitor for Civil Rights and Labor-Management, Regional Solicitors, and Associate Regional Solicitors.

(3) For the purposes of hearings pursuant to this part, references in 41 CFR part 60–30 to ''Executive Order 11246'' shall mean the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; references to ''equal opportunity clause'' shall mean the equal opportunity clause published at § 60–300.5; and references to ''regulations'' shall mean the regulations contained in this part.

§ 60–300.66 Sanctions and penalties.

(a) *Withholding progress payments.* With the prior approval of the Director, so much of the accrued payment due on the contract or any other contract between the Government contractor and the Federal Government may be withheld as necessary to correct any violations of the provisions of the Act or this part.

(b) *Termination.* A contract may be canceled or terminated, in whole or in part, for failure to comply with the provisions of the Act or this part.

(c) *Debarment.* A contractor may be debarred from receiving future contracts for failure to comply with the provisions of the Act or this part subject to reinstatement pursuant to § 60–300.68. Debarment may be imposed for an indefinite period, or may be imposed for a fixed period of not less than six months but no more than three years.

(d) *Hearing opportunity.* An opportunity for a formal hearing shall be afforded to a contractor before the imposition of any sanction or penalty.

§ 60–300.67 Notification of agencies.

The Director shall ensure that the heads of all agencies are notified of any debarments taken against any contractor.

§ 60–300.68 Reinstatement of ineligible contractors.

(a) *Application for reinstatement.* A contractor debarred from further contracts for an indefinite period under the Act may request reinstatement in a letter filed with the Director at any time after the effective date of the debarment; a contractor debarred for a fixed period may make such a request following the expiration of six months from the effective date of the debarment. In connection with the reinstatement proceedings, all debarred contractors shall be required to show that they have established and will carry out employment policies and practices in compliance with the Act and this part. Additionally, in determining whether reinstatement is appropriate for a contractor debarred for a fixed period, the Director also shall consider, among other factors, the severity of the violation which resulted in the debarment, the contractor's attitude towards compliance, the contractor's past compliance history, and whether the contractor's reinstatement would impede the effective enforcement of the Act or this part. Before reaching a decision, the Director may conduct a compliance evaluation of the contractor and may require the contractor to supply additional information regarding the request for reinstatement. The Director shall issue a written decision on the request.

(b) *Petition for review.* Within 30 days of its receipt of a decision denying a request for reinstatement, the contractor may file a petition for review of the decision with the Secretary. The petition shall set forth the grounds for the contractor's objections to the Director's decision. The petition shall be served on the Director and the Associate Solicitor for Civil Rights and Labor-Management and shall include the decision as an appendix. The Director may file a response within 14 days to the petition. The Secretary shall issue the final agency decision denying or granting the request for reinstatement. Before reaching a final decision, the Secretary may issue such additional orders respecting procedure as he or she finds appropriate in the circumstances, including an order referring the matter to the Office of Administrative Law Judges for an evidentiary hearing where there is a material factual dispute that cannot be resolved on the record before the Secretary.

§ 60–300.69 Intimidation and interference.

(a) The contractor shall not harass, intimidate, threaten, coerce, or discriminate against any individual because the individual has engaged in or may engage in any of the following activities:

(1) Filing a complaint;

(2) Assisting or participating in any manner in an investigation, compliance evaluation, hearing, or any other activity related to the administration of the Act or any other Federal, state or local law requiring equal opportunity for protected veterans;

(3) Opposing any act or practice made unlawful by the Act or this part or any other Federal, state or local law requiring equal opportunity for protected veterans, or

(4) Exercising any other right protected by the Act or this part.

(b) The contractor shall ensure that all persons under its control do not engage in such harassment, intimidation, threats, coercion or discrimination. The sanctions and penalties contained in this part may be exercised by the

Director against any contractor who violates this obligation.

§ 60–300.70 Disputed matters related to compliance with the Act.

The procedures set forth in the regulations in this part govern all disputes relative to the contractor's compliance with the Act and this part. Any disputes relating to issues other than compliance, including contract costs arising out of the contractor's efforts to comply, shall be determined by the disputes clause of the contract.

Subpart E—Ancillary Matters

§ 60–300.80 Recordkeeping.

(a) *General requirements.* Except as set forth in paragraph (b) of this section, any personnel or employment record made or kept by the contractor shall be preserved by the contractor for a period of two years from the date of the making of the record or the personnel action involved, whichever occurs later. However, if the contractor has fewer than 150 employees or does not have a Government contract of at least $150,000, the minimum record retention period will be one year from the date of the making of the record or the personnel action involved, whichever occurs later, except as set forth in paragraph (b) of this section. Such records include, but are not necessarily limited to, records relating to requests for reasonable accommodation; the results of any physical examination; job advertisements and postings; applications and resumes; tests and test results; interview notes; and other records having to do with hiring, assignment, promotion, demotion, transfer, lay-off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship. In the case of involuntary termination of an employee, the personnel records of the individual terminated shall be kept for a period of two years from the date of the termination, except that contractors that have fewer than 150 employees or that do not have a Government contract of at least $150,000 shall keep such records for a period of one year from the date of the termination. Where the contractor has received notice that a complaint of discrimination has been filed, that a compliance evaluation has been initiated, or that an enforcement action has been commenced, the contractor shall preserve all personnel records relevant to the complaint, compliance evaluation or action until final disposition of the complaint, compliance evaluation or action. The term *personnel records relevant to the complaint, compliance evaluation or action* would include, for example, personnel or employment records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person, and application forms or test papers completed by an unsuccessful applicant and by all other candidates for the same position as that for which the aggrieved person applied and was rejected.

(b) *Records with three-year retention requirement.* Records required by §§ 60–300.44(f)(4), 60–300.44(k), and 60–300.45(c) shall be maintained by all contractors for a period of three years from the date of the making of the record.

(c) *Failure to preserve records.* Failure to preserve complete and accurate records as required by this part constitutes noncompliance with the contractor's obligations under the Act and this part. Where the contractor has destroyed or failed to preserve records as required by this section, there may be a presumption that the information destroyed or not preserved would have been unfavorable to the contractor: *Provided,* That this presumption shall not apply where the contractor shows that the destruction or failure to preserve records results from circumstances that are outside of the contractor's control.

(d) The requirements of this section shall apply only to records made or kept on or after the date that the Office of Management and Budget has cleared the requirements.

§ 60–300.81 Access to records.

Each contractor shall permit access during normal business hours to its places of business for the purpose of conducting on-site compliance evaluations and complaint investigations and inspecting and copying such books, accounts, and records, including electronic records, and any other material OFCCP deems relevant to the matter under investigation and pertinent to compliance with the Act or this part. Contractors must also provide OFCCP access to these materials, including electronic records, off-site for purposes of conducting compliance evaluations and complaint investigations. Upon request, the contractor must provide OFCCP information about all format(s), including specific electronic formats, in which the contractor maintains its records and other information. The contractor must provide records and other information in any of the formats in which they are maintained, as selected by OFCCP. Information obtained in this manner shall be used only in connection with the administration of the Act and in furtherance of the purposes of the Act. OFCCP will treat records provided by the contractor to OFCCP under this section as confidential to the maximum extent the information is exempt from public disclosure under the Freedom of Information Act, 5 U.S.C. 552.

§ 60–300.82 Labor organizations and recruiting and training agencies.

(a) Whenever performance in accordance with the equal opportunity clause or any matter contained in the regulations in this part may necessitate a revision of a collective bargaining agreement, the labor organizations which are parties to such agreement shall be given an adequate opportunity to present their views to OFCCP.

(b) OFCCP shall use its best efforts, directly or through contractors, subcontractors, local officials, the Department of Veterans Affairs, vocational rehabilitation facilities, and all other available instrumentalities, to cause any labor organization, recruiting and training agency or other representative of workers who are employed by a contractor to cooperate with, and to assist in, the implementation of the purposes of the Act.

§ 60–300.83 Rulings and interpretations.

Rulings under or interpretations of the Act and this part shall be made by the Director.

§ 60–300.84 Responsibilities of appropriate employment service delivery system.

By statute, appropriate employment service delivery systems are required to refer qualified protected veterans to fill employment openings listed by contractors with such appropriate employment delivery systems pursuant to the mandatory job listing requirements of the equal opportunity clause and are required to give priority to protected veterans in making such referrals. The employment service delivery systems shall provide OFCCP, upon request, information pertinent to whether the contractor is in compliance with the mandatory job listing requirements of the equal opportunity clause.

Appendix A to Part 60–300—Guidelines on a Contractor's Duty To Provide Reasonable Accommodation

The guidelines in this appendix are in large part derived from, and are consistent with, the discussion regarding the duty to provide reasonable accommodation contained in the Interpretive Guidance on

Title I of the Americans with Disabilities Act (ADA) set out as an appendix to the regulations issued by the Equal Employment Opportunity Commission (EEOC) implementing the ADA (29 CFR part 1630). Although the following discussion is intended to provide an independent ''free-standing'' source of guidance with respect to the duty to provide reasonable accommodation under this part, to the extent that the EEOC appendix provides additional guidance which is consistent with the following discussion, it may be relied upon for purposes of this part as well. *See* § 60–300.1(c). Contractors are obligated to provide reasonable accommodation and to take affirmative action. Reasonable accommodation under VEVRAA, like reasonable accommodation required under section 503 and the ADA, is a part of the nondiscrimination obligation. *See* EEOC appendix cited in this paragraph. Affirmative action is unique to VEVRAA and section 503, and includes actions above and beyond those required as a matter of nondiscrimination. An example of this is the requirement discussed in paragraph 2 of this appendix that a contractor *shall* make an inquiry of a disabled veteran who is having significant difficulty performing his or her job.

1. A contractor is required to make reasonable accommodations to the known physical or mental limitations of an ''otherwise qualified'' disabled veteran, unless the contractor can demonstrate that the accommodation would impose an undue hardship on the operation of its business. As stated in § 60–300.2(s), a disabled veteran is qualified if he or she has the ability to perform the essential functions of the position with or without reasonable accommodation. A contractor is required to make a reasonable accommodation with respect to its application process if the disabled veteran is qualified with respect to that process. One is ''otherwise qualified'' if he or she is qualified for a job, except that, because of a disability, he or she needs a reasonable accommodation to be able to perform the job's essential functions.

2. Although the contractor would not be expected to accommodate disabilities of which it is unaware, the contractor has an affirmative obligation to provide a reasonable accommodation for applicants and employees who are known to be disabled veterans. As stated in § 60–300.42(b) (see also Appendix B of this part), the contractor is required to invite applicants who have been provided an offer of employment, before they are placed on the contractor's payroll, to indicate whether they are a disabled veteran who may be protected by the Act. Section 60–300.42(d) further provides that the contractor must seek the advice of disabled veterans who ''self-identify'' in this way as to reasonable accommodation. Moreover, § 60–300.44(d) provides that if an employee who is a known disabled veteran is having significant difficulty performing his or her job and it is reasonable to conclude that the performance problem may be related to the disability, the contractor is required to confidentially inquire whether the problem is disability related and if the employee is in need of a reasonable accommodation.

3. An accommodation is any change in the work environment or in the way things are customarily done that enables a disabled veteran to enjoy equal employment opportunities. Equal employment opportunity means an opportunity to attain the same level of performance, or to enjoy the same level of benefits and privileges of employment, as are available to the average similarly situated employee without a disability. Thus, for example, an accommodation made to assist an employee who is a disabled veteran in the performance of his or her job must be adequate to enable the individual to perform the essential functions of the position. The accommodation, however, does not have to be the ''best'' accommodation possible, so long as it is sufficient to meet the job-related needs of the individual being accommodated. There are three areas in which reasonable accommodations may be necessary: (1) accommodations in the application process; (2) accommodations that enable employees who are disabled veterans to perform the essential functions of the position held or desired; and (3) accommodations that enable employees who are disabled veterans to enjoy equal benefits and privileges of employment as are enjoyed by employees without disabilities.

4. The term ''undue hardship'' refers to any accommodation that would be unduly costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of the contractor's business. The contractor's claim that the cost of a particular accommodation will impose an undue hardship requires a determination of which financial resources should be considered—those of the contractor in its entirety or only those of the facility that will be required to provide the accommodation. This inquiry requires an analysis of the financial relationship between the contractor and the facility in order to determine what resources will be available to the facility in providing the accommodation. If the contractor can show that the cost of the accommodation would impose an undue hardship, it would still be required to provide the accommodation if the funding is available from another source, *e.g.,* the Department of Veterans Affairs or a state vocational rehabilitation agency, or if Federal, state or local tax deductions or tax credits are available to offset the cost of the accommodation. In the absence of such funding, the disabled veteran must be given the option of providing the accommodation or of paying that portion of the cost which constitutes the undue hardship on the operation of the business.

5. The definition for ''reasonable accommodation'' in § 60–300.2(t) lists a number of examples of the most common types of accommodations that the contractor may be required to provide. There are any number of specific accommodations that may be appropriate for particular situations. The discussion in this appendix is not intended to provide an exhaustive list of required accommodations (as no such list would be feasible); rather, it is intended to provide general guidance regarding the nature of the obligation. The decision as to whether a reasonable accommodation is appropriate must be made on a case-by-case basis. The contractor must consult with the disabled veteran in deciding on the reasonable accommodation; frequently, the individual will know exactly what accommodation he or she will need to perform successfully in a particular job, and may suggest an accommodation which is simpler and less expensive than the accommodation the contractor might have devised. Other resources to consult include the appropriate state vocational rehabilitation services agency, the Equal Employment Opportunity Commission (1–800–669–4000 (voice), 1–800–669–6820 (TTY)), the Job Accommodation Network (JAN) operated by the Office of Disability Employment Policy in the U.S. Department of Labor (1–800–526–7234 or 1–800–232–9675), private disability organizations (including those that serve veterans), and other employers.

6. With respect to accommodations that can permit an employee who is a disabled veteran to perform essential functions successfully, a reasonable accommodation may require the contractor to, for instance, modify or acquire equipment. For the visually-impaired, such accommodations may include providing adaptive hardware and software for computers, electronic visual aids, Braille devices, talking calculators, magnifiers, audio recordings and Braille or large-print materials. For persons with hearing impairments, reasonable accommodations may include providing telephone handset amplifiers, telephones compatible with hearing aids and text telephones (TTYs). For persons with limited physical dexterity, the obligation may require the provision of telephone headsets, speech activated software and raised or lowered furniture.

7. Other reasonable accommodations of this type may include providing personal assistants such as a reader, sign language interpreter or travel attendant, permitting the use of accrued paid leave or providing additional unpaid leave for necessary treatment. The contractor may also be required to make existing facilities readily accessible to and usable by disabled veterans—including areas used by employees for purposes other than the performance of essential job functions such as restrooms, break rooms, cafeterias, lounges, auditoriums, libraries, parking lots and credit unions. This type of accommodation will enable employees to enjoy equal benefits and privileges of employment as are enjoyed by employees who do not have disabilities.

8. Another of the potential accommodations listed in § 60–300.2(t) is job restructuring. This may involve reallocating or redistributing those nonessential, marginal job functions which a qualified disabled veteran cannot perform to another position. Accordingly, if a clerical employee who is a disabled veteran is occasionally required to lift heavy boxes containing files, but cannot do so because of a disability, this task may be reassigned to another employee. The contractor, however, is not required to reallocate essential functions, i.e., those functions that the individual who holds the job would have to perform, with or without

reasonable accommodation, in order to be considered qualified for the position. For instance, the contractor which has a security guard position which requires the incumbent to inspect identity cards would not have to provide a blind disabled veteran with an assistant to perform that duty; in such a case, the assistant would be performing an essential function of the job for the disabled veteran. Job restructuring may also involve allowing part-time or modified work schedules. For instance, flexible or adjusted work schedules could benefit disabled veterans who cannot work a standard schedule because of the need to obtain medical treatment, or disabled veterans with mobility impairments who depend on a public transportation system that is not accessible during the hours of a standard schedule.

9. Reasonable accommodation may also include reassignment to a vacant position. In general, reassignment should be considered only when accommodation within the disabled veteran's current position would pose an undue hardship. Reassignment is not required for applicants. However, in making hiring decisions, contractors are encouraged to consider applicants who are known disabled veterans for all available positions for which they may be qualified when the position(s) applied for is unavailable. Reassignment may not be used to limit, segregate, or otherwise discriminate against employees who are disabled veterans by forcing reassignments to undesirable positions or to designated offices or facilities. Employers should reassign the individual to an equivalent position in terms of pay, status, etc., if the individual is qualified, and if the position is vacant within a reasonable amount of time. A ''reasonable amount of time'' must be determined in light of the totality of the circumstances.

10. The contractor may reassign an individual to a lower graded position if there are no accommodations that would enable the employee to remain in the current position and there are no vacant equivalent positions for which the individual is qualified with or without reasonable accommodation. The contractor may maintain the reassigned disabled veteran at the salary of the higher graded position, and must do so if it maintains the salary of reassigned employees who are not disabled veterans. It should also be noted that the contractor is not required to promote a disabled veteran as an accommodation.

11. With respect to the application process, reasonable accommodations may include the following: (1) providing information regarding job vacancies in a form accessible to disabled veterans who are vision or hearing impaired, e.g., by making an announcement available in braille, in large print, or on computer disc, or by responding to job inquiries via TTYs; (2) providing readers, sign language interpreters and other similar assistance during the application, testing and interview process; (3) appropriately adjusting or modifying employment-related examinations, e.g., extending regular time deadlines, allowing a disabled veteran who is blind or has a learning disorder such as dyslexia to provide oral answers for a written test, and permitting an applicant, regardless of the nature of his or her ability, to demonstrate skills through alternative techniques and utilization of adapted tools, aids and devices; and (4) ensuring a disabled veteran with a mobility impairment full access to testing locations such that the applicant's test scores accurately reflect the applicant's skills or aptitude rather than the applicant's mobility impairment.

Appendix B to Part 60–300—Sample Invitation to Self-Identify

[Sample Invitation to Self-Identify]

1. This employer is a Government contractor subject to the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended by the Jobs for Veterans Act of 2002, 38 U.S.C. 4212 (VEVRAA), which requires Government contractors to take affirmative action to employ and advance in employment: (1) disabled veterans; (2) recently separated veterans; (3) active duty wartime or campaign badge veterans; and (4) Armed Forces service medal veterans. These classifications are defined as follows:

- A ''disabled veteran'' is one of the following:
- a veteran of the U.S. military, ground, naval or air service who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Secretary of Veterans Affairs; or
- a person who was discharged or released from active duty because of a service-connected disability.
- A ''recently separated veteran'' means any veteran during the three-year period beginning on the date of such veteran's discharge or release from active duty in the U.S. military, ground, naval, or air service.
- An ''active duty wartime or campaign badge veteran'' means a veteran who served on active duty in the U.S. military, ground, naval or air service during a war, or in a campaign or expedition for which a campaign badge has been authorized under the laws administered by the Department of Defense.
- An ''Armed forces service medal veteran'' means a veteran who, while serving on active duty in the U.S. military, ground, naval or air service, participated in a United States military operation for which an Armed Forces service medal was awarded pursuant to Executive Order 12985.

Protected veterans may have additional rights under USERRA—the Uniformed Services Employment and Reemployment Rights Act. In particular, if you were absent from employment in order to perform service in the uniformed service, you may be entitled to be reemployed by your employer in the position you would have obtained with reasonable certainty if not for the absence due to service. For more information, call the U.S. Department of Labor's Veterans Employment and Training Service (VETS), toll-free, at 1–866–4–USA–DOL.

2. [THE FOLLOWING TEXT SHOULD BE USED WHEN EXTENDING THE ''PRE–OFFER'' INVITATION AS REQUIRED BY 41 CFR 60–300.42(a). THE DEFINITIONS OF THE SEPARATE CLASSIFICATIONS OF PROTECTED VETERANS SET FORTH IN PARAGRAPH 1 MUST ACCOMPANY THIS SELF–IDENTIFICATION REQUEST.] If you believe you belong to any of the categories of protected veterans listed above, please indicate by checking the appropriate box below. As a Government contractor subject to VEVRAA, we request this information in order to measure the effectiveness of the outreach and positive recruitment efforts we undertake pursuant to VEVRAA.

[ ] I IDENTIFY AS ONE OR MORE OF THE CLASSIFICATIONS OF PROTECTED VETERAN LISTED ABOVE

[ ] I AM NOT A PROTECTED VETERAN

[THE FOLLOWING TEXT SHOULD BE USED IF REQUIRED TO EXTEND THE ''POST–OFFER'' INVITATION DESCRIBED IN 41 CFR 60–300.42(b). THE DEFINITIONS OF THE SEPARATE CLASSIFICATIONS OF PROTECTED VETERAN INCLUDED IN THE POST–OFFER INVITATION MUST ACCOMPANY THIS SELF–IDENTIFICATION REQUEST.]

As a Government contractor subject to VEVRAA, we are required to submit a report to the United States Department of Labor each year identifying the number of our employees belonging to each specified ''protected veteran'' category. If you believe you belong to any of the categories of protected veterans listed above, please indicate by checking the appropriate box below.

I BELONG TO THE FOLLOWING CLASSIFICATIONS OF PROTECTED VETERANS (CHOOSE ALL THAT APPLY):

[ ] DISABLED VETERAN

[ ] RECENTLY SEPARATED VETERAN

[ ] ACTIVE WARTIME OR CAMPAIGN BADGE VETERAN

[ ] ARMED FORCES SERVICE MEDAL VETERAN

_____

[ ] I am a protected veteran, but I choose not to self-identify the classifications to which I belong.

[ ] I am NOT a protected veteran.

If you are a disabled veteran it would assist us if you tell us whether there are accommodations we could make that would enable you to perform the essential functions of the job, including special equipment, changes in the physical layout of the job, changes in the way the job is customarily performed, provision of personal assistance services or other accommodations. This information will assist us in making reasonable accommodations for your disability.

3. Submission of this information is voluntary and refusal to provide it will not subject you to any adverse treatment. The information provided will be used only in ways that are not inconsistent with the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended.

4. The information you submit will be kept confidential, except that (i) supervisors and managers may be informed regarding restrictions on the work or duties of disabled veterans, and regarding necessary accommodations; (ii) first aid and safety personnel may be informed, when and to the

extent appropriate, if you have a condition that might require emergency treatment; and (iii) Government officials engaged in enforcing laws administered by the Office of Federal Contract Compliance Programs, or enforcing the Americans with Disabilities Act, may be informed.

5. [The contractor should here insert a brief provision summarizing the relevant portion of its affirmative action program.]

Appendix C to Part 60–300—Review of Personnel Processes

The following is a set of procedures which contractors may use to meet the requirements of § 60–300.44(b):

1. The application or personnel form of each known applicant who is a protected veteran should be annotated to identify each vacancy for which the applicant was considered, and the form should be quickly retrievable for review by the Department of Labor and the contractor's personnel officials for use in investigations and internal compliance activities.

2. The personnel or application records of each known protected veteran should include (i) the identification of each promotion for which the protected veteran was considered, and (ii) the identification of each training program for which the protected veteran was considered.

3. In each case where an employee or applicant who is a protected veteran is rejected for employment, promotion, or training, the contractor should prepare a statement of the reason as well as a description of the accommodations considered (for a rejected disabled veteran). The statement of the reason for rejection (if the reason is medically related), and the description of the accommodations considered, should be treated as confidential medical records in accordance with § 60–300.23(d). These materials should be available to the applicant or employee concerned upon request.

4. Where applicants or employees are selected for hire, promotion, or training and the contractor undertakes any accommodation which makes it possible for him or her to place a disabled veteran on the job, the contractor should make a record containing a description of the accommodation. The record should be treated as a confidential medical record in accordance with § 60–300.23(d).

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41 CFR Part 60–741

Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Individuals With Disabilities; Final Rule

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Part 60–741

RIN 1250–AA02

Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Individuals With Disabilities

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Final rule.

SUMMARY: The Office of Federal Contract Compliance Programs (OFCCP) is publishing revisions to the current regulations implementing the non-discrimination and affirmative action regulations of section 503 of the Rehabilitation Act of 1973, as amended. Section 503 prohibits discrimination by covered Federal contractors and subcontractors against individuals on the basis of disability, and requires affirmative action on behalf of qualified individuals with disabilities.

The final rule adopts several key revisions proposed in the notice of proposed rulemaking. The final rule strengthens the affirmative action provisions by, among other things, requiring data collection pertaining to applicants and hires with disabilities, and establishing a utilization goal for individuals with disabilities to assist in measuring the effectiveness of the contractor's affirmative action efforts. However, some of the NPRM's proposals, particularly with regard to the creation and maintenance of certain records and the conduct of certain affirmative action obligations, have been eliminated or made more flexible in order to reduce the compliance burden on contractors. To implement changes necessitated by the passage of the ADA Amendments Act (ADAAA) of 2008, the final rule also adopts revisions to the definitions and to the nondiscrimination provisions of the implementing regulations. The specific revisions made, and the rationale for making them, are set forth in the Section-by-Section Analysis below.

DATES: *Effective Date:* These regulations are effective March 24, 2014.

FOR FURTHER INFORMATION CONTACT: Debra A. Carr, Director, Division of Policy, Planning and Program Development, Office of Federal Contract Compliance Programs, at 200 Constitution Avenue NW., Room C–3325, Washington, DC 20210, or call (202) 693–0104 (voice) or (202) 693–1337 (TTY). Copies of this rule in alternative formats may be obtained by calling (202) 693–0103 (voice) or (202) 693–1337 (TTY). The alternative formats available are large print and electronic file on computer disk. The rule also is available on the Internet on the Regulations.gov Web site at *http://www.regulations.gov* or on the OFCCP Web site at *http://www.dol.gov/ofccp*.

SUPPLEMENTARY INFORMATION:

Executive Summary

The Office of Federal Contract Compliance Programs (OFCCP) is a civil rights, worker protection agency which enforces one Executive Order and two laws that prohibit employment discrimination and require affirmative action by companies doing business with the Federal Government.[1] Specifically, Federal contractors must engage in affirmative action and provide equal employment opportunity without regard to race, color, religion, sex, national origin, disability, or status as a protected veteran. Executive Order 11246, as amended, prohibits employment discrimination on the basis of race, religion, color, national origin, and sex. The Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA), as amended, prohibits employment discrimination against certain protected veterans. Section 503 of the Rehabilitation Act of 1973 (section 503), as amended, prohibits employment discrimination against individuals with disabilities.

OFCCP evaluates the employment practices of over 4,000 Federal contractors and subcontractors annually and investigates individual complaints. OFCCP also engages in outreach to employees of Federal contractors to educate them about their rights, and provides technical assistance to contractors on their nondiscrimination and affirmative action obligations. We estimate that our jurisdiction covers approximately 200,000 Federal contractor establishments, and more than 45,000 parent companies.[2]

Employment discrimination and underutilization of qualified workers, such as individuals with disabilities and veterans, contribute to broader societal problems such as income inequality and poverty. The median household income for ''householders'' with a disability, aged 18 to 64, was $25,420 compared with a median income of $59,411 for households with a householder who did not report a disability.[3] Controlling for age and race we find that workers with a disability, on average, earn less than private sector workers without a disability. The mean hourly wage of those with a disability is $17.62 (with a median of $13.73) compared to $21.67 (median $16.99) for those without a disability.[4] Controlling for age and race, male workers with a disability earn 23 percent less than males without a disability. The disability gap for females is 20 percent.[5] While 28.8 percent of individuals, ages 18 to 64, with a disability were in poverty in 2011, the data show that 12.5 percent of those individuals without a disability were in poverty.[6]

Based on our analysis of the American Community Survey (ACS) 2008–2010 Public Use Microdata (PUMS), and controlling for age and race we found that:[7]

- Males with disability had a 7.2 percentage point higher unemployment rate than males without a disability.
- Females with disability had a 6.5 percentage point higher unemployment rate than females without a disability.

[1] Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended, (section 503), and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212 (VEVRAA).

[2] This establishment estimate is based on a review of FY 2009 EEO–1 contractor establishment data and other contractor databases, including the Federal Procurement Data System (FPDS). Based on EEO–1 data, we determined that the ratio of parent companies to the number of establishments is approximately four establishments per parent company.

[3] *Income, Poverty and Health Insurance Coverage in the United States: 2011,* Current Population Reports, issued September 2012, *http://www.census.gov/prod/2012pubs/p60-243.pdf* (last accessed July 8, 2013), p. 10. A ''householder'' is the person (or one of the people) in whose name the home is owned or rented and the person to whom the relationship of other household members is recorded. Typically, it is the head of a household. Only one person per household is designated the ''householder.''

[4] OFCCP ran wage regressions using the natural log of effective hourly wages calculated as real income divided by usual hours per week and weeks per year. The weeks per year variable is categorical so the midpoint of each category was used as a proxy for the number of weeks worked. Explanatory variables include age and race. The sample was restricted to individuals aged 18 to 64 employed in the private sector. Individuals currently in the armed forces were not included in the sample. All OFCCP models used ACS 2008–2010 Public Use Microdata (PUMS).

[5] Id.

[6] *Income, Poverty and Health Insurance Coverage in the United States: 2011,* Current Population Reports, issued September 2012, *http://www.census.gov/prod/2012pubs/p60-243.pdf* (last accessed July 8, 2013)

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• Females with a disability had a 29.2 percentage point higher probability of not being in the labor force than females without a disability.

A 2009 report found that ''having a disability is associated with lower earnings due to decreased ability to work, prejudice, and other factors.'' [8] There are a number of hypotheses concerning disparities in labor force participation, employment rates, and wages. While knowledge of opportunities, differences in access and attainment of training and education, and underutilization of individuals with disabilities likely contribute to these disparities, the culture of the typical workplace and discrimination are also factors in some employment settings. However, there is little empirical data upon which to base targeted interventions. Data collection remains a critical need.

The final rule is intended to provide contractors with the tools needed to evaluate their own compliance and proactively identify and correct any deficiencies in their employment practices. Because the existing regulations implementing section 503 do not provide contractors with adequate tools to assess whether they are complying with their nondiscrimination and affirmative action obligations to recruit and employ qualified individuals with disabilities, the revisions of the final rule will assist contractors in averting potentially expensive violation findings by OFCCP.

I. Statement of Legal Authority

Enacted in 1973, the purpose of section 503 of the Rehabilitation Act, as amended, is twofold. First, section 503 prohibits employment discrimination on the basis of disability by Federal Government contractors and subcontractors. Second, it requires each covered Federal Government contractor and subcontractor to take affirmative action to employ and advance in employment qualified individuals with disabilities.

The nondiscrimination and general affirmative action requirements of section 503 apply to all Government contractors with contracts or subcontracts in excess of $10,000 for the purchase, sale, or use of personal property or nonpersonal services (including construction). *See* 41 CFR 60–741.4. The requirement to prepare and maintain an affirmative action program, the specific obligations of which are described at 41 CFR 60–741.44, apply to those contractors that have a contract or subcontract of $50,000 or more and 50 or more employees.

In the section 503 context, receipt of a Federal contract comes with a number of responsibilities, including compliance with the section 503 nondiscrimination and anti-retaliation provisions, meaningful and effective efforts to recruit and employ individuals with disabilities, creation and enforcement of personnel policies that support the contractor's affirmative action efforts, maintenance of accurate records on its affirmative action efforts, and OFCCP access to these records upon request. Failure to abide by these responsibilities may result in various sanctions, including withholding of progress payments, termination of contracts, and debarment from receiving future contracts.

II. Major Provisions

The following major provisions in the Final Rule would:

• Establish, for the first time, a 7 percent workforce utilization goal for individuals with disabilities. This goal is not a quota or a ceiling that limits or restricts the employment of individuals with disabilities. Instead, the goal is a management tool that informs decision-making and provides real accountability. Failing to meet the disability utilization goal, alone, is not a violation of the regulation and it will not lead to a fine, penalty, or sanction. OFCCP is mindful that smaller contractors may find it more difficult to attain the goal in each of their job groups. Therefore, the final rule permits contractors with a total workforce of 100 or fewer employees to apply the 7 percent goal to their entire workforce, rather than to each job group.

• Require contractors to invite applicants to voluntarily self-identify as an individual with a disability at the pre-offer stage of the hiring process, in addition to the existing requirement that contractors invite applicants to voluntarily self-identify after receiving a job offer. The purpose of this data collection is to provide contractors with useful information about the extent to which their outreach and recruitment efforts are effectively reaching people with disabilities.

• Require contractors to invite incumbent employees to voluntarily self-identify on a regular basis. The status of employees may change and a regular invitation to self-identify provides employees a way to self-identify for the first time, or to change their previously reported status. Providing a regular invitation should contribute to increased self-identification rates. Improving data collection is important to assessing employment practices.

• Require contractors to maintain several quantitative measurements and comparisons for the number of individuals with disabilities who apply for jobs and the number of individuals with disabilities they hire in order to create greater accountability for employment decisions and practices. Having this data will enable contractors and OFCCP to evaluate the effectiveness of contractors' outreach and recruitment efforts, and examine hiring and selection processes related to individuals with disabilities.

• Require prime contractors to include specific, mandated language in their subcontracts in order to provide knowledge and increase compliance by alerting subcontractors to their responsibilities as Federal contractors.

• Implement changes necessitated by the passage of the ADA Amendments Act (ADAAA) of 2008 by revising the definition of ''disability'' and certain nondiscrimination provisions of the implementing regulations.

III. Cost and Benefits

This is an economically significant and major rule. Individuals with disabilities make up 4.83 percent of the employed.[9] The section 503 rule establishes a utilization goal for employing individuals with disabilities of 7 percent. To meet the goal, OFCCP estimates that Federal contractors would hire an additional 594,580 individuals with disabilities. There are tangible and intangible benefits from investing in the recruitment and hiring of individuals with disabilities. Among them are employer tax credits, access to a broader talent pool, an expanded pool of job applicants, access to new markets by developing a workforce that mirrors the general customer base, lower turnover based on increased employee loyalty, and lower training costs resulting from lower staff turnover.[10] According to the U.S. Business Leadership Network (USBLN), ''corporate CEOs understand that it's cost effective to recruit and retain the best talent regardless of

[8] *Changing Demographic Trends that Affect the Workplace and Implications for People with Disabilities,* Executive Summary (Nov. 30, 2009), p. 4. ''Studies agree that disability incidence is related to income and earnings. A number of intertwined relationships, however, make it somewhat difficult to sort out cause and effect.''

[9] U.S. Census Bureau, 2011 American Community Survey. There are a variety of sources for this estimate. The Current Population Survey estimates a lower rate, 3.5 percent, and the Survey of Income and Program Participation estimates 9.4 percent.

[10] Job Accommodation Network, ''Workplace Accommodations: Low Cost, High Impact,'' Sept. 1, 2012. *Accommodation and Compliance Series, http://askjan.org/media/lowcosthighimpact.html* (last accessed Aug. 9, 2013).

disability.'' [11] Broad public policy considerations also exist related to the decreased demand for and cost of social services as more people move into jobs and pay taxes.

These projected hires, some of whom will require reasonable accommodation, will not add significant costs for the employers. The requirement to provide reasonable accommodation exists under the ADA, and now exists under the ADA Amendments Act for employers. This is not a new obligation created by this rule. According to a study conducted by the Job Accommodation Network (JAN), of the employers who gave the researchers cost information related to accommodations they had provided, 57 percent said the accommodations needed by employees cost absolutely nothing.[12] For 43 percent of employers, the typical one-time expenditure by employers to provide a reasonable accommodation was $500. Finally, 2 percent reported that accommodations required a combination of one-time and annual costs.

In projecting the overall increase in Federal contractor employment of protected veterans under the VEVRAA rule and individuals with disabilities under the section 503 rule, there is likely to be an interaction between the two categories. Some of the newly hired individuals with disabilities will likely be protected veterans. There are 5.78 million people 18 years or older in the labor force with a disability, 822,000, or 14.21 percent, of whom are veterans.[13]

To meet the section 503 rule's utilization goal of 7 percent, Federal contractors would have to hire an additional 594,580 individuals with disabilities. Assuming that the number of disabled veterans hired will be proportional to their share of the disabled labor force, then we estimate that 84,490 of the newly hired individuals with disabilities will also be protected veterans.[14] Subtracting 84,490 protected veterans from the target of 205,500 leaves 121,010 non-disabled veterans needed to meet the hiring goal. Viewed independently, Federal contractors under VEVRAA would employ an additional 205,500 protected veterans and under section 503 employ an additional 594,580 individuals with disabilities. In the aggregate, we anticipate the overall number of hires across both rules will be closer to 715,590. We adjust the reasonable accommodation cost estimates based on the aforementioned assumptions. The total cost of providing reasonable accommodation to employees with disabilities who are not protected veterans is $114,770,291 in the year the target is met and $48,524,879 in recurring costs. The requirement to provide reasonable accommodation, however, existed under the ADA, and now exists under the ADAAA for employers. This is not a new obligation created by this rule. Nonetheless, the estimated cost of providing reasonable accommodations is included in this rule.

Employers often think providing a reasonable accommodation is more costly than it actually is. Sometimes an accommodation may be something as simple as allowing someone to have their instructions tape recorded, or allowing someone to wear ear phones so they are not distracted by noise around them, or allowing someone an empty office as space when they have difficulty with concentration or attention span. Employers must provide effective accommodations but are not expected to create an undue hardship for themselves by doing so. Individuals seeking reasonable accommodation beyond what is effective have the option of paying the difference between the cost of the more expensive accommodation and the cost of what the employer will pay for the effective reasonable accommodation.

	Final rule low [15]	Final rule high
Total Cost	$349,510,926	$659,877,833
Cost Per Company	7,550	9,716
Cost Per Establishment	2,040	2,626
Cost Per New Hire	588	1,110

[15] The high cost estimates in this chart are based on a contractor establishment count of 251.300 and 67,919 companies while the low estimates are based on 171,275 establishments and 46,291 companies.

Present value costs over ten years for the final rule range from $1.84 billion to $3.91 billion using a 3 percent discount rate. If we use a 7 percent discount rate then the present value costs range from $1.53 billion to $3.25 billion. Annualizing these costs yields a cost range of $215 million to $459 million at the 3 percent discount rate and $218 million to $463 million using a 7 percent discount rate.

	7% Discount rate	3% Discount rate
Benefits	Not Quantified.	Not Quantified
Costs	$1.53 billion to $3.25 billion.	$1.84 billion to $3.91 billion

Introduction

Strengthening the implementing regulations of section 503, whose stated purpose ''requires Government contractors and subcontractors to take affirmative action to employ and advance in employment qualified individuals with disabilities,'' is an important means by which the Government can contribute to reducing the employment disparity between those with and without disabilities. The objective of these regulations is to ensure that employers doing business with the Federal Government do not discriminate and that they take affirmative action to recruit, hire, promote and retain individuals with disabilities. More specifically, the final

[11] USBLN Disability at Work, and U.S. Chamber of Commerce, ''Leading Practices on Disability Inclusion,'' *http://www.usbln.org/pdf-docs/Leading_Practices_on_Disability_Inclusion.pdf* (last accessed Aug. 9, 2013). The USBLN and Chamber report shares best practices from larger corporations for hiring and providing reasonable accommodations.

[12] Job Accommodation Network, ''Workplace Accommodations: Low Cost, High Impact,'' Sept. 1, 2012. *Accommodation and Compliance Series, http://askjan.org/media/lowcosthighimpact.html* (last accessed Aug. 9, 2013), p.3; ''Fast Facts: Reasonable Accommodations & The Americans with Disabilities Act,'' U.S. Chamber of Commerce & the Virginia Commonwealth University, Rehabilitation Research and Training Center on Workplace Supports, *http://www.worksupport.com/Topics/downloads/rrtcfactsheet2.pdf.*

[13] Calculation based on unpublished table, *Employment status of persons 18 years and over by veteran status, period of service, sex, race, Hispanic or Latino ethnicity, and disability status, Annual Average 2012 (Source: Current Population Survey).*

[14] Because of data limitations, OFCCP is using the share of veterans as a proxy for ''protected'' veterans. For more information on the difference between protected and unprotected veterans, please visit, *http://www.dol.gov/ofccp/regs/compliance/factsheets/vetrights.htm#Q2*

rule has the potential to reduce the employment gap in a number of ways. It adds and strengthens affirmative action requirements designed to improve outreach and recruitment of qualified individual with disabilities; establishes an aspirational goal for the employment of qualified individuals with disabilities that will allow contractors to measure and improve (where appropriate) the effectiveness of those affirmative efforts; provides for greater accountability regarding employment of individuals with disabilities through collection of several quantitative measures; and provides stronger dissemination of contractor obligations to subcontractors and unions. These measures, taken together, are designed to bring more qualified individuals with disabilities into the Federal contractor workforce and provide them with an equal opportunity to advance in employment.

OFCCP published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on December 9, 2011 (76 FR 77056), seeking comment on a number of proposals that would strengthen the regulations implementing section 503. The NRPM was published for a 60-day public comment period. The NPRM proposed specific actions that contractors and subcontractors must satisfy to meet their section 503 obligations, including increased data collection obligations, and the establishment of a utilization goal for individuals with disabilities. After receiving several requests to extend the public comment period, OFCCP published a subsequent notice in the **Federal Register** on February 10, 2012 (77 FR 7108), extending the public comment period an additional 14 days.

OFCCP received more than 400 comments on the NPRM. Commenters represented diverse perspectives including: 185 individuals; 105 contractors; 41groups representing contractors; 48 disability and veterans' rights advocacy groups; and 11 governmental entities. The commenters raised a broad range of issues, including concerns with the cost and burden associated with the proposed rule, the extended recordkeeping requirements, the proposed utilization goal, and the new categories of data collection and analyses. OFCCP carefully considered all comments in the development of this final rule.

Pursuant to Executive Order (EO) 13563, the final rule was developed through a process that involved public participation. Indeed, prior to issuing an NPRM, OFCCP had previously issued an Advanced Notice of Proposed Rulemaking (ANPRM), 75 FR 43116 (July 23, 2010), requesting public comment regarding potential ways to strengthen the section 503 affirmative action regulations. During 2010 and 2011, OFCCP also conducted multiple town hall meetings, webinars, and listening sessions with individuals from the contractor community, state employment services, disability organizations, and other interested parties to understand the features of the section 503 regulations that work well, those that can be improved, and possible new requirements that could help to effectuate the overall objective of increasing employment opportunities for individuals with disabilities with Federal contractors.

Compliance With the Final Rule

Although this final rule becomes effective 180 days after publication, full compliance with the requirements of this final rule by current contractors will be phased in as follows. Current contractors subject to subpart C of the existing 41 CFR part 60–741 regulations that have written affirmative action programs (AAP) prepared pursuant to those regulations in place on the effective date of this final rule may maintain that AAP for the duration of their AAP year. Such contractors are required to update their affirmative action programs to come into compliance with the requirements of subpart C of this final rule at the start of their next standard 12-month AAP review and updating cycle. OFCCP will verify compliance with the requirements of this final rule when a contractor is selected for a compliance evaluation pursuant to § 60–741.60 or subject to a complaint investigation pursuant to § 60–741.61.

Overview of the Final Rule

The final rule incorporates several of the changes proposed in the NPRM. However, in order to focus the scope of the final rule more closely on key issues, and in an effort to reduce the burden of compliance on contractors, the final rule also revises or declines to adopt some of the NPRM's proposals.

The final rule strengthens the affirmative action provisions for Federal contractors in a number of ways. The rule addresses the increased use of technology in the workplace by allowing for the electronic posting of employee rights and contractor obligations, and by codifying contractors' reasonable accommodation obligation to ensure that any use of electronic job application systems do not result in the denial of equal employment opportunity to individuals with disabilities. Further, the regulations establish a utilization goal, and increase data collection pertaining to applicants and hires, including modifying and standardizing the requirement to invite applicants and existing employees to self-identify as individuals with a disability. These revisions will help contractors better evaluate their outreach and recruitment efforts, and to modify them as needed, toward the end of increasing employment opportunities for individuals with disabilities by Federal contractors and subcontractors. Additionally, as proposed in the NPRM, changes necessitated by the passage of the ADA Amendments Act (ADAAA) of 2008, Public Law110–325, and the subsequent amendment by the Equal Employment Opportunity Commission (EEOC) of their implementing regulations at 29 CFR part 1630 have been made to the rule's definitions and nondiscrimination provisions.

OFCCP revised or eliminated a number of provisions from the NPRM in response to the comments that were received, particularly with regard to the cost and burden of the rule, recordkeeping requirements, data collection and analyses, and the goal. These changes are discussed in full in the Section-by-Section Analysis. However, a summary of the most significant provisions is below.

OFCCP received approximately 130 comments concerning the burdens and costs of the proposed rule from contractor groups, contractors, individuals and government entities. Many of these commenters stated that OFCCP's estimates of costs and hours were too low. A few commenters also suggested that OFCCP's contractor universe was too small. In response to these concerns, OFCCP modified the burden and cost estimates for the final rule. These changes provide a more accurate estimation of the burden and costs associated with the final rule. As discussed in the NPRM, the overall contractor universe of 171,275 contractor and subcontractor establishments was derived from the Fiscal Year 2009 Employer Information Report EEO–1 (EEO–1), the Federal Procurement Data System-Next Generation (FPDS–NG) report data on contractor establishments, and other pertinent information. OFCCP notes that there were comments on the contractor universe recommending an establishment count of 285,390 using the Veterans Employment Training Services (VETS) annual report. While OFCCP declines to exclusively rely on the VETS report number, we present an estimated high end for the range of the cost of the rule based on a contractor

establishment number of 251,300. This number is based on 2010 VETS data from their pending Information Collection Request.[16] As discussed in more detail below, OFCCP also made key changes to the recordkeeping requirements to minimize the burden on contractors.

The NPRM proposed that contractors maintain data pursuant to §§ 60–741.44(f)(4) (linkage agreements and other outreach and recruiting efforts) and 60–741.44(k) (collection of applicant and hire data) for five years. More than 50 commenters opposed these provisions. Several of the commenters were particularly concerned about the burden associated with the five-year requirement. In response, OFCCP has reduced the proposed five-year recordkeeping requirement to three years in the final rule. Further, in light of the comments we received, the final rule does not incorporate the proposal in § 60–741.44(k) of the NPRM to maintain data related to referrals from State agencies and other organizations. Commenters expressed concern with this requirement, indicating that State agencies either cannot provide data or provide data inconsistently across the states. In reviewing the practical utility of the referral data in light of the burden that it would create on contractors, OFCCP has eliminated the requirement to collect and analyze referral data. Eliminating the referral data requirement and reducing the length of recordkeeping minimizes the burden on contractors, while still requiring contractors to keep adequate records to aid and inform their outreach and recruitment efforts.

The NPRM also proposed to require many of the affirmative action efforts that are only suggested in § 60–741.44 of the existing rule. Among these were proposals requiring contractors to: review personnel processes on an annual basis (§ 60–741.44(b)); review physical and mental qualification standards on an annual basis (§ 60–741(c)); establish linkage agreements with three disability-related agencies or organizations to increase connections between contractors and individuals with disabilities seeking employment (§ 60–741.44(f)); take certain specified actions to internally disseminate its affirmative action policy (§ 60–741.44(g)); and train personnel on specific topics related to the employment of individuals with disabilities (§ 60–741.44(j)). After consideration of the comments and taking into account the expected utility of these provisions in light of the burden that contractors would incur to comply with the proposals, OFCCP decided not to incorporate the majority of these proposals into the final rule, and instead retains the language in the existing rule. These NPRM proposals, for the most part, would have required certain specific actions contractors must take to fulfill their already existing, general affirmative action obligations. These general affirmative action obligations—reviewing personnel processes and qualification standards on a periodic basis, undertaking appropriate outreach and positive recruitment activities, developing internal procedures to disseminate affirmative action policies, and training its employees on these policies—remain in the final rule. By eliminating the specific provisions but maintaining the general affirmative action obligations, the final rule provides the contractor flexibility and lesser burden, while still requiring the maintenance and implementation of a robust affirmative action program.

The final rule adopts, but modifies, the proposed establishment of a national utilization goal for individuals with disabilities. The NPRM proposed to establish a single utilization goal of 7 percent per job group. OFCCP also requested public comment on several issues, including the possible establishment of a sub-goal for specific targeted disabilities, the availability of alternative data sources, and a range of potential goal values between 4 percent and 10 percent and the justification for their use. As discussed in more detail in the preamble to § 60–741.45, below, OFCCP received approximately 250 comments on the proposed goal. Disability and veterans' organizations, as well as many individuals, supported the establishment of a goal, while most contractors and employer associations were generally opposed. Most commenters who opposed the proposed goal asserted that any goal would be arbitrary and ineffective because of deficiencies in source data regarding the availability of qualified individuals with disabilities. In addition, some commenters stated their belief that the goals were illegal quotas and would adversely impact other protected groups. Supporters of the goal argued that the establishment of a goal was long overdue, given the long history of employment discrimination against individuals with disabilities, and the extremely low participation rate of people with disabilities in the labor force. The final rule retains the 7 percent per job group national utilization goal, but declines to adopt a sub-goal at this time. In response to commenters, the final rule clarifies that the failure to meet the goal, in and of itself, is not a violation of this part, and what contractors must do when the goal is not met. More specifically, the final rule identifies steps for the contractor to take to ascertain whether there are impediments to equal employment opportunity and, if impediments are found, to correct any identified problems. If no impediments are identified, then no corrective action is required. The goal is not a rigid and inflexible quota which must be met, nor is it to be considered either a ceiling or a floor for the employment of particular groups. Quotas are expressly forbidden.

The NPRM proposed substantial changes to the requirement that contractors invite applicants to self-identify as individuals with disabilities by adding to the existing post-offer invitation requirement both a pre-offer invitation requirement and an annual survey of all employees. It also detailed proposed mandatory language for these invitations. As discussed in detail in the Section-by-Section Analysis, OFCCP received more than 130 comments on this provision from a broad range of perspectives. The final rule adopts the NPRM requirement to invite self-identification from applicants both before and after a job offer has been made. Instead of adopting the proposal for annual self-identification, the final rule adopts an every five year invitation for employees to self-identify with an interim reminder to employees of their ability to change their status. In response to the comments, OFCCP will simplify the language of the invitations and consolidate them into a single form for contractors to use when inviting self-identification. When finalized, the form will be available on the OFCCP Web site.

The NPRM proposed to require that contractors develop and implement written procedures for processing requests for reasonable accommodation and prescribed specific mandatory elements that the procedures must contain. This proposal prompted strong support and strong criticism from commenters. After consideration of the comments, OFCCP decided not to require the development of written reasonable accommodation procedures and eliminated proposed § 60–741.45. Instead, the final rule notes that using written reasonable accommodation procedures is a best practice that may assist contractors in meeting their

[16] OMB Control Number 1293–0005, Federal Contractor Veterans' Employment Report, VETS–100/VETS–100A, *http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201104-1293-003* (last accessed Aug. 13, 2013).

reasonable accommodation obligations. The final rule states that contractors are not required to use such procedures and will not be found in violation of this part for not using such procedures. However, for the benefit of contractors that choose to adopt this best practice, the final rule also contains a new Appendix B that provides guidance for contractors on establishing written reasonable accommodation procedures.

The final rule presents a significant revision of the section 503 regulations. The detailed Section-by-Section Analysis below identifies and discusses all of the final changes in each section. For ease of reference, part 60–741 will be republished in its entirety in the final rule.

Section-By-Section Analysis

41 CFR Part 60–741

Subpart A—Preliminary Matters, Equal Opportunity Clause

Section 60–741.1 Purpose, Applicability, and Construction

Section 60–741.1 of the current rule sets forth the scope of section 503 and the purpose of its implementing regulations. The NPRM proposed three minor changes to this section. Specifically, it proposed to add language to paragraph (a) referencing contractors' nondiscrimination obligation; to modify the citation to the ''Americans with Disabilities Act of 1990'' (ADA) in paragraph (c) to reflect that statute's amendments by the ADA Amendments Act of 2008; and to add a new paragraph (c)(2) (and renumber existing paragraph (c)(2) as (c)(3)) to reflect the ADAAA's affirmation, in section 6(a)(1), that nothing in the statute ''alters the standards for determining eligibility for benefits'' under State worker's compensation laws or under State and Federal disability benefit programs. We received no comments on these proposed changes. Accordingly, OFCCP adopts the proposed revisions in the final rule without alteration.

Section 60–741.2 Definitions

The NPRM incorporated the vast majority of existing definitions contained in § 60–741.2 without change. However, OFCCP proposed several changes to the substance and structure of this section. With regard to structure, OFCCP proposed to reorder the definitions so that they are primarily in alphabetical order, rather than in order by subject matter.

With regard to substantive changes, the NPRM proposed several revisions relating to the definition of ''disability'' and its component parts resulting from the passage of the ADAAA, which became effective on January 1, 2009, and which amends both the ADA and Section 503. These include revisions to the definitions of ''disability'' (paragraph (g)), ''major life activities'' (paragraph (m)), ''mitigating measures'' (paragraph (n)), ''regarded as having such an impairment'' (paragraph (v)), and ''substantially limits'' (paragraph (z)). It is OFCCP's intention that these terms will have the same meaning as set forth in the ADAAA, and as implemented by the EEOC in its revised regulations published at 76 FR 16978 (March 25, 2011). In addition to revisions related to the definition of ''disability,'' the NPRM also proposed to replace the term ''Deputy Assistant Secretary'' with the term ''Director,'' and added a definition of ''linkage agreement.'' OFCCP received 18 comments on the proposed changes to § 60–741.2 from a variety of entities including individuals, contractors, and associations.

• *Definitions related to ''Disability''*

Commenters generally commended OFCCP for its efforts to bring consistency to the definitions used in section 503 and those in the ADAAA, noting, for example, that the ''contractor community and individuals with disabilities are well-served by a consistent and uniform approach.'' A few commenters asserted that the new definition of ''disability'' was overly broad and that, as a result, these commenters were concerned that ''a majority of individuals in the labor force may consider themselves as disabled.''

In amending the ADA, Congress made clear its intent to ensure a ''broad scope of protection'' for ''disability,'' and to ensure that this broad scope is not unduly ''narrowed'' by administrative or court rulings. See ADAAA at section 2. OFCCP's revised definitions incorporate the ADAAA's requirements, which, as previously noted, apply equally to section 503. We therefore adopt the NPRM's revised definitions related to ''disability'' into the final rule.

• *Definition of ''Director''*

We received no comments on the new definition of ''Director,'' and it is adopted into the final rule as proposed.

• *Definition of ''Linkage Agreement''*

We received no comments on the proposed definition of ''linkage agreement.'' However, as the final rule eliminates the requirement for contractors to enter into linkage agreements, there is no need for the regulation to contain a definition for it, and thus it is eliminated from the final rule. *See* discussion of § 60–741.44(f) below.

• *Additional Definitions*

Several commenters representing the contractor community requested that OFCCP add formal definitions for ''applicant'' and for ''Internet applicant,'' as those terms are defined in the Executive Order 11246 (EO 11246) implementing regulations at 41 CFR part 60–1. While OFCCP does not formally adopt the definition of ''Internet applicant'' into the section 503 regulations, OFCCP is harmonizing the requirements of the section 503 regulations and the Internet Applicant Rule. OFCCP provides further guidance on this issue in the preamble discussion related to § 60–741.42.

Section 60–741.3 Exceptions to the Definitions of ''Disability'' and ''Qualified Individual''

The NPRM proposed to modify this section by changing the terms ''individual with a disability'' and ''qualified individual with a disability'' in the section title, as well as throughout the section, to ''disability'' and ''qualified individual,'' respectively, in accordance with the ADAAA. No comments were received regarding these non-substantive changes, and OFCCP therefore adopts them in the final rule.

Section 60–741.4 Coverage and Waivers

The proposed rule removed the text of paragraph (a)(2) as the ''contract work only'' exception applied to ''employment decisions and practices occurring before October 29, 1992'' and has now expired. Accordingly, the NPRM also renumbered paragraphs (3), (4), and (5) as paragraphs (2), (3), and (4). No comments were received on this proposed revision and OFCCP adopts it into the final rule.

Section 60–741.5 Equal Opportunity Clause

The NPRM proposed several changes to the content of the Equal Opportunity (EO) Clause found in § 60–741.5, and to the manner in which the EO Clause is included in Federal contracts. We received a total of 23 comments on these proposals. The proposals, the comments to these proposals, and the revisions made to the final rule are discussed in turn below.

• *EO Clause Paragraph 1—Statement Requiring that Contractors Not Discriminate on the Basis of Disability*

In paragraph 1 of the EO clause, the NPRM proposed to modify the phrase ''to employ, advance in employment and otherwise treat qualified individuals with disabilities without discrimination based on their physical

or mental disability'' to read ''to employ and advance in employment individuals with disabilities, and to treat qualified individuals without discrimination on the basis of their physical or mental disability . . . .'' This formulation more closely mirrors the language and intent of the ADAAA. Only two comments were received regarding this change. One requested that we also delete the word ''because'' from the first sentence of paragraph 1 for consistency with the ADAAA, while the other asked that we add the word ''qualified'' before the phrase ''individuals with disabilities.'' OFCCP does not believe that the first sentence of paragraph 1 is inconsistent with the ADAAA and declines to make this change. OFCCP also declines to add the word ''qualified'' as requested. The phrase ''qualified individuals with disabilities'' is used in the ADAAA solely in the context of the entitlement to reasonable accommodation, which is not the subject of the revised sentence. Thus, it would not be consistent with the ADAAA to use that phrasing in this sentence. The NPRM's changes to paragraph 1 of the NPRM are adopted and set forth in the final rule as proposed.

• *EO Clause Paragraph 4—Electronic Notice Posting and Accessible Formats*

In paragraph 4, we proposed two revisions. First, the proposed regulation revised the parenthetical at the end of the third sentence of this paragraph to replace the outdated suggestion of reading the notice to a visually impaired individual as an accommodation with the suggestion to provide the notice in Braille, large print, or other alternative formats, so that the individual with a disability may read the notice him/herself. The proposed regulation also addressed the electronic posting of notices by contractors to satisfy the contractors' posting obligation in the context of telecommuting, work arrangements that do not include a physical office setting, and the use of electronic or Internet-based application systems. It proposed that the contractor be able to satisfy its posting obligation through electronic means for employees who telework, provided that the contractor provides computers to its employees or otherwise has actual knowledge that employees can access the notice. To clarify, ''actual knowledge'' does not mean actual knowledge that the employee accessed the notice, but rather actual knowledge that the notice was posted or disseminated in such a way that would be accessible to the employee. The NPRM further proposed that contractors that use an electronic application process be required to use an electronic posting, and be required to conspicuously store the electronic notice with, or as part of, the electronic application.

OFCCP received two comments regarding paragraph 4 of the EO Clause. One commenter expressed uncertainty as to what point in the hiring process a contractor is required to provide an alternative version of the notice. A contractor must provide an alternate version of the notice to an applicant with a disability at the same point in the process that it would provide the notice to applicants without disabilities, and upon request. The second commenter recommended that the EO Clause require that electronic notices be available in an accessible format. Paragraph 4 of the EO Clause clearly states that ''The contractor must ensure that applicants or employees with disabilities are provided the notice in a form that is accessible and understandable to the individual applicant or employee.'' Contractors are thus already expected to provide the notice in accessible format, if needed.

In the final rule, OFCCP has adopted the proposed changes to paragraph 4 of the EO Clause. We have also added a clarification stating that a contractor is able to satisfy its posting obligation by electronic means for employees who do not work at a physical location of the contractor, provided that the contractor provides computers or access to computers that can access the electronically posted notices. This clarifies that electronic posting is appropriate not only for employees who telework, but also for those who share work space—and contractor provided computers– at a remote work center.

• *EO Clause Paragraph 7—Contractor Solicitations and Advertisements*

The proposed rule added a new paragraph 7 to the EO clause that would require the contractor to state and thereby affirm in solicitations and advertisements that it is an equal employment opportunity employer of individuals with disabilities. A comparable clause already exists in the equal opportunity clause of Executive Order 11246 regulations. *See* 41 CFR 60–1.4(a)(2).

OFCCP received three comments objecting to this proposal. These commenters asserted that this requirement would be too burdensome since newspapers and other publications charge for each word of a solicitation and that the word ''solicitation'' was undefined and thus open to broad interpretation.

The word ''solicitation'' is also used, along with the word ''advertisements,'' in the Executive Order regulations. It has been broadly construed for many years to refer to any job listing, announcement, or advertisement, and would have the same meaning in the section 503 regulations. With regard to the assertion of burdensomeness, as noted in the NPRM, contractors are already required under Executive Order 11246 to state in advertisements and solicitations that ''all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.'' *See* 41 CFR 60–1.4(a)(2). The requirement set forth in paragraph 7 of the NPRM would require adding the single word ''disability'' to the language that contractors are already required to use in advertisements. This is a very minor change involving nominal time and expense to contractors that will affirm to jobseekers and the public the fact that individuals with disabilities are entitled to non-discrimination and affirmative action in the workplaces of Federal contractors. Accordingly, the language in paragraph 7 of the NPRM is adopted into the final rule as proposed.

• *Inclusion of EO Clause in Federal Contracts (proposed 60–741.5(d)*

Finally, the NPRM proposed requiring that the entire EO Clause be included verbatim in Federal contracts. This proposed change was to ensure that the contractor, and particularly any subcontractor, who often relies on the prime contractor to inform it of its nondiscrimination and affirmative action obligations, reads and understands the language in this clause. OFCCP received nineteen comments, all opposing the verbatim inclusion of the EO Clause in contracts. The commenters primarily asserted that this requirement would be too burdensome, as the length of the contract would increase significantly to perhaps double or even triple its original length in some instances.

In light of the comments and upon further consideration of the issue, the final rule does not require express inclusion of the entire EO Clause into Federal contracts. In addition to the burden concerns set forth by commenters, there is concern that the length of the EO Clause will dissuade, rather than promote, contractors and subcontractors from reading and taking note of their non-discrimination and affirmative action obligations. This is contrary to the intent behind the proposal in the NPRM.

However, the requirement in the existing regulations does little to notify contractors and subcontractors of the nature of their obligations to employ and advance in employment qualified individuals with disabilities, which was

a primary objective of the NPRM proposal. Accordingly, in order to draw greater attention to the contractors' obligations under section 503 without the burden of including the entire section 503 EO Clause, the final rule revises paragraph (d) of this section to require the following text, set in bold text, in each contract, following the reference to the section 503 regulations: ''This contractor and subcontractor shall abide by the requirements of 41 CFR 60–741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.''

Subpart B—Discrimination Prohibited

Section 60–741.21 Prohibitions

This section of the rule describes types of conduct that would violate the non-discrimination requirements of section 503. The NPRM renumbered the section's paragraphs, captioning the introductory sentence as (a), and renumbering existing paragraphs (a) through (i) as paragraphs (1) through (9). The NPRM also proposed several substantive changes, most of which are necessitated by the ADAAA. A new paragraph (iv) was added to paragraph (a)(6) regarding reasonable accommodation (§ 60–741.21(f) of the existing regulations) to clarify that a contractor is ''not required'' to provide reasonable accommodation to individuals who ''satisfy only the 'regarded as having such an impairment' prong of the definition of disability.'' A new paragraph (ii) was added to paragraph (a)(7) regarding qualification standards (§ 60–741.21(g) of the existing regulations) to incorporate the ADAAA's specific prohibition on the use of qualification standards, employment tests, or other selection criteria that are ''based on an individual's uncorrected vision'' unless the standard, test, or other selection criteria, as used by the contractor, ''is shown to be job-related for the position in question and consistent with business necessity.'' We also proposed adding a sentence to paragraph (a)(9) regarding compensation (§ 60–741.21(i) of the existing regulations) to clarify that it would be impermissible for a contractor to reduce the compensation provided to an individual with a disability because of the ''actual or anticipated cost of a reasonable accommodation the individual needs or may request.'' Lastly, the NPRM added a new subsection (b) to incorporate the ADAAA's prohibition on claims of discrimination because of an individual's lack of disability.

OFCCP received no comments regarding any of these proposed changes. We did, however, receive one comment suggesting we add ''disparate work assignments'' as an example of a method by which an employer may discriminate against an employee with a disability. While we agree with the point, we note that the nondiscrimination requirement of the rule already broadly encompasses ''any other term, condition, or privilege of employment,'' including work assignments, as well as every other aspect of employment. *See* § 60–741.20(i). We therefore decline to make this suggested change, as discrimination in work assignments is already prohibited by the section 503 regulations. Accordingly, OFCCP adopts the revisions proposed in the NPRM into the final rule, except that proposed paragraph (a)(6)(iv) is renumbered paragraph (a)(6)(v) in the final rule.

In addition, the final rule adds two new paragraphs to paragraph (a)(6). The NPRM proposed, in section § 60–741.44(d), that as a matter of affirmative action, the contractor ''must ensure'' that its online job application systems are ''compatible with'' assistive technology used by individuals with disabilities. In response to concerns raised by commenters, OFCCP decided not to include this provision in the final rule and to instead codify its publicly stated position that the nondiscrimination obligation to make reasonable accommodation includes contractors' use of electronic or online job application systems and requires that contractors ensure equal access to job opportunities. Although we are not including the proposed provision in the final rule, OFCCP notes in paragraph (a)(6)(iii) that it is a best practice for contractors to make their online systems accessible and compatible with assistive technologies used by individuals with disabilities. *See* the preamble to § 60–741.44(d), below, for a discussion of the comments. The codification of this position, first stated publicly in Directive 281, *Federal Contractor's Online Application Selection System* (July 10, 2008), on line at *http://www.dol.gov/ofccp/regs/compliance/directives/dir281.htm,* is in paragraph (a)(6)(iii) of the final rule.

Paragraph (a)(6)(vi) of § 60–741.21of the final rule is also new. The NPRM proposed a new § 60–741.45 requiring contractors to develop and implement written procedures for processing requests for reasonable accommodation, and providing minimum elements that contractors' reasonable accommodation procedures must address. After further consideration of the burden associated with this provision, OFCCP has decided not to incorporate this obligation in the final rule. *See* the preamble to § 60–741.45, below, for a discussion of the comments regarding this section. Instead, in new paragraph (vi) to paragraph (a)(6) of § 60–741.21, the final rule notes that using written reasonable accommodation procedures is a best practice that may assist contractors in meeting their reasonable accommodation obligations. This paragraph states that contractors are not required to use such procedures and will not be found in violation of this part for not using such procedures. However, for the benefit of contractors that choose to adopt this best practice, the final rule also contains a new Appendix B that provides guidance for contractors on establishing written reasonable accommodation procedures.

Section 60–741.23 Medical Examinations and Inquiries

The proposed rule modified paragraph (b)(4) to clarify that voluntary medical examinations and activities need not be job-related and consistent with business necessity, and revised paragraph (b)(5) to eliminate the existing paragraph's reference to (b)(4). We received no comments on these proposed changes and adopt them into the final rule as proposed.

Section 60–741.25 Health Insurance, Life Insurance and Other Benefit Plans

The proposed rule revised paragraph (d) by changing the current rule's two references to ''qualified individual with a disability'' to ''individual with a disability,'' as the ability to perform essential functions, inherent in the definition of ''qualified individual,'' is not relevant to insurance considerations. We received no comments on this proposed change and adopt it into the final rule as proposed.

Subpart C—Affirmative Action Program

Section 60–741.40 General Purpose and Applicability of the Affirmative Action Program Requirement

The proposed rule proposed changes to the structure of this section by adding a statement of purpose in new paragraph (a), reordering and recaptioning existing paragraphs (a), (b), (c), and (d), and revising the language of existing paragraph (c), renumbered as paragraph (b)(3) in the final rule, to require that the affirmative action program be reviewed and updated annually ''by the official designated by

the contractor pursuant to § 60–741.44(i).''

• *Paragraph (a): General Purpose*

Proposed paragraph (a) stated that an affirmative action program is a management tool designed to ensure equal employment opportunity and foster employment opportunities for individuals with disabilities. The proposed paragraph also noted that an affirmative action program ''is more than a paperwork exercise,'' and ''includes measurable objectives, quantitative analyses, and internal auditing and reporting systems that measure the contractor's progress toward achieving equal employment opportunity for individuals with disabilities.''

A total of 22 comments were received from disability, veteran and employer associations, and from several individual employers about paragraph (a). Eighteen of the 22 comments expressed support for proposed paragraph (a) as ''helpful,'' and asserted that the proposal would bring the section 503 regulations in line with the regulations implementing the affirmative action obligations of EO 11246 on behalf of minorities and women. These commenters also asserted that paragraph (a) would be strengthened by the addition of language that the AAP is designed to ''effectuate'' and measure the contractor's progress toward achieving equal employment opportunity for individuals with disabilities. In contrast, three comments from employers and an employer association expressed general opposition to the proposed paragraph. One commenter asserted the transportation industry should be exempt. Another commenter stated that the proposed changes to the regulations would impose financial burdens on small and medium sized businesses.

OFCCP agrees with the majority of commenters that proposed paragraph (a) accurately describes the general purpose of contractors' affirmative action program obligations and is consistent with the implementing regulations of EO 11246. We believe it is important to clearly articulate OFCCP's expectation that contractors' affirmative action programs will result in progress toward effectuating equal employment opportunity objectives for individuals with disabilities. With respect to the comment requesting an exemption for the transportation industry, we note that such a request must be made to the Director as provided in § 60–741.4(b) of the regulations and cannot be sought through a public comment on the NPRM. OFCCP therefore declines to grant the requested waiver. Consequently, proposed paragraph (a) is adopted without change.

• *Paragraph (b): Applicability of the affirmative action program*

No comments were received regarding the addition to proposed new paragraph (b)(3), previously paragraph (c), indicating that the affirmative action program shall be reviewed and updated annually ''by the official designated by the contractor pursuant to § 60–741.44(i).'' Proposed paragraph (b) is adopted without change.

No comments were received regarding the reordering of § 60–741.40, and these changes are, likewise, adopted without change.

Section 60–741.41 Availability of Affirmative Action Program

The proposed regulation proposed requiring that, in instances where the contractor has employees who ''telework'' or otherwise do not work at the contractor's physical establishment, the contractor shall inform these employees about the availability of the affirmative action program by means other than a posting at its establishment. This proposal in many respects mirrored the electronic notice requirements set forth in paragraph 4 of the EO Clause at § 60–741.5 of the rule.

A few commenters from the contractor community asserted that the NPRM's inclusion in the AAP of the data required to be collected and analyzed by proposed § 60–741.44(k) could result in the AAP including sensitive, trade secret, or proprietary information. These commenters expressed concern that this information would be available, under proposed § 60–741.41 to any applicant or employee.

In response to these comments, OFCCP revises the language for the final rule to state that ''[t]he full affirmative action program, *absent the data metrics required by § 60–741.44(k),* shall be made available to any employee or applicant . . . '' (revisions emphasized). This balances the interest in confidentiality of the contractor and its employees with the need for transparency regarding the contractor's affirmative action efforts. In addition, as part of the effort to focus the final rule on those elements that are of critical importance to OFCCP, while reducing the burden on contactors where possible, the final rule does not incorporate the NPRM proposals regarding informing off-site individuals about the availability of the contractor's affirmative action program. Rather, the final rule retains the language in the existing § 60–741.41 in that regard.

Section 60–741.42 Invitation to Self-Identify

The NPRM proposed five significant revisions to this section of the regulation: (1) Requiring the contractor to invite all applicants to self-identify as having a disability prior to an offer of employment, using the language and manner prescribed by the Director (paragraph (a)); (2) retaining but modifying the post-offer self-identification invitation requirement in the existing regulation (paragraph (b)); (3) requiring contractors to annually, and anonymously, survey their employees, using the language and manner prescribed by the Director (paragraph (c)); (4) emphasizing that the contractor is prohibited from compelling or coercing individuals to self-identify (paragraph (d)); and (5) requiring contractors to keep all information regarding self-identification as an individual with a disability confidential, and maintained in a data analysis file in accordance with § 60–741.23 of this part. The NPRM also proposed eliminating the sample invitation to self-identify in Appendix B of the existing rule, and invited public comment on potential language for the text of the mandated invitation to self-identify for contractors to use.

OFCCP received 136 comments on this section from a broad array of perspectives, including contractors, law firms, government agencies and individuals, as well as from organizations representing individuals with disabilities, veterans, and contractors. By and large, individuals with disabilities, and disability advocacy organizations were supportive of the three-step approach to voluntary self-identification of disability proposed in the NPRM, while contractors and contractor organizations opposed the proposed approach.

Commenters opposed to the proposed self-identification rubric raised various concerns, including: (1) That the pre-offer invitation to self-identify allegedly conflicts with the Americans with Disabilities Act (ADA); (2) the potential interplay between the pre-offer data collection requirement and the Internet Applicant Rule set forth in regulations for Executive Order 11246; (3) the possibility of inaccurate self-reporting and underreporting; (4) the potential for contractors to be exposed to discrimination claims as a result of having knowledge about the existence of a disability; and (5) cost and burden issues. Additionally, some of those who favored the proposed self-identification approach joined those opposed in questioning the wording and readability

of the proposed invitation to self-identify included in the NPRM preamble. The proposals, the comments regarding these proposals, and the revisions made in the final rule are discussed in turn below (with the exception of some specific comments on burden, which are addressed in the Regulatory Procedures section of the final rule).

• *Paragraph (a): Pre-offer invitation to self-identify*

Paragraph (a) of the NPRM proposed requiring the contractor to invite all applicants to voluntarily self-identify as individuals with disabilities whenever the applicant applies for or is considered for employment. As discussed in the NPRM, the primary reason for proposing a pre-offer invitation to voluntarily self-identify is to collect important data pertaining to the participation of individuals with disabilities in the contractor's applicant pools and workforces. This data would enable the contractor and OFCCP to better monitor and evaluate the contractor's hiring and selection practices with respect to individuals with disabilities. Furthermore, data related to the pre-offer stage of the employment process would be particularly helpful, as it would provide the contractor and OFCCP with valuable information regarding the number of individuals with disabilities who apply for jobs with contractors. In turn, this data would assist OFCCP and the contractor in assessing the effectiveness of the contractor's recruitment efforts over time, and in refining and improving the contractor's recruitment strategies, where necessary.

There was support for this provision, among individuals with disabilities and disability advocacy organizations. One commenter stated that a study conducted by the Cornell University ILR School and the American Association of People with Disabilities had found that applicants are most likely to self-identify as having a disability during the recruitment process. On the other hand, several other commenters expressed concern about this paragraph. Most prominently, commenters were concerned that requiring contractors to invite applicants to reveal whether they have a disability pre-offer could expose contractors to an increased risk of liability under the ADA, and that pre-offer self-identification conflicted with that statute's general ban on pre-offer inquiries about disability and guidance issued by EEOC and OFCCP.

OFCCP believes that concerns regarding the possibility of a conflict with the ADA or related guidance are based on an incorrect reading of the ADA and its regulations. As discussed in the NPRM, the ADA and section 503 regulations specifically permit the contractor to conduct a pre-offer inquiry about disability if it is ''made pursuant to a Federal, state or local law requiring affirmative action for individuals with disabilities,'' such as section 503. Furthermore, EEOC has clearly stated that ''collecting information and inviting individuals to identify themselves as individuals with disabilities as required to satisfy the affirmative action requirements of section 503 of the Rehabilitation Act is not restricted'' by the ADA or EEOC's implementing regulations. *See* 29 CFR 1630.13, 1630.14 and its Appendix; 41 CFR 60–741.42. EEOC has reiterated this exception to the prohibition on pre-offer inquiries about disability in sub-regulatory technical assistance guidance.[17] For example, EEOC's Title I Technical Assistance Manual, online at *www.askjan.org/LINKS/ADAtam1.html,* states:

> 5.5(c) *Exception for Federal Contractors Covered by Section 503 of the Rehabilitation Act and Other Federal Programs Requiring Identification of Disability.* Federal contractors and subcontractors who are covered by the affirmative action requirements of Section 503 of the Rehabilitation Act may invite individuals with disabilities to identify themselves on a job application form or by other pre-employment inquiry, to satisfy the affirmative action requirements of Section 503 of the Rehabilitation Act. Employers who request such information must observe Section 503 requirements regarding the manner in which such information is requested and used, and the procedures for maintaining such information as a separate, confidential record, apart from regular personnel records.

The ADA, thus, clearly allows the type of pre-offer self-identification invitation proposed in the NPRM.

Some commenters were also concerned that obtaining information about the disability status of an applicant could potentially expose contractors to claims of discrimination by disappointed job seekers. These commenters stated that obtaining information that an applicant has a disability would give them ''knowledge'' of the existence of a disability—a necessary component to any disparate treatment discrimination claim—and that the pre-offer invitation requirement eliminates an important protection for contractors.

OFCCP acknowledges that knowledge of the existence of a disability, like knowledge of a person's race, ethnicity, or gender, which are regularly self-reported and collected by contractors, is a component of an intentional discrimination claim. However, to find intentional discrimination it must be *proven* not only that the contractor knew that a person had a disability (or was of a particular race, ethnicity, or gender), but that the contractor treated the person less favorably because of his or her disability (or race, ethnicity, or gender). We note, moreover, that contractors have long had knowledge of the disabilities of applicants who have visible disabilities, such as blindness, deafness, or paraplegia, but that OFCCP has had no means of knowing of their presence in the applicant pool or their experience in the application and selection process. Requiring contractors to invite pre-offer self-identification will help fill this void. Lastly, OFCCP points out that, generally, self-identification information will be obtained by, and reside with, Human Resources (HR) offices and will not be provided to interviewing, testing, or hiring officials, as it is confidential information that must be kept separate from regular personnel records. This will help ensure that these officials do not, in fact, have knowledge of which applicants have chosen to self-identify as having a disability.

Several commenters were concerned that self-identification would be unreliable in truly measuring the number of individuals with disabilities in the applicant pool, as many applicants will not self-identify or will do so incorrectly. Indeed the same study cited above showed that at best, only about 50 percent of those with disabilities were likely to respond. Commenters also asked OFCCP to clarify whether contractors would be allowed to identify an individual as having a disability who does not self-identify. These commenters expressed concern that not permitting contractors to identify applicants with known or obvious disabilities who do not self-identify as having a disability, would only increase the degree of underreporting, make it more difficult for contractors to meet the NPRM's proposed utilization goal, and possibly result in erroneous findings that the goal has not been met.

OFCCP concedes that there likely will be significant underreporting, especially at the beginning, meaning that self-reported data regarding disability will not give a full picture of the applicant

[17] To assuage any remaining doubt on this matter, OFCCP obtained a letter from EEOC's Office of Legal Counsel in advance of the publication of this rule affirming that the pre-offer invitation to self-identify as an individual with a disability required by this final rule is permissible under the ADA and its implementing regulations. This letter will be posted on the OFCCP Web site.

pool. We disagree, though, that this is alone sufficient reason to eliminate the pre-offer invitation. While not perfect, the data that will result from the pre-offer invitation requirement will provide the contractor and OFCCP with important data that does not now exist pertaining to the participation of individuals with disabilities in the contractor's applicant pools. The hope is that this will allow the contractor and OFCCP to better identify, monitor, and evaluate the contractor's hiring and selection practices with respect to individuals with disabilities. We also believe that the response rate to the invitation to self-identify will increase over time, as people become accustomed to the invitation and workplaces become more welcoming to individuals with disabilities.

With regard to the question of contractors identifying individuals with disabilities who do not self-identify, we note that contractors subject to Executive Order 11246 have long been permitted to identify the race, gender, and ethnicity of applicants who do not voluntarily self-identify, but may not guess or speculate when so doing. *See Frequently Asked Questions for the Employer,* online at *http://www.dol.gov/ofccp/regs/compliance/faqs/emprfaqs.htm#Q10.* OFCCP believes that a comparable interpretation of the section 503 voluntary self-identification provisions is appropriate. The final rule requires contractors to maintain several quantitative measurements regarding individuals with disabilities who have applied or been hired for jobs (§ 60–741.44(k)). Contractors are also required to annually assess their utilization of individuals with disabilities in each job group against a national utilization goal, and to take specific steps to ascertain the existence of, and correct, any impediments to equal employment opportunity if the goal is not met (§ 60–741.45). In light of these requirements and the overall objective of measuring progress toward equal employment opportunity for people with disabilities, it is important that the reporting of disability demographic information be as accurate as possible. OFCCP therefore believes that it is appropriate to allow contractors to identify an individual as having a disability for the purposes of §§ 60–741.44(k) and 60–741.45, if the individual does not voluntarily self-identify when: (1) The disability is obvious (e.g., someone is blind or missing a limb) or (2) the disability is known to the contractor (e.g., an individual says that he or she has a disability or requests reasonable accommodation for a disability).

OFCCP believes that this approach strikes the appropriate balance between the privacy concerns of those with disabilities and the need for reporting information to be as accurate as possible. Pursuant to the final rule, disability demographic information must be kept confidential and maintained in a data analysis file. Such information may not be included in an individual's personnel file. Contractors are also reminded that they may not guess or speculate when identifying an individual as having a disability. Nor may they assume that an individual has a disability because he or she ''looks sickly'' or behaves in an unusual way.

Another concern raised by several commenters is that the requirement to collect and maintain self-identification data from applicants does not comport with the Internet Applicant Rule found in the regulations to Executive Order 11246. *See* 41 CFR 60–1.3, 1.12. These commenters recommended that OFCCP add a definition of ''applicant'' and ''Internet applicant'' to this final rule and ensure that wherever in the regulations the term ''applicant'' is used, the term ''Internet applicant'' applies as well. OFCCP did not propose to add a definition of ''applicant'' or ''Internet applicant'' in its NPRM. Therefore, the final rule does not do so. However, the discussion that follows provides guidance about how contractors may invite Internet applicants to self-identify as an individual with a disability under section 503 in a manner consistent with demographic collection requirements under the Executive Order Internet Applicant Rule. Under this final rule, contractors will be able to invite applicants to self-identify as an individual with a disability at the same time the contractor solicits demographic data on applicants under the Executive Order 112146 Internet Applicant Rule. For Internet applicants this generally will be after the contractor has determined the individual has been screened for basic qualifications and meets other requirements for being an Internet applicant.

Therefore, this rule does not require contractors to change their existing systems for screening Internet applicants so long as those systems comply with existing law.

By way of background, OFCCP's longstanding definition of ''applicant'' is contained in agency subregulatory guidance. See the Uniform Guidelines on Employee Selection Procedures (UGESP), Question and Answer 15, 44 FR 11996 (March 2, 1979).[18] According to that guidance, in general, an applicant is a person who has indicated an interest in being considered for hiring, promotion, or other employment opportunities, either in writing (by completing an application form or submitting a resume) or orally, depending upon the contractor's practice. The Internet Applicant Rule came into effect in February 2006, and pertains to recordkeeping by contractors on Internet-based hiring processes and the solicitation of race, gender, and ethnicity data, in conjunction with their recordkeeping obligations under the Executive Order implementing regulation at § 60–1.12. Under § 60–1.12, contractors' recordkeeping obligations include maintaining expressions of interest through the Internet that the contractor considered for a particular position, as well as applications and resumes. Contractors also are required to maintain, where possible, data about the race, sex, and ethnicity of applicants and Internet Applicants, as appropriate. The term Internet Applicant is defined in § 60–1.3 and generally means an individual who: (1) Submitted an expression of interest in employment through the Internet; (2) is considered by the contractor for employment in a particular position; (3) possessed the basic qualifications for the position; and (4) did not remove himself or herself from consideration.

OFCCP has taken into account contractors' concerns about inviting self-identification for applications submitted electronically, particularly for those contractors who create resume databases which they mine for applicants when they have a job opening. In recognition of these concerns, and consistent with EO 13563's focus on simplifying and harmonizing requirements, OFCCP will permit contractors to invite applicants to self-identify as an individual with a disability at the same time as contractors collects the demographic data for applicants required under Executive Order 11246.

The Internet Applicant rule under EO 11246 generally allows contractors to do a ''first cut'' and screen out individuals whom they believe do not meet the

[18] Question and Answer 15 reads: ''Q. What is meant by the terms ''applicant'' and ''candidate'' as they are used in the Uniform Guidelines? A: The precise definition of the term ''applicant'' depends upon the user's recruitment and selection procedures. The concept of an applicant is that of a person who has indicated an interest in being considered for hiring, promotion, or other employment opportunities. This interest might be expressed by completing an application form, or might be expressed orally, depending upon the employer's practice.''

basic qualifications of the position—without capturing or retaining any demographic documentation on these individuals. There is the concern, however, that in doing this ''first cut'' contractors may be engaging in discrimination (e.g., if they are incorrectly applying their basic qualifications, or the basic qualifications have an adverse impact on a protected group and are not job-related and consistent with business necessity), and by not keeping the demographic information on the individuals they screened out they are eliminating evidence to prove that discrimination may be occurring. This concern is even greater in the section 503 context because these Executive Order ''first cuts'' are not designed to take into account the possibility that someone with a disability might be able to meet the qualification standard or perform the essential functions of the job with the provision of a reasonable accommodation.

Under existing law, it is unlawful under section 503 to use qualification standards, including at the ''basic qualifications'' screen stage, that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard is shown to be job-related for the position in question and consistent with business necessity. Selection criteria that concern an essential function may not be used to exclude an individual with a disability if that individual could satisfy the criteria with a reasonable accommodation. *See* § 60–741.21(a)(7). These requirements, therefore, apply when contractors design and implement their ''basic qualifications'' screens. In addition, after the initial screening for ''basic qualifications,'' contractors must also ensure that they are complying with their duty to evaluate all applicants for jobs based on the applicant's ability to perform the essential functions of the job with or without reasonable accommodation.

OFCCP will treat the recordkeeping provisions of section 503 at § 60–741.80 in the same manner as the recordkeeping requirements under Executive Order 11246 at 41 CFR 60–1.12 as applied to Internet applicants. These recordkeeping requirements are not new and will impose no additional burden on contractors. The record retention requirements exist independently of whether and when individuals are invited to self identify under section 503.

The section 503 recordkeeping provisions require contractors to retain personnel or employment records made or kept by the contractor for one or two years depending on the size of the contractor and contract. Those records include the records contractors are required to maintain under 41 CFR 60–1.12. Section 60–1.12 requires contractors to maintain all expressions of interest through the Internet or related technologies considered by the contractor for a particular position, such as on-line resumes or internal resume databases, and records identifying job seekers contacted regarding their interest in a particular position. For purposes of recordkeeping with respect to internal resume databases, the contractor also must maintain a record of each resume added to the database, a record of the date each resume was added to the database, the position for which each search of the database was made, and corresponding to each search, the substantive search criteria used and the date of the search. For purposes of recordkeeping with respect to external databases the contractor must maintain a record of the position for which each search of the database was made, and corresponding to each search, the substantive criteria used, the date of the search, and the resumes of job seekers who met the basic qualifications for the particular position who are considered by the contractor. As with records retained under EO 11246 regulations, these records are to be maintained regardless of whether the job seeker is an Internet applicant.

If a contractor has a practice of welcoming unsolicited resumes regardless of current job openings, OFCCP will permit the contractor to invite self-identification only of those considered for employment, consistent with requirements under Executive Order 11246 and its regulations at 41 CFR 60–1.3 and 60–1.12. The obligation to invite self-identification is triggered by considering the job seeker for employment, not by including the resume in the resume database. For example, if a contractor has an internal resume database with 1,000 resumes and is looking for applicants to fill a job as an engineer in Omaha, the contractor could limit the pool of resumes under review by applying a ''basic qualifications'' screen that identifies those who have a masters degree in electrical engineering, at least three years of experience as an electrical engineer, and further limit the review to resumes submitted within the last three months. If that search produced a pool of 30 job seekers, the contractor might narrow the pool further by asking the 30 job seekers if they are interested in being considered for the job. If 10 job seekers indicate interest in being considered, they would be applicants and the contractor would invite the 10 job seekers to self-identify. In contrast, if a contractor has a practice of not accepting unsolicited resumes, job seekers who submit an unsolicited resume are not applicants. Accordingly, the contractor would have no obligation to invite them to self-identify as an individual with a disability.

It is also possible that potential and qualified job applicants with disabilities may not apply for jobs posted on contractors' online application systems because, for example, they are not aware that selection criteria concerning essential functions may not be used to exclude them if they can satisfy the criteria with a reasonable accommodation. Contractors seeking to fill jobs should seek to attract the best possible pool of applicants; this includes applicants with disabilities who could perform the job with or without reasonable accommodations. OFCCP notes that a best practice for ensuring a diverse, qualified pool of applicants for contractors using online application systems is posting a notice on their human resources Web page or online application portal that notifies job applicants that may need a reasonable accommodation to perform the functions of a job that they are entitled to one under the ADAAA. This best practice encourages qualified individuals with disabilities to pursue job vacancies, and provides contractors with access to a wide range of skills and talents.

In providing this guidance as to application of the self-identification requirement under section 503, contractors should be able to operate as they have been using their existing systems and processes because this rule does not change how contractors handle Internet applicants. This should allow contractors to avoid creating separate data collection and storage systems as many contractors feared. For those contractors that need further help determining which individuals must be given a pre-offer self-identification inquiry, OFCCP is available to provide technical guidance.

• *Paragraph (a)(1): Requirement that the contractor invite self-identification using the language and manner prescribed by the Director*

Paragraph (a)(1) of the NPRM proposed requiring contractors to invite applicants to self-identify using language prescribed by the Director and provided a sample of what that language might look like for public comment. Several commenters responded, the majority of which expressed support for

the proposed text, but suggested that modifications be made to it.

Commenters asserted that the proposed language was too long, wordy and complex. Many of these commenters offered suggestions to simplify the language, thereby increasing the likelihood that the invitation would be read, understood and responded to. Commenters also suggested that we state that self-identifying is ''voluntary'' before, rather than after, individuals are asked to identify their disability status. OFCCP agrees with these criticisms and is developing a form that will address them. When finalized, the form will be available on the OFCCP Web site.

Some commenters opposed the use of uniform language for the self-identification invitation, arguing that uniform language will not allow contractors flexibility to modify the self-identification language as necessary based on geographic location. They recommended that we provide a framework with suggested language and allow contractors the flexibility to design invitations they believed would maximize response rates. Other commenters expressed a willingness to use self-identification language prescribed by OFCCP, but only if the EEOC has approved the inquiry. As noted in the NPRM, OFCCP believes that the use of uniform language is needed to ensure consistency in all self-identification invitations, and to reassure individuals with disabilities that the self-identification request is routine and executed pursuant to obligations created by OFCCP. Standardized language will also minimize any burden to contractors associated with this responsibility, and will facilitate contractor compliance. With respect to the concern about EEOC approval, pursuant to the rulemaking process, both the NPRM and this final rule were coordinated with EEOC, among other agencies, prior to their publication. EEOC will be asked for input in the process that Secretary uses to finalize the form.

Finally, few commenters commented on the portion of the text inviting applicants to request any needed accommodation in the application process. Those who did suggested that we either separate language concerning reasonable accommodation from the invitation, or include clarification that applicants are not being asked to disclose accommodations they need to perform the job they are seeking. We will address this issue when finalizing the language of the form.

• *Paragraph (b): Post-Offer Invitation to Self-identify*

Paragraph (b) of the NPRM proposed modifying, but retaining, the current rule's requirement that contractors invite individuals, after an offer of employment is extended, but before the applicant begins work, to voluntarily self-identify as an individual with a disability. As explained in the NPRM, we proposed to retain this requirement, in addition to the new pre-offer invitation requirement, so that individuals with hidden disabilities who fear potential discrimination if their disability is revealed prior to receiving a job offer will, nevertheless, have the opportunity to provide this valuable data. We received no comments on this paragraph. Accordingly, the language in the NPRM is adopted as proposed.

• *Paragraph (c): Annual Employee Survey*

Paragraph (c) proposed requiring that, on an annual basis, contractors invite all of their employees to voluntarily and anonymously self-identify as having a disability using the language and manner prescribed by the Director.

We received several comments that addressed whether the annual employee survey should be anonymous. Some of these commenters generally supported an anonymous survey. These commenters asserted that having the survey be anonymous would permit contractors to collect the data necessary to evaluate the effectiveness of their affirmative action efforts while ensuring that applicants and employees with disabilities are protected from discrimination. Others contended that an anonymous survey would be critical to increasing the likelihood that individuals would choose to self-identify.

Several other commenters opposed the anonymity requirement, arguing that it would impede the ability of contractors to comply with the NPRM's proposed requirements for collecting and analyzing data regarding individuals with disabilities. These commenters pointed out that contractors would be unable to comply with the goal requirement of proposed § 60–741.46 to determine their utilization of individuals with disabilities by job group from anonymous self-identification forms. Such assessments would require an individual's name and other identifying information. Moreover, without identifying information, it would not be possible for contractors to know whether any of the employees who self-identified had self-identified previously, leading to the possibility of double counting employees with disabilities.

OFCCP agrees that identifying information is needed in order for contractors to assess their utilization of individuals with disabilities by job group. We have, accordingly, revised paragraph (c) to remove the word ''anonymous.'' However, as noted previously, disability demographic information must be kept strictly confidential, apart from regular personnel files. We have also recaptioned paragraph (c) as ''Employees'' and removed the word ''survey.'' This clarifies that contractors are to provide employees with the same invitation to voluntarily self-identify as an individual with a disability that is provided to applicants, and do not need to canvass their employees in some other fashion.

Divergent views were also expressed by commenters regarding the proposal to invite employees to voluntarily self-identify on an annual basis. Commenters supporting the annual requirement contended that it would provide an opportunity for employees who have become disabled since employment, or who were hesitant to self-identify during the hiring process, to be counted for affirmative action purposes. They also asserted that an annual employee survey would provide contractors with current information and enable them to measure the impact of changes in their hiring and employment practices.

Commenters opposed to the annual survey requirement contended that it would be superfluous in light of the requirement in the existing regulations for contractors to advise employees of their right to self-identify at any time. They also argued that it is redundant to require contractors to survey all employees annually in addition to the pre- and post-offer invitations to self-identify. These commenters argued that a single solicitation of applicants post-offer would be more appropriate, and would provide an opportunity for interactive discussions about reasonable accommodation. Other commenters opposed to the annual survey asserted that the inclusion of individuals who become disabled after becoming employed would not help contractors in analyzing and improving recruiting and outreach efforts. These commenters also contended the annual survey would deter employees from participating in the interactive reasonable accommodation process, and make employees suspicious of management's persistence in asking them to identify their disability status, making them less likely to self-identify.

Finally, some commenters opposed to the annual employee survey proposed

alternative ways to achieve the desired result. For example, one commenter recommended that we allow the contractor to post the invitation to self-identify in a conspicuous location and allow employees to self-identify at any time, rather than once per year, and require the contractor to record the data annually. Another proposal was to reduce the frequency of the survey to every two or three years instead of annually, or to make the annual survey optional, rather than mandatory.

As stated in the NPRM, because baseline data regarding the number of individuals with disabilities in the contractor's workforce is not available, it is important to provide all employees with an initial opportunity to self-identify. It is also important that contractors continue to have the most accurate data possible in order to be able to conduct meaningful self-assessments of their employment practices and recruitment efforts. This is especially important in the disability context because the status of employees may change over time and the snapshot of the makeup of the contractor's workforce may become outdated for planning and self-assessment purposes. In light of both the importance of employee data and the concerns raised by commenters, the final rule revises the requirement to invite employee self-identification as follows: The contractor is to invite employee self-identification during the first year it becomes subject to the requirements of this section, and at five year intervals, thereafter. At least once during the years between each invitation, the contractor must remind their employees that they may voluntarily update their disability status at any time.

• *Paragraph (d): Prohibits contractor from compelling or coercing individuals to self-identify*

Proposed paragraph (d) emphasized that the contractor is prohibited from compelling or coercing individuals to self-identify. While a majority of commenters supported this proposal, a few commenters opposed it. Commenters opposing this paragraph argued that the adoption of any utilization goal should be predicated upon mandatory self-identification for applicants and employees to eliminate inaccurate reporting.

The language of the NPRM is adopted into the final rule as proposed. OFCCP notes that self-identification for affirmative action purposes has always been voluntary under section 503, and is, likewise, voluntary with regard to race, gender, and ethnicity under Executive Order 11246, which OFCCP also enforces. While the final rule adds a goal requirement to section 503 for the first time, we find this an insufficient reason to mandate self-identification by applicants and employees. Executive Order 11246 has long had a goal requirement, but has never mandated self-reporting by applicants or employees. Moreover, such a mandate would be virtually unenforceable as many disabilities are hidden and would not be known to the contractor. In addition, as previously discussed, OFCCP will permit contractors to identify as individuals with disabilities applicants and employees with known or obvious disabilities who decline to voluntarily self-identify. Permitting such identification by contractors for affirmative action purposes, we believe, adequately addresses the concerns of commenters seeking a mandatory self-identification requirement. OFCCP, therefore, adopts paragraph (d) into the final rule as proposed.

• *Paragraph (e): Requirement that information concerning disability be kept confidential*

Proposed paragraph (e) emphasized that all information regarding self-identification as an individual with a disability shall be kept confidential and maintained in a data analysis file in accordance with § 60–741.23 of this part.

Some commenters offered recommendations to modify paragraph (e). Commenters suggested that a clear definition of what constitutes a ''data analysis file'' be provided and include clarification regarding who may have access to the information in such a file. It was also suggested that OFCCP expand the language of paragraph (e) to state that self-identification information should not be placed in an individual's personnel file. Still others suggested that self-identification information should be kept in the confidential medical file required by the ADA and the Genetic Information Nondiscrimination Act (GINA), and the implementing regulations for those statutes. OFCCP believes that paragraph (e) is sufficiently descriptive to instruct contractors to maintain self-identification information in a single confidential file maintained solely for the purpose of conducting data analysis required by section 503 and this part, and that a definition of ''data analysis file'' is not necessary. As section 503 already prohibits the maintenance of disability-related information in personnel files, there is no need to so state in this paragraph. *See* 41 CFR 60–741.23(d). Lastly, OFCCP rejects the suggestion that contractors be permitted to maintain self-identification information in employees' individual confidential medical files. This would impede contractors' ability to use the data for the collective analysis for which the data are collected, and to provide the self-identification information to OFCCP when requested to do so.

Section 60–741.44 Required Contents of Affirmative Action Programs

The proposed rule contained significant revisions to several paragraphs of this section. These proposals, the comments to these proposals, and the revisions made to the final rule are discussed below.

A total of 133 comments addressed the required contents of a section 503 affirmative action program (AAP). Commenters included disability, employer, veterans and other groups and associations, contractors, law firms, government offices, and individuals.

• *Paragraph (a): Affirmative action policy statement*

Proposed § 60–741.44(a) requires contractors to state their equal employment opportunity policy in the company's AAP. The NPRM proposed revising the second sentence of the existing paragraph to clarify the contractor's duty to provide notice of employee rights and contractor obligations in a manner that is accessible and understandable to persons with disabilities. It also proposed revising the parenthetical at the end of the sentence, replacing the outdated suggestion of ''hav[ing] the notice read to a visually disabled individual'' as an accommodation with the suggestion to provide Braille, large print, or other versions of the notice that allow persons with disabilities to read the notice themselves. The NPRM also proposed revising paragraph (a) to require the contractor's chief executive officer to clearly articulate his or her support for the company's AAP in the policy statement.

OFCCP received sixteen comments on these proposed revisions, most of which supported the changes. Commenters noted that the requirement for contractors to provide accommodations such as large print, Braille and other means to enable individuals with visual impairments to read for themselves brings the regulation in line with current practice under the ADA and Rehabilitation Act.

An employer association questioned the feasibility of obtaining the required notice in Braille. This comment also stated that the proposed requirement would impose an insurmountable burden because providing notices that are understandable to an individual with a disability requires identification, understanding, and anticipation of the

varying types and degrees of learning disabilities that individuals may possess.

OFCCP declines to revise § 60–741.44(a) with regard to the provision of alternative formats that are accessible and understandable to persons with disabilities. The proposed wording indicates that the listed alternative formats are simply examples of reasonable accommodation that may be needed by particular individuals; there may be other ways to comply with this requirement, depending on the specific circumstances. With regard to the concern that there may be varying types and degrees of learning disabilities requiring accommodation, OFCCP notes that paragraph (a) is consistent with the existing section 503 reasonable accommodation obligation that requires contractors to accommodate the specific limitations of their applicants and employees with disabilities, unless to do so would impose an undue hardship on its operations. *See* 41 CFR 60–741.21(f).

OFCCP, however, agrees with commenters' suggestion to revise the language of paragraph (a) to clarify the level of company leadership that must demonstrate their support for the company's AAP. The purpose of this paragraph is to ensure that the statement of policy communicates to employees that support for the AAP goes to the very top of the contractor's organization. For contractors with foreign-based parent companies, it is appropriate to require the company leadership that is based in the United States to express that support. Therefore, § 60–741.44(a) of the final rule is revised to state ''[t]he policy statement shall indicate the top United States executive's (such as the Chief Executive Officer or the President of the United States Division of a foreign company) support for the contractor's affirmative action program . . .''

• *Paragraph (b): Review of personnel processes*

The NPRM proposed three changes to this paragraph. First, it required that the contractor review its personnel processes on at least an annual basis, rather than ''periodically,'' to ensure that its obligations are being met.

Second, proposed paragraph (b) mandated certain specific steps (based on existing Appendix C) that the contractor must take, at a minimum, in the review of its personnel processes, including: (1) Identifying the vacancies and training programs for which protected applicants and employees were considered; (2) providing a statement of reasons explaining the circumstances for rejecting individuals with disabilities for vacancies and training programs and a description of considered accommodations; and (3) describing the nature and type of accommodations for individuals with disabilities who were selected for hire, promotion, or training programs.

Third, the NPRM proposed to require that the contractor ''ensure that its use of information and communication technology is accessible to applicants and employees with disabilities.'' A footnote citing resources related to technological accessibility, such as the Web Content Accessibility Guidelines (WCAG 2.0) and the regulations implementing the accessibility requirements for Federal agencies prescribed in section 508 of the Rehabilitation Act was also included.

OFCCP received 56 comments regarding these proposals. Some supported an annual review of personnel processes, while other commenters suggested a less frequent review, occurring every three or five years, would be sufficient. Several comments asserted that significant burden and costs would result from the proposed requirement, much greater than that calculated by OFCCP in the NPRM's Regulatory Procedures section. The comments also asserted that promotion and training opportunities, unlike hiring, are not as readily distinguishable for individual candidates. Such opportunities may be available to all employees, take a number of different forms, and may be noncompetitive. These commenters further objected to the requirement to create and maintain a statement of reasons for every instance in which an individual with a disability is denied a position or training as tantamount to requiring a drafted legal defense before any claims were brought, and warned that it could serve to ''drive underground'' the real reason for rejection. Lastly, the comments raised confidentiality concerns and cited difficulties the proposed requirement would create in terms of recordkeeping and access to human resource information systems currently used by contractors. The comments asserted that it would therefore be unreasonable to make the proposed procedures mandatory.

Based on the comments submitted, and questions about the efficacy of these requirements toward the end of increasing employment opportunities for individuals with disabilities, OFCCP does not adopt the proposal as drafted in the NPRM. Instead, the final rule retains the language in existing § 60–741.44(b) that contractors shall review their personnel processes ''periodically,'' but eliminates existing Appendix C. However, in so doing, OFCCP reiterates that existing paragraph (b) contains several requirements—including ensuring that its personnel processes are careful, thorough, and systematic; ensuring that these processes do not stereotype individuals with disabilities; and designing procedures that facilitate a review of the implementation of these requirements—that continue to apply to contractors. OFCCP will vigorously enforce these requirements.

With respect to the proposed technological accessibility requirement, some disability advocacy groups supported the proposed requirement. However, other commenters asserted that this requirement was too vague, and asked for clarification as to what they would have to do to comply and how OFCCP intended to enforce it. These commenters also asserted that there is not a single, accepted standard of ''accessibility,'' that technology is constantly changing, and that it could be tremendously expensive and time-consuming for contractors to have to ensure on an annual basis that all of its information and communication technology are fully accessible and technologically up-to-date.

In response to these comments OFCCP has revised and clarified paragraph (b) in the final rule. It requires that the ''contractor shall ensure'' that applicants and employees with disabilities have ''equal access to its personnel processes, including those implemented through information and communication technologies.'' The final rule requires, further, that contractors must provide ''necessary reasonable accommodation to ensure applicants and employees with disabilities receive equal employment opportunity in the operation of personnel processes.'' Contractors are also ''encouraged'' to make their information and communication systems accessible, even in the absence of a specific accommodation request. To assist contractors in making their systems accessible, the final rule retains the footnote highlighting the Web Content Accessibility Guidelines (WCAG 2.0) and the regulations implementing the Federal sector accessibility requirements of section 508 of the Rehabilitation Act as examples of readily available accessibility resources.

• *Paragraph (c): Physical and mental qualifications*

The NPRM proposed three substantive revisions to this paragraph. First, it required that all physical and mental job qualification standards must be reviewed and updated, as necessary, on an annual, as opposed to a

''periodic,'' basis. Second, paragraph (c)(1) of the NPRM required the contractor to document its annual review of physical and mental job qualification standards. Third, paragraph (c)(3) of the NPRM required the contractor to timely document those instances in which it believes that an individual would constitute a ''direct threat'' as understood under the ADA and defined in these regulations, and to maintain this document as set forth in the recordkeeping requirements in § 60–741.80.

OFCCP received 37 comments addressing the proposal to require annual reviews of physical and mental job qualification standards. Comments from disability and other associations, as well as a few law firms, supported the annual review requirement. Some of these commenters stated that all qualifications that needlessly screen out people with disabilities should be reviewed including such qualifications as having a driver's license. Contrasting comments from contractors, employer associations, and other law firms stated that the requirement to review physical and mental qualifications of all jobs with openings during the AAP period would be burdensome because of the number of job openings, variety of jobs, time, staff and needed changes to HR systems. Several comments suggested less burdensome approaches. Most of these comments suggested reviewing the qualifications only when it is a new position or a significant change in the job occurs. Other commenters suggested that reviews occur on a three or five year basis.

With regard to the second proposed change in paragraph (c)(1) requiring that the contractor document its job qualification standard reviews, commenters questioned what evidence will be necessary to demonstrate that a review has been completed, including whether a job analysis and validation are needed. One of these comments noted that the proposed regulation lacks clarity as to how job-relatedness is evidenced and asserted that the ADA practice of examining ''essential functions'' of a job should be sufficient.

Finally, the third proposed change requires the contractor to timely document those instances in which it believes that an individual would constitute a ''direct threat.'' Comments on this proposal were limited. One comment asserted that this proposed requirement would be burdensome and other comments expressed concern that contractors may become overzealous in documenting incidents involving persons with disabilities. In contrast, another commenter stated that documentation should be subject to disclosure to the individual.

We note at the outset that the existing regulation clearly prohibits the contractor from using a job qualification standard that screens out or tends to screen out an individual or class of individuals on the basis of disability unless the standard is job-related and consistent with business necessity. *See* 41 CFR 60–741.21(g), 60–741.44(c)(2). This is a primary reason that the existing regulations require the contractor to periodically review its physical and mental job qualification standards. To the extent that contractors are not currently conducting these reviews at all, they are already in violation of the existing regulations.

With this in mind, and taking into account commenters' concerns about the burden associated with the proposal, the final rule does not adopt the proposal as drafted in the NPRM. Instead, the final rule retains the language in existing § 60–741.44(c), requiring that contractors adhere to a schedule for the ''periodic review of all physical and mental job qualification standards,'' and providing that contractors have the burden to demonstrate that qualification standards that tend to screen out qualified individuals with disabilities are job-related and consistent with business necessity. The burden analysis in the Regulatory Procedures section of the final rule has been amended accordingly.

• *Paragraph (d): Reasonable accommodation to physical and mental limitations.*

The NPRM proposed a single revision to this provision of the regulations. The proposed change required the contractor to ensure that its electronic or online job application systems are compatible with assistive technology commonly used by individuals with disabilities, such as screen reading and speech recognition software.

Thirteen comments were received on this proposed change. One of these comments asserted that OFCCP should require adoption of a universal design approach or of a regulatory scheme such as section 508. Commenters who opposed the requirement spoke to the potential burden the requirement would impose. One comment submitted by an employer association asserted that OFCCP's proposed change is premature and pointed out that the Department of Justice and the Access Board are currently examining requiring Web site and technology accessibility and the availability of processes or technology to facilitate such access.

OFCCP has revised and clarified this requirement in the final rule, and determined that, as revised, this obligation is more appropriately addressed in § 60–741.21(a)(6)(iii) as part of the fundamental, nondiscrimination reasonable accommodation obligation of all contractors subject to section 503. This revised provision makes clear that the reasonable accommodation obligation extends to contractors' ''use of electronic or online application systems.'' A contractor using such a system must provide necessary reasonable accommodation to ''ensure'' that qualified individuals with disabilities who are unable to fully utilize the system are provided ''equal opportunity to apply and be considered for all jobs.''

• *Paragraph (f): Outreach and recruitment efforts*

Existing paragraph (f) requires contractors to engage in outreach and recruitment of individuals with disabilities and suggests a number of outreach and recruitment efforts that the contractor could undertake to comply with this obligation. The NPRM proposed several changes to this paragraph: proposed paragraph (f)(1)(i) required that contractors promptly list all of their employment opportunities, with limited exceptions, with the nearest Employment One-Stop Career Center; paragraph (f)(1)(ii) required that the contractor enter into three linkage agreements with various entities to serve as sources of potential applicants with disabilities; paragraph (f)(2) included a list of additional suggested outreach and recruitment efforts that contractors could take; paragraph (f)(3) proposed a new requirement that the contractor conduct an annual self-assessment of their outreach and recruitment efforts; and paragraph (f)(4) clarified the contractor's recordkeeping obligations with regard to these outreach and recruitment efforts.

Overall, OFCCP received 112 comments on the proposed changes to § 60–741.44(f). While a number of commenters praised OFCCP's efforts to strengthen Federal contractors' recruitment and outreach efforts, the majority of the comments expressed concerns about the proposed requirements. Commenters raised a variety of issues, including concerns about the burden associated with the proposed mandatory requirements, technical questions regarding the drafting of the proposed rule language, and the utility of some of the recommended provisions. We address the proposals in each subparagraph, and

the comments to these proposals, in turn below.

Commenters voiced several concerns with the (f)(1)(i) proposed requirement that contractors promptly list all of their employment opportunities with the nearest Employment One-Stop Career Center. Commenters stated that the requirement to provide information about each job vacancy in the manner and format required by the appropriate One-Stop would be extremely burdensome because the One-Stops have a wide variety of different manners of submission and required formats. Some commenters suggested that OFCCP should establish a uniform format and manner for job listings or reestablish the national ''job bank'' that previously existed under VEVRAA.

As stated above, paragraph (f)(1)(ii) required contractors to enter into three linkage agreements with three different entities: Specifically, the proposal required linkage agreements with (1) the State Vocational Rehabilitation Agency nearest the contractor's establishment or a local organization listed in the Social Security Administration's Ticket to Work Employment Network Directory; (2) at least one of several other listed organizations and agencies for purposes of recruitment and developing training opportunities; and (3) an organization listed in the Employer Resources section of the National Resource Directory (NRD), an online collaboration among the Departments of Labor, Defense, and Veterans Affairs. Commenters expressed concern about the administrative and financial burden related to the linkage agreement requirement. Several commenters also opined that requiring contractors to have three linkage agreements per establishment could result in a Federal contractor with multiple establishments having to enter into hundreds of linkage agreements. Commenters also questioned the capacity of some of the organizations mentioned in the proposed rule to enter into a significant number of linkage agreements with contractors. Additionally, we received comments from contractors that were already party to linkage agreements with various groups. These commenters asked whether they would need to enter into three additional linkage agreements, or if their existing agreements could be used to satisfy the requirement. Some commenters stated that contractors should be allowed the flexibility to develop relationships with potential resource organizations that may better meet their needs but that were not among those listed in the NPRM. Finally, many commenters suggested adding other specific recruitment sources to those listed in the NPRM or on the NRD, such as State developmental disability, and mental health agencies. These commenters also suggested that the NPRM's reference to career offices of educational institutions and private recruitment sources be revised to specify that these be offices and recruitment sources that ''specialize in the placement of individuals with disabilities.''

In light of these comments, and in order to reduce the burden on contractors, the final rule does not incorporate the proposal to mandate contractors' listing of employment opportunities with the One Stop Career Centers. Additionally, the final rule does not incorporate the proposal to require contractors to enter into linkage agreements. Rather, the final rule retains the existing language of § 60–741.44(f)(1)(i) which requires the contractor to undertake ''appropriate outreach and positive recruitment activities,'' and provides a number of suggested resources, in paragraph (f)(2)(i), that contractors may utilize to carry out this general outreach and recruitment obligation. The final rule also includes, as suggested resources, the Employment One-Stop Career Centers (One-Stops) and American Job Centers, State mental health agencies, and State developmental disability agencies. Additionally, language was added to the recommended resources of ''placement or career offices of educational institutions'' and ''private recruitment sources, such as professional organizations or employment placement services'' to clarify that these should be resources ''that specialize in the placement of individuals with disabilities.''

The final rule's approach requires contractors to engage in outreach and recruitment efforts, but allows each individual contractor the flexibility to choose the specific resources they believe will be most helpful in identifying and attracting protected individuals with disabilities, given their particular needs and circumstances. It will also enhance contractors' capability to switch between and among different resources in order to find and maintain the resource ''mix'' that is most effective.

Lastly with regard to paragraph (f)(1), several commenters argued that OFCCP underestimated the burden hours associated with complying with the proposed paragraph (f)(1)(iii) (paragraph (f)(1)(ii) in the final rule), which requires the contractor to send written notification of company policy related to its affirmative action efforts to all subcontractors, including subcontracting vendors and suppliers. OFCCP retains this requirement as proposed, as we believe it is crucial to effective implementation and enforcement of the regulations that subcontractors are aware of their section 503 affirmative action obligations. A discussion of commenters' concerns regarding the burden of compliance with this requirement is found in the Regulatory Procedures section of this final rule.

OFCCP received several comments regarding proposed paragraph (f)(2), which set forth additional suggested outreach efforts that contractors could engage in to increase the effectiveness of its recruitment efforts. These comments centered on paragraph (f)(2)(vi), which stated that contractors, in making hiring decisions, ''shall'' consider applicants who are known individuals with disabilities for all available positions for which they may be qualified when the position(s) applied for is unavailable. Commenters indicated that despite paragraph (f)(2)'s language that it contains ''suggested outreach efforts,'' the word ''shall'' suggested that the contents of paragraph (f)(2)(vi) were mandatory. The use of ''shall'' in this paragraph was an inadvertent error in the NPRM. The content of proposed paragraph (f)(2) appears in paragraph (f)(2)(ii) of the final rule. The content of proposed (f)(2)(vi) appears in paragraph (f)(2)(ii)(F) of the final rule, revised to state that contractors ''should consider applicants…'' We also note that this suggested activity is intended to be a limited one. Contractors who choose to consider individuals with disabilities for jobs other than those for which they applied may exercise discretion to limit this consideration based on geography, the qualifications of the applicant, and other factors. Contractors may also exercise discretion with respect to the time period for which they will consider applicants for other positions. This provision is intended to be flexible and is not required of contractors.

Paragraph (f)(3) of the NPRM proposed to require the contractor, on an annual basis, to review the outreach and recruitment efforts it has undertaken over the previous twelve months and evaluate their effectiveness in identifying and recruiting individuals with disabilities, and document its review. Some commenters supported the proposed requirement, some suggested less frequent review, and others opposed this proposed requirement. Several commenters expressed concern about the utility of the suggested metrics for analyzing external outreach and recruitment efforts. One commenter stated that if the

only standard used for assessing outreach and recruitment is the number of individuals with disabilities who are hired, the proposed rule would effectively become a quota system for hiring individuals with disabilities. Another commenter questioned whether overall hiring statistics would provide much useful information about the effectiveness of specific outreach efforts. Commenters also expressed concerns about the requirement to analyze hiring data for the current year as well as the previous two years. Commenters argued that the most recent year is the most relevant year in measuring effectiveness of affirmative action efforts. Finally, commenters also questioned OFCCP's calculation of the cost of compliance with this provision.

OFCCP declines to make changes to the proposed paragraph (f)(3). The purpose of the mandated self-assessment is to ensure that the contractor thinks critically about its recruitment and outreach efforts, and modifies its efforts as needed to ensure that its obligations are being met. OFCCP disagrees that the number of individuals with disabilities who are hired is the ''only'' standard for analyzing the effectiveness of outreach efforts. The proposed rule made clear that the number of individuals with disabilities who are hired is to be a primary factor considered, given section 503's stated purpose to ''employ and advance in employment'' individuals with disabilities, but is not the only metric for contractors to use for analyzing the effectiveness of external outreach and recruitment efforts. Rather, as stated in the NPRM, the regulation requires the contractor to consider all the metrics required by § 60–741.44(k) (which includes both applicant and hiring data), and also clearly allows the contractor to consider any other criteria, including factors that are unique to a particular contractor, in determining the effectiveness of its outreach, so long as the criteria are reasonable and documented by the contractor so that OFCCP compliance officers can understand the rationale behind the contractor's self-assessment and the conclusions reached. OFCCP believes that this self-assessment is crucial to the contractor's section 503 affirmative action obligations, and that the final rule provides the contractor a significant amount of flexibility in meeting this requirement.

With regard to the lengthened timeframe of applicant and hire data that the contractor must consider when evaluating its outreach efforts, OFCCP notes that in response to comments, it has reduced this time period from 5 years to 3 years. As explained in the NPRM, the purpose of requiring consideration of additional data for the self-assessment is to provide more complete information with which a contractor can assess the effectiveness of its outreach and recruitment efforts over time. In short, the additional information will enable the contractor and OFCCP to more accurately review outreach and recruitment efforts to ensure that the affirmative action obligations of paragraph (f) are satisfied. Accordingly, we retain paragraph (f)(3) in the final rule as proposed in the NPRM. The comments regarding the burden imposed by this provision, including a revised calculation of its cost, can be found in the Regulatory Procedures section of this final rule.

The final rule makes one minor change to the second to last sentence in paragraph (f)(3). As explained in the preamble to the NPRM, OFCCP proposed that the contractor's conclusion as to the effectiveness of its outreach efforts ''shall be reasonable as determined by OFCCP in light of these regulations.'' The final rule replaces the word ''shall'' with ''must,'' which more clearly describes the requirement.

• *Paragraph (g): Internal dissemination of affirmative action policy*

Paragraph (g) of the existing rule requires contractors to develop internal procedures to communicate to employees their obligation to engage in affirmative action efforts to employ and advance in employment qualified individuals with disabilities. The NPRM proposed requiring the contractor to undertake many specific actions that are only suggested in the existing rule, including incorporating the affirmative action policy in company policy manuals, discussing the affirmative action policy during management training programs to ensure they are informed about the contractor's obligations, and if the contractor is a party to a collective bargaining agreement, meeting with union officials and employee representatives to inform them of the policy and ask for their cooperation. OFCCP received nine comments regarding § 60–741.44(g), including comments from a disability association, employer associations, contractors, and a law firm.

Several of these comments supported the proposed requirement, while others sought some clarification, and still others indicated that the requirement imposed an unnecessary burden.

Some commenters requested alternative options to including the affirmative action policy in the contractor's policy manual pursuant to the proposed 60–741.44(g)(2)(i). One commenter suggested instead, for example, that contractors be permitted to post the policy on the company's intranet where similar human resources and EEO pronouncements are found. One comment requested that OFCCP clarify how contractors could post their policy in the absence of having a policy manual.

The final rule adopts the proposed language in § 60–741.44(g)(1) without change. This paragraph sets out the general requirement that contractors internally disseminate their affirmative action policy and explains the reasons for the requirement. It clearly states that the procedures for internally disseminating affirmative action policies ''shall be designed to foster understanding, acceptance and support among the contractor's executive, management, supervisory and other employees and to encourage such persons to take the necessary actions to aid the contractor in meeting this obligation.''

The remainder of paragraph (g) is streamlined and revised in the final rule to ease the burden on contractors, while ensuring that contractors must communicate their affirmative action obligations and policies internally. Two of the three actions the NPRM proposed in paragraph (g)(2) are maintained as requirements in paragraph (g)(2) of the final rule: (1) including the policy in the contractor's policy manual; and (2) informing union officials of the policy and requesting their cooperation, if the contractor is party to a collective bargaining agreement. However, these requirements are modified slightly, based on the comments received. The first has been modified to allow contractors to include the affirmative action policy either in the contractor's policy manual, or to ''otherwise make the policy available to employees.'' We believe that most companies generally have some form of document that provides guidance on human resources policies and procedures—either a policy manual, employee handbook, or similar document—that is available to employees that is an appropriate place to put the policy. OFCCP believes including the affirmative action policy in these documents will enhance the visibility of the contractor's commitment to individuals with disabilities. However, the final rule also allows contractors the flexibility to make the policy available to its employees through other means. This could include posting the policy on a company intranet, but this will only fulfill the requirement if all employees have access to this intranet. The second

requirement, regarding informing union officials, is modified for consistency and clarity to reflect the requirement in § 60–741.5(a)(5) that the contractor ''notify'' union officials of its policy.

The remaining elements that were required in the NPRM or suggested in the existing rule now appear in paragraph (g)(3) of the final rule as actions that the contractor is ''encouraged'' to take. The recordkeeping provision that was in proposed paragraph (g)(3) is eliminated in the final rule. We note, however, that to the extent any activities undertaken pursuant to paragraph (g) involve the creation of records, they are subject to the general recordkeeping requirement of § 60–741.80 and contractors will be required to maintain such documents as specified by § 60–741.80.

• *Paragraph (h): Audit and reporting system for affirmative action program*

Paragraph (h) of the existing rule outlines the contractor's responsibility to design and implement an audit and reporting system for the company's AAP. It also requires, in paragraph (h)(2), that contractors undertake necessary action to bring deficient programs into compliance. The NPRM proposed a new requirement that contractors document the actions taken to comply with paragraph (h). The NPRM also proposed that contractors maintain the records of their documentation subject to the recordkeeping requirements of § 60–741.80. OFCCP received nine comments on this provision. Of these, seven asserted that the proposed recordkeeping requirement would be burdensome and require the development of new processes, while two supported this requirement recognizing the need for and benefits of self-audits.

This section is adopted into the final rule as proposed. The section requires the contractor to measure the effectiveness of its affirmative action program, indicate any need for remedial action, determine the degree to which the contractor's objectives have been attained, determine whether individuals with disabilities have had the opportunity to participate in all company professional and social activities, and measure the contractor's compliance with the affirmative action program's specific obligations. OFCCP believes that the proper conduct of the analysis required in paragraph (h) will necessitate the creation of documentation. Paragraph (h)(1)(vi) makes this expectation clear by requiring that the contractor document the actions it takes to comply with self-audit requirements of paragraph (h)(i). Contractors are further required to maintain this documentation in accordance with the recordkeeping requirements of § 60–741.80. OFCCP believes that this requirement will allow for a more effective assessment, by contractors and by OFCCP, of whether the contractor is meeting its affirmative action obligations, including whether deficiencies have been identified and corrected.

• *Paragraph (i): Responsibility for implementation*

The NPRM proposed to modify existing paragraph (i) to require that the identity of the official responsible for a contractor's affirmative action activities appear on all internal and external communications regarding the contractor's affirmative action program. Upon further review, OFCCP does not believe that the benefit of this suggested change outweighs the potential burden that it would place on contractors. Accordingly, the final rule restores the text of the existing regulation, which states that the identity of the official responsible for a contractor's affirmative action activities ''should'' appear in all communications about the contractor's affirmative action program.

• *Paragraph (j): Training*

Paragraph (j) of the existing regulation requires that the contractor train ''[a]ll personnel involved in the recruitment, screening, selection, promotion, disciplinary and related processes . . . to ensure that the commitments in the contractor's affirmative action program are implemented.'' The NPRM proposed revising this paragraph to specify topics required to be included in this training, including: the business and societal benefits of employing individuals with disabilities; appropriate sensitivity toward recruits, applicants, and employees with disabilities; and the legal responsibilities of the contractor and its agents regarding individuals with disabilities, including the obligation to provide reasonable accommodation to qualified individuals with disabilities. The NPRM also proposed requiring the contractor to record which of its personnel receive this training, when they receive it, and the person(s) who administered the training, and to maintain these records, along with all written or electronic training materials used, pursuant to the recordkeeping requirements of § 60–741.80.

OFCCP received 15 comments from disability and employer associations, contractors, and a law firm. Approximately half of the comments supported the proposed requirements, while the others opposed it. These latter comments raised concerns regarding the burden that training requirements place on contractors and the manner in which OFCCP calculated it. One comment noted specific concerns about what constitutes ''sensitivity'' training. Several commenters suggested that OFCCP develop a model training for contractors to use, instead of the contractor having to create additional training to what it currently provides.

In light of these concerns, and balancing the utility of the proposal against the burden that it would create for contractors, the final rule does not incorporate the NPRM proposal requiring specific training topics and the maintenance of all training materials pursuant to § 60–741.80. Instead, the final rule retains the existing rule's general requirement that ''[a]ll personnel involved in the recruitment, screening, selection, promotion, disciplinary, and related processes'' must be trained to ensure that the contractor's affirmative action commitments are implemented. However, we note that documents created by the contractor in connection with activities undertaken pursuant to paragraph (j) are subject to the general recordkeeping requirement of § 60–741.80.

• *Paragraph (k): Data Collection Analysis*

The proposed regulation added paragraph (k) to the rule, proposing to require that the contractor document and update annually the following information: (1) For referral data, the number of referrals of individuals with disabilities received from entities with which the contractor has a linkage agreement and the number of referrals of individuals with disabilities received from employment service delivery systems; (2) for applicant data, the total number of applicants for employment, the number of applicants who are known individuals with disabilities, and the ''applicant ratio'' of known individuals with disabilities who are applicants to total applicants; (3) for hiring data, the total number of job openings, the number of jobs filled, the number of known individuals with disabilities hired, and the ''hiring ratio'' of known individuals with disabilities to total hires; and (4) the total number of job openings, the number of jobs that are filled, and the ''job fill ratio'' of job openings to job openings filled.

The NPRM stated that OFCCP is also considering adding a reporting requirement, and invited public comment on this option. Under this proposal, contractors would be required to provide OFCCP with a report containing the measurements and computations required by proposed

paragraph (k), including the percentage of applicants, new hires, and total workforce for each EEO–1 category. The report would be provided to OFCCP on an annual basis, regardless of whether the contractor has been selected for a compliance evaluation.

As stated in the NPRM, the impetus behind this new section is that no structured data regarding the number of individuals with disabilities who are referred for or apply for jobs with Federal contractors is currently maintained. This absence of data makes it nearly impossible for the contractor and OFCCP to perform even rudimentary evaluations of the availability of individuals with disabilities in the workforce, or to make any sort of objective, data-based assessments of how effective contractor outreach and recruitment efforts have been in attracting individuals with disabilities as candidates. Maintaining this information will provide meaningful data to assist the contractor in evaluating and tailoring its recruitment and outreach efforts.

OFCCP received a total of 80 comments from disability, contractor and other associations, law firms, government offices, contractors, and individuals. Disability and other associations, and some contractors and individuals that commented supported the required data collection and the objectives behind it. The contractor community, by and large, opposed the proposal on varying grounds, including: concerns regarding the integrity of the data to be collected (particularly data on referrals); assertions that some of the data conflicts with the Internet Applicant Rule in the Executive Order regulations; and assertions that collecting, analyzing, and maintaining the data would be unduly burdensome. Several commenters from the construction and transportation industries asserted that they should be exempt from the requirement due to the unique nature of their respective industries. Finally, a number of commenters sought clarification of some of the processes set forth in paragraph (k). These issues are addressed below.

Several comments articulated data integrity concerns regarding the data to be used in calculating the referral ratio. Commenters characterized the state employment service delivery systems as ''self-service,'' leaving source identification to the job candidates, thus making referral data unreliable and not meaningful. Examples were provided indicating that individuals frequently apply directly online with a company and may fail to identify that he or she was referred, and that he or she is an individual with a disability. These commenters also expressed concern that referral data may include referrals of individuals that are not qualified for the position(s) at issue. OFCCP believes that the points raised regarding the practical utility of the referral data have merit. Accordingly, OFCCP has eliminated from the final rule the requirement, in proposed paragraphs (k)(1) and (k)(2), for contractors to collect, maintain, and analyze information on the number of referrals it receives.

Many of these comments also asserted data integrity concerns regarding the requirement to document and maintain applicant and hiring ratios, including that applicant data appears to be dependent upon self-identification, which is not reliable. These issues were previously addressed in the discussion of the requirement to invite applicants to self-identify as individuals with disabilities in § 60–741.42(a). In short, demographic data based on self-identification is not perfect, but it is nonetheless valuable and the best data that is available.

Another concern asserted by commenters is that the proposed data collection and analysis is not ''aligned'' with the availability analysis conducted when examining employment activities for females and minorities. However, as discussed in the preamble to the goal requirement in § 60–741.45, below, it is not feasible to have the data collection for section 503 exactly mirror that of the Executive Order 11246 regulations.

Commenters also questioned the purpose of the job opening/job filled ratio. Upon reconsideration, OFCCP agrees that it is not necessary for contractors to calculate the job fill ratio and has deleted from the final rule the requirement, in proposed paragraph (k)(5), for contractors to calculate and maintain the ratio of jobs filled to job openings. OFCCP has also eliminated the requirement to calculate an applicant ratio in proposed paragraph (k)(7), and the requirement to calculate a hiring ratio in proposed paragraph (k)(10). Thus, the final rule requires that contractors need only collect and maintain the raw data regarding the number of applicants with disabilities, the total number of job openings and jobs filled, the total number of applicants, the number of applicants with disabilities hired, and the total number of applicants hired.

Several commenters also objected to the collection of data about the disability status of applicants because it differs from the recordkeeping requirements related to Internet applicants under the Executive Order 11246 implementing regulations at 41 CFR 60–1.12. In recognition of these concerns, and as explained in the preamble discussion of § 60–741.42(a), in an effort to harmonize requirements across the various regulations OFCCP enforces, OFCCP will permit contractors to invite applicants to self-identify as an individual with a disability at the same time as the contractor collects the demographic data for applicants required under the Executive Order. OFCCP will also treat the recordkeeping provisions of section 503 at 41 CFR 60–741.80 in the same manner as the recordkeeping requirements under the Executive Order at 41 CFR 60–1.12 as applied to Internet applicants. With regard to burden calculation issues, many commenters, including employer associations, contractors, and individuals, indicated that OFCCP had not correctly calculated the burden of this section. Specific cost information was provided by several commenters. A revised burden calculation is included in the Regulatory Procedures section of this final rule. We highlight a few points here, however, because it appears that the contractor community may misunderstand portions of the obligation they are expected to undertake. First, as stated above, the referral data metrics have been eliminated, which reduces the burden. We have also eliminated the calculation of the job fill, applicant, and hiring ratios. Second, job-specific hiring data is already collected and maintained by contractors pursuant to the Executive Order 11246 program. Moreover, hiring metrics are also maintained and calculated by Federal contractors subject to VEVRAA pursuant to their existing obligation, under 41 CFR part 61–300, to file the VETS–100A form. Therefore, that portion of paragraph (k) requiring contractors to document the total number of job openings and total number of hires does not create any additional burden. The only ''new'' items are those pertaining to the self-identification applicant data. However, the burden for collecting and maintaining the applicant data is already partially calculated under § 60–741.42(a).

Also pertaining to burden, commenters for the construction and transportation industries asserted that they should be exempted from this section of the proposed regulation because of the unique nature of the industries. Traditionally, construction and transportation contractors who meet the basic coverage thresholds (contract amount and number of employees) of section 503 have not been exempted from any of its provisions. Accordingly,

we decline to exempt construction and transportation contractors.

The majority of commenters also cited burden concerns with the proposed requirement to maintain the paragraph (k) computations for a period of five (5) years. As set forth in the discussions of § 60–741.44(f)(4) and § 60–741.80 herein, the final rule reduces the document retention requirement to three (3) years, and revises the language of paragraph (k) to reflect this change.

A few of the comments also raised clarification questions we would like to address, including: (1) Whether the intent of the analyses is to measure change from year to year; (2) whether the ratios should be run by job group, job title, or establishment; and (3) how compliance determinations will be made. As to the first question, measuring change from year to year, and looking at two previous years of data, is a central intent of the analyses, as that can aid the contractor in seeing trends that may be associated with certain of its outreach and recruitment efforts over time. However, as previously discussed with regard to the self-assessment required in paragraph (f)(3) of this section, contractors are also free to use any other reasonable criteria in addition to the applicant and hiring data they feel is relevant to evaluate the effectiveness of its efforts. As to the second question, the ratios in paragraph (k) will be calculated by establishment, and not by job groups or titles within a given establishment, unless OFCCP has approved the contractor's development and use of a functional affirmative action program (FAAP) pursuant to 41 CFR 60–2.1(d)(4).

With regard to the third question, compliance determinations for paragraph (k) will be made based simply on whether the contractor has completely and accurately documented and maintained the eight listed metrics in the final rule. OFCCP Compliance Officers will not be using the applicant and hiring data to conduct underutilization or impact ratio analyses, as is the case under Executive Order 11246, and enforcement actions will not be brought solely on the basis of statistical disparities between individuals with, and without, disabilities in this data. Rather, Compliance Officers will look to see whether the contractor has fulfilled its various obligations under § 60–741.44, including its obligation, pursuant to § 60–741.44(f)(3), to critically analyze and assess the effectiveness of its recruitment efforts, using the data in paragraph (k) and any other reasonable criteria the contractor believes is relevant, and has pursued different or additional recruitment efforts if the contractor concludes that its efforts were not effective.

On the topic of OFCCP's invitation for public comments regarding the possible addition of a new annual reporting requirement, we received 20 comments. The majority of these comments asserted that the proposed requirement would impose an unnecessary additional burden. Several commenters stated that OFCCP did not provide any support or justification for proposing the requirement. A few of these commenters indicated that such a report would serve no other purpose than to assist OFCCP in the scheduling of compliance reviews. A few commenters supported the proposed reporting requirement, asserting that the data is needed to better ensure equal employment opportunities for individuals with disabilities. After weighing the practical utility of this potential reporting requirement against its anticipated burden OFCCP has determined that the imposition of this new reporting requirement is not warranted at this time. Accordingly, this proposal is not adopted into the final rule.

Section 60–741.45 Reasonable Accommodation Procedures

The NPRM proposed a new provision at § 60–741.45 requiring contractors to develop and implement written procedures for processing requests for reasonable accommodation. The proposal identified specific elements that the contractor's reasonable accommodation procedures, at a minimum, would be required to address. These included: (1) contact information for the official responsible for implementation of the procedures; (2) to whom a request for reasonable accommodation may be made; (3) a statement that requests for reasonable accommodation may be made orally or in writing by an applicant, employee, or third party on his or her behalf; (4) written confirmation of receipt of a reasonable accommodation request; (5) a timeframe for the processing of reasonable accommodation requests; (6) a description of the contractor's reasonable accommodation process and circumstances under which the contractor may request medical documentation to support a reasonable accommodation request; and (7) provision of a written explanation by the contractor for any denials of reasonable accommodation.

OFCCP received 80 comments on this proposal from disability associations, employer associations, contractors, and law firms. The disability associations were strongly supportive of the proposed requirement. They asserted that it would foster contractor understanding of their reasonable accommodation obligation, encourage individuals who need reasonable accommodation to come forward and make a request, and promote efficiency in the processing of reasonable accommodation requests. Many of these commenters also recommended that the scope of the proposed requirement be expanded to encompass all Federal contractors subject to section 503 by relocating the requirement from the ''affirmative action'' subpart of the regulations (Subpart C) to the ''nondiscrimination'' subpart of the regulations (Subpart B).

In contrast, the majority of the contractor community objected to the new requirement for a variety of reasons. Many stated their belief that a mandated, ''formal'' process was unnecessary since most employers were already accustomed to making reasonable accommodations as required by the ADA. Some characterized the proposal as a ''one size fits all'' approach that would impede the ability of contractors to individually address reasonable accommodation requests, and to grant requests for accommodation informally (e.g., leave time for doctor visits or a modified work schedule to attend therapy sessions). Finally, commenters asserted that the requirement to develop written reasonable accommodation procedures, to provide written confirmation of reasonable accommodation requests, and to provide written explanations of any denials of reasonable accommodation was unduly burdensome.

Upon further consideration of the burden associated with this provision, OFCCP has decided not to incorporate this proposal into the final rule. OFCCP, however, notes in new paragraph (d)(2) to § 60–741.44 of the final rule, that the use of written reasonable accommodation procedures is a best practice that may assist contractors in meeting their reasonable accommodation obligations. The paragraph makes clear that contractors are not required to have or use such procedures, and that not having such procedures is not violation of this part. OFCCP has also added a new Appendix B entitled *Developing Reasonable Accommodation Procedures* providing specific guidance that contractors may use should they choose to adopt this best practice.

Although OFCCP is not incorporating the written reasonable accommodation procedures requirement into the final

rule, we wish to note our disagreement with those commenters who assert that written procedures would prevent contractors from individually addressing reasonable accommodation requests. Rather, we believe that having such procedures would serve to reinforce the obligation to individually address each person's request for reasonable accommodation. Moreover, in OFCCP's view, written reasonable accommodation procedures would not hamper a contractor's ability to informally grant accommodation requests, such as leave for visits to the doctor or a modified work schedule to attend therapy sessions. If a contractor has flexible leave or scheduling policies, having written reasonable accommodation procedures would not interfere with the granting of requests for leave or modified work schedules by employees with disabilities simply because the request is made to accommodate a disability.

Section 60–741.46 Utilization Goals

Section 60–741.46 of the NPRM (renumbered as § 60–741.45 in the final rule) proposed a single, national 7 percent utilization goal for individuals with disabilities for each job group in a contractor's workforce. It proposed that covered contractors annually evaluate the representation of individuals with disabilities in each job group in the contractor's workforce against the 7 percent utilization goal. If the percentage of employees with disabilities in one or more job groups is less than the 7 percent utilization goal, the NPRM proposed that the contractor develop and execute action-oriented programs designed to correct any identified barriers to equal employment opportunity for qualified individuals with disabilities. Although it proposed a 7 percent goal, the NPRM invited the public to comment on a range of goal values between 4 percent and 10 percent. In addition, the NPRM alerted the public that OFCCP was considering an option of a sub-goal of 2 percent for individuals with certain particularly severe disabilities as part of the overall 7 percent goal, and invited public comment on this sub-goal option. Specifically, OFCCP requested comment on the concept of a sub-goal, as well as the disabilities to be included in the sub-goal.

OFCCP received 250 comments on this section from a broad range of perspectives, including contractors, law firms, government agencies, organizations representing individuals with disabilities and those representing contractors, as well as from individuals. The comments represented divergent views on the institution of a single, national utilization goal. In general, the disability community and those representing their interests were strongly in support of this new requirement. For these commenters, affirmative action efforts under section 503 have been largely meaningless without, among other things, measurable goals for the employment of people with disabilities. By and large, these commenters urged OFCCP to increase the utilization goal from 7 percent to 10 percent and to adopt a sub-goal of 5 percent for individuals with severe disabilities. In contrast, commenters from the contractor community and those representing their interests were largely opposed to this provision and to the sub-goal option for various reasons, including: (1) OFCCP lacks authority to mandate the 7 percent goal; (2) the utilization goal is equivalent to a quota; (3) use of ACS data is arbitrary and ineffective; and (4) the goal approach is unworkable as proposed. The proposed utilization goal, comments to the proposal, and the subsequent revisions made in the final rule are discussed in turn below. Comments related to the burden estimates associated with this section are addressed in the Regulatory Procedures section of the final rule.

• *Paragraph (a): Establishment of a single, national utilization goal*

Paragraph (a) of the NPRM proposed to establish for the first time a single, national utilization goal of 7 percent for employment of individuals with disabilities for each job group within a contractor's workforce.[19] As explained in the NPRM, the current section 503 regulatory framework requires affirmative action but lacks a goal. This has been the case since the initial publication of the section 503 regulations in the 1970s, but the intervening years have seen little improvement in the unemployment and workforce participation rates of individuals with disabilities. OFCCP determined that affirmative action process requirements, without a quantifiable means of assessing whether progress toward equal employment opportunity is occurring, are insufficient. We therefore concluded that the establishment of a utilization goal would create more accountability within the contractor's organization and provide a much-needed tool to help ensure that progress toward equal employment opportunity is achieved.

• *Methodology for Setting the Utilization Goal*

As explained in the NPRM, the utilization goal established in this section is derived primarily from the disability data collected as part of the American Community Survey. The American Community Survey (ACS) was designed to replace the census ''long form'' of the decennial census, last sent out to U.S. households in 2000, to gather information regarding the demographic, socioeconomic and housing characteristics of the nation. Whereas the Census Bureau now only administers a very short survey for the decennial census, a more detailed view of the social and demographic characteristics of the population is provided by the ACS, which collects data from a sample of 3 million residents on a continuing basis.[20]

The ACS was first launched in 2005, after a decade of testing and development by the Census Bureau. Refinement of the questions designed to characterize disability status has been continuous, with the current set of disability-related questions incorporated into the ACS in 2008. Taken together, the six dichotomous (''yes'' or ''no'') disability-related questions[21] comprise a function-based definition of ''disability,'' used in the ACS and by most of the other major surveys administered by the Federal Statistical System.

The definition of disability used by the ACS, however, is clearly not as broad as that of the Rehabilitation Act and the ADA. For example, since the ACS questions do not say that one should respond without considering mitigating measures (*e.g.,* medication or aids), some individuals with disabilities that are well-controlled by medication (*e.g.,* depression or epilepsy) or in

[19] OFCCP received several comments seeking clarification of the difference between a utilization goal and a placement goal. A placement or hiring goal relates to the percentage of new hires from a particular group, such as individuals with disabilities. In contrast, a utilization goal relates to the percentage of a contractor's workforce represented by a particular group, in this instance, individuals with disabilities.

[20] A national sample of approximately 3 million addresses nationwide receives the ACS each year, with a portion of this total receiving the survey each month. For more information on the American Community Service visit the Census Bureau's ACS Web page at *www.census.gov/acs.*

[21] The six questions are: Is this person deaf or does he/she have serious difficulty hearing? Is this person blind or does he/she have serious difficulty seeing even when wearing glasses? Because of a physical, mental, or emotional condition, does this person have serious difficulty concentrating, remembering, or making decisions? Does this person have serious difficulty walking or climbing stairs? Does this person have difficulty dressing or bathing? Because of a physical, mental, or emotional condition, does this person have difficulty doing errands alone such as visiting a doctor's office or shopping? 2009 American Community Survey, Questions 17–19.

remission might respond to the ACS that he or she does not have a disability. Likewise, since the ACS questions do not include major bodily functions, an individual who has a disability that substantially limits a major bodily function, but does not limit a major life activity as originally defined in the ADA, might respond that he or she does not have a disability on the ACS. Despite its limitations, the ACS is the best source of nationwide disability data available today, and, thus, an appropriate starting place for developing a utilization goal.

In developing the utilization goal, OFCCP considered two general approaches. The first approach OFCCP considered aimed to mirror precisely the goals framework for minorities and women that is used by supply and service (non-construction) contractors subject to Executive Order (EO) 11246. Such an approach would have required individual contractor establishments to set their own goals for each of their job groups [22] based on the percentage of individuals with disabilities available in the particular recruitment area from which the contractor sought to fill the jobs in the job group. Where there are fewer than expected incumbent employees with disabilities in a job group given their availability percentage, a contractor would be required to establish a goal for the specific job group that is at least equal to the availability percentage in the job group's recruitment area. *See* 41 CFR 60–2.12—60–2.16 for a more detailed description of the EO 11246 goals provisions for supply and service contractors.

After careful consideration of the available data and consultation with the U.S. Census Bureau regarding the level of geographic aggregation at which the disability data could be analyzed, OFCCP became convinced that replicating the supply and service goals framework would not be the most effective approach for the establishment of goals for individuals with disabilities. Supply and service contractors establishing goals for minorities and women typically use the Special EEO Tabulation of census data to assist them. The results of the 2000 decennial census can be tabulated for 472 occupation categories and thousands of geographic areas. However, because the ACS disability data is based on sampling, and because the percentage of that sample who identify as having a disability is considerably smaller than the percentage that provide race and gender information, it cannot be broken down into as many job titles, or as many geographic areas as the data for race and gender. That is, the confidence intervals on such estimates are large and the estimates are not statistically significant when broken down to the degree of detail required by the supply and service goals framework. Contractors therefore would not be able to use the job groups established under Executive Order 11246 to establish goals for individuals with disabilities, and would often be unable to utilize the geographic recruitment areas established under the Executive Order when determining the availability of individuals with disabilities (as queried in the ACS).[23] In addition, the Executive Order supply and service goals framework does not include consideration of discouraged workers in computing availability, a factor particularly important in the context of disability, as discussed below.

In light of the difficulties replicating the supply and service goals approach in the context of disability, OFCCP considered other options. OFCCP concluded that the establishment of a single, national goal [24] for all jobs in all geographic areas is a more viable approach to the establishment of a goal for individuals with disabilities. This approach allows for the continued use of the contractor's Executive Order 11246 job groups, and requires that those job groups be used to measure the representation of individuals with disabilities in the contractor's workforce, except in cases of contractors with fewer than 100 employees, where contractors will have the option to apply the goal to their workforce as a whole. The goal established in this section is based on the 2009 ACS disability data for the ''civilian labor force'' and the ''civilian population,'' [25] first averaged by EEO–1 job category, and then averaged across EEO–1 category totals. Specifically, we used the mean across these EEO–1 groups to estimate that 5.7 percent of the civilian labor force has a disability as defined by the ACS.[26] However, OFCCP acknowledges that this number does not encompass all individuals with disabilities as defined under the broader definition in section 503 and the ADAAA. Therefore, 5.7 percent is an insufficient figure to use as an affirmative action goal for individuals with disabilities under section 503.

Even if the 5.7 percent represented a complete availability figure for all individuals with disabilities as defined under section 503, such an availability figure does not take into account discouraged workers, or the effects of historical discrimination against individuals with disabilities that has suppressed the representation of such individuals in the workforce. Discouraged workers are those individuals who are not now seeking

[22] Job groups usually contain one to three jobs each. However, contractors with fewer than 150 employees may use the broader EEO–1 job categories in place of smaller job groups.

[23] On November 29, 2012, the Census Bureau released the new 2006–2010 EEO Tabulation (EEO Tab) to the public. The new EEO Tab replaces the 2000 Special EEO Tabulation. It is based on five years of demographic data from the ACS, rather than on a decennial census, tabulates data for 488 occupations including several occupations not previously included in the 2000 Special EEO Tabulation, and includes data by citizenship status. The EEO Tab is online at *http://www.census.gov/people/eeotabulation/.*

On March 14, 2013, the Census Bureau launched the first of its kind 2008–2010 Disability Employment Tabulation (Disability Tab) containing statistical information regarding the employment status, earnings, race, ethnicity and occupations of individuals with disabilities. The Disability Tab, online at *http://www.census.gov/people/disabilityemptab/data,* was sponsored by the U.S. Department of Labor and, in contrast to the EEO Tab, is intended to be a research resource rather than an enforcement tool. Although the Disability Tab includes data for each occupation in the EEO Tab, important differences between the tabs make the Disability Tab impractical for contractors to use to set individual placement goals for each of their Executive Order job groups. These differences include: (1) the Disability Tab uses three years of ACS data rather than the five years used in the EEO Tab; (2) the geographical designations of ''county sets'' and ''places'' (cities) are used in the EEO Tab but not in the Disability Tab; (3) the geographical designation of public use microareas (PUMAs) are used in the Disability Tab but not in the EEO Tab; and (4) the citizen-only tables in the Disability Tab contain occupation-specific data solely at the national level. In light of these differences, were we to require the establishment of individual disability placement goals using the Disability Tab many contractors would be forced to identify and utilize recruitment areas for this purpose different from those they currently use when establishing individual Executive Order goals. The creation of such a ''parallel'' process for the establishment of disability goals would be far more burdensome for contractors than the single, national utilization goal process established in this final rule.

[24] Disability rates by State for the civilian labor force has a mean of 6.32, median of 6.20, and standard deviation of 1.29. There are only two states, Alaska (9.0%) and Oklahoma (9.5%) that are outside the 95% confidence interval of this otherwise almost uniform distribution. This general uniformity is consistent with the use of a single national goal. See Table 15 in *Affirmative Action for People with Disabilities—Volume I: Data Sources and Models,* Economic Systems, Inc. (April 30, 2010) at 55.

[25] The civilian labor force is the sum of people who are employed and those who are unemployed and looking for work. The civilian population is the civilian labor force plus civilians who are not in the labor force, excluding those in institutions.

[26] Similarly, the Disability Tab found that between 2008 and 2010 individuals with disabilities were 6% of the civilian labor force. See Census Bureau press release, *Workers with a Disability Less Likely to be Employed, More Likely to Hold Jobs with Lower Earnings, Census Bureau Reports,* (March 14, 2013) available online at *http://www.census.gov/newsroom/releases/archives/american_community_survey_acs/cb13–47.html.*

employment, but who might do so in the absence of discrimination or other employment barriers. There are undoubtedly some individuals with disabilities who, for a variety of reasons, would not seek employment even in the absence of employment barriers. However, given the acute disparity in the workforce participation rates of those with and without disabilities, it is reasonable to assume that at least a portion of that gap is due to a lack of equal employment opportunity.

To estimate the size of the discouraged worker effect, we compared the percent of the civilian population with a disability (per the ACS definition) who identified as having an occupation to the percent of the civilian labor force with a disability who identified as having an occupation. Though not currently seeking employment, it is reasonable to believe that those in the civilian population who identify as having an occupation, but who are currently not in the labor force, remain interested in working should job opportunities become available. Using the 2009 ACS EEO–1 category data, the result of this comparison is 1.7 percent.[27]

Adding this figure to the 5.7 percent availability figure above, resulted in 7.4 percent.[28] The national utilization goal prescribed in this section is derived from this total, rounded to 7 percent to avoid implying a false level of precision.

• *Comments on paragraph (a)*

Many of the comments received on the proposed utilization goal addressed OFCCP's methodology for arriving at the 7 percent availability estimate, including the use of a discouraged worker estimate within the 7 percent figure. In general, commenters in favor of the proposed single, national utilization goal accepted the methodology used by OFCCP to derive the goal but urged OFCCP to increase the goal from 7 percent to 10 percent given that the ACS data upon which the goal is based is only partially representative of those covered by section 503. As confirmation that the 7 percent figure is too low, these commenters referred to the Final Regulatory Impact Analysis for the EEOC regulations implementing the ADA Amendments Act which estimated that somewhere between 20 percent and 64 percent of individuals covered by the ADA as amended participate in the labor force. Given this estimate, the commenters stated that OFCCP ought to aim higher than 7 percent. Within OFCCP's suggested range of between 4 percent and 10 percent, these commenters urged the goal be set at 10 percent.

With regard to OFCCP's use of the discouraged worker effect, commenters in favor of the proposal noted that discouraged workers are those who have not looked for work not because they lack the desire to work, but rather because they believe that no work is available for them. The goal requirement should reflect the assumption that new outreach and recruiting efforts will have some effect in correcting the notion among discouraged workers that no jobs are available for individuals with disabilities. A number of these commenters also noted that the 1.7 percent estimate used by OFCCP is likely under-inclusive since the value was derived from the ACS data.

OFCCP declines to adopt a 10 percent goal at this time. We recognize that 7 percent is an imprecise estimate based on a data set that is more narrow than the universe of individuals with disabilities protected under section 503. However, as explained above, this figure is derived from the best available source of workforce disability data that presently exists. In contrast, the 10 percent figure urged by many of the commenters is based solely on the general notion that 7 percent is too low, in light of the differing definitions of ''disability'' in the ACS and the ADA, and the EEOC's general estimate that somewhere between 20 percent and 64 percent of individuals covered by the ADA participate in the labor force. The commenters, however, did not suggest an alternative data base from which OFCCP could derive an appropriate utilization goal. Nor does the EEOC estimate, which juxtaposes the workforce participation rate of individuals with disabilities with the overall workforce participation rate for all adults (with and without a disability) age 16 and older, provide sufficiently specific information on which OFCCP could rationally base a utilization goal for individuals with disabilities. Indeed, EEOC did not use this estimate for such a purpose. See 76 FR 16978, 16991 (March 25, 2011). Having said that, as indicated in the final rule at § 60–741.45(c), OFCCP will periodically review and update the utilization goal as data becomes more refined.

A substantial number of commenters from the contractor community objected to the proposed 7 percent utilization goal on the grounds that it is arbitrary. They argued that the 7 percent figure is based on ACS data that is based on a definition of ''disability'' that is narrower than the term used under section 503. Without consistent definitions, they argue, the results are meaningless for establishing a goal for utilization of individuals with disabilities. Furthermore, the figure fails to take into account variations in occupational requirements, geography, industry, and nature of disabilities. Many commenters asserted that there is no statistical evidence to support the idea that the population of those with disabilities is distributed equally across all geographic areas. Additionally, one commenter noted that across the board goals are unrealistic because certain job groups will have inherent limitations. The commenter noted that there are some jobs for which some individuals with certain disabilities will never qualify. For instance, a person who is blind, deaf, or paralyzed would not be granted a commercial pilot's license by the Federal Aviation Administration. Given these variations, even the best intentioned contractor may have significant challenges meeting the utilization goal across all job groups.

Still other commenters were opposed to applying a national goal to each job group because the goal as proposed represents an aggregate availability for individuals with disabilities across EEO category totals. Applying a number that represents the average availability across all categories to individual job groups would, thus, be inappropriate. Many of these commenters argued that OFCCP should delay imposing a utilization goal requirement until such time that data is available to enable goal setting in a manner similar to what is done under the EO 11246 supply and service affirmative action program.

Finally, several commenters expressed concern about OFCCP's discouraged worker estimate. These commenters questioned the accuracy of the estimate and posited that many of those discouraged are not actually interested in employment at all. They state that the most obvious explanation for an individual's departure from the workforce is the disability itself. One commenter also objected to OFCCP inclusion in the goal of a 1.7 percent figure to account for individuals with disabilities who have become discouraged workers and for the effects of historical discrimination. This commenter stated that the Bureau of Labor Statistics reports discouraged workers with disabilities account for only 0.1 percent of the workforce.

[27] This number was derived from an updated 2009 version of Table 24 in *Affirmative Action for People with Disabilities—Volume I: Data Sources and Models,* Economic Systems, Inc. (April 30, 2010) at 64. The original table uses ACS data from 2008.

[28] As it is derived from ACS data, the 1.7% is also a limited number that does not fully encompass all individuals with disabilities as defined in section 503 and the ADA.

OFCCP recognizes that the 7 percent figure is less precise than the geographically specific availability information that contractors are familiar with under the Executive Order 11246 program, and that for some jobs in some locations availability of qualified individuals may be less than 7 percent. Furthermore, we recognize that the ACS data is based on a definition of disability that is narrower than that used under section 503. We disagree, however, that this is sufficient reason to eliminate the utilization goal. While not perfect, the goal will provide a yardstick against which contractors will be able to measure the effectiveness of their equal employment opportunity efforts. It is our belief that the goal will enable contractors to think critically about their employment practices, including their outreach, recruitment, and retention efforts, and help them to assess whether and where any barriers to equal employment opportunity for individuals with disabilities remain. If barriers are identified, then the contractor can move to take corrective action. Because the goal is intended solely as a tool, the final rule clearly states that a failure to meet the goal will not, in and of itself, result in a violation of section 503 or a finding of discrimination. The goal is not a rigid and inflexible quota which must be met, nor is it to be considered either a ceiling or a floor for the employment of particular groups. OFCCP will look at the totality of the contractor's affirmative action efforts to determine whether it is in compliance with its affirmative action obligations under this section. As discussed below, if the contractor has complied with the requirements of this part and no impediments to equal employment opportunity exist, then the fact that the contractor does not meet the goal will not result in a violation.

With regard to commenter concerns regarding the use of the discouraged worker effect, more than twenty years after the passage of the ADA and nearly forty years after the passage of the Rehabilitation Act, there continues to be a substantial discrepancy between the workforce participation and unemployment rates of working age [29] individuals with and without disabilities. According to the U.S. Department of Labor's Bureau of Labor Statistics (BLS), just 20.9 percent of working age individuals with certain functional disabilities were in the labor force in 2011, compared with 69.7 percent of working age individuals without such disabilities. This same data also indicates that the unemployment rate for those with these disabilities was 15.0 percent, compared with an 8.7 percent unemployment rate for those without a disability. This acute disparity in the workforce participation and unemployment rates of working age individuals with disabilities persists, despite the many technological advances that now make it possible for a broad array of jobs to be successfully performed by individuals with severe disabilities. OFCCP therefore believes that at least a portion of this gap is due to discrimination and sought to take this gap into account in the establishment of the goal by including in its calculation a discouraged worker figure. OFCCP acknowledges that the 1.7 percent figure we included in the goal is different from the 0.1 percent BLS figure cited by a commenter. However, the BLS figure represents the number of discouraged workers with disabilities among the universe of discouraged workers, whereas the 1.7% figure we used approximates the number of discouraged disabled workers among the universe of individuals with disabilities.

In addition to the concerns about the methodology used to derive the goal, several commenters asserted that OFCCP lacked authority to mandate a 7 percent utilization goal. These commenters noted that section 503 requires affirmative action for *qualified* individuals with disabilities; they assert that there is no duty to take affirmative action with regard to a general category of ''individuals with disabilities.'' Because section 503 requires affirmative action only for qualified individuals with disabilities, these commenters argue that a 7 percent utilization goal is impermissible unless the availability data revealed that underutilization of qualified individuals with disabilities exists for each job group in every geographic area.

It appears from these comments that the NPRM did not make explicit enough that the utilization goal requirement is for the utilization of qualified individuals with disabilities. OFCCP did not intend, nor do we believe that the proposed rule would have required, that a contractor employ and advance in employment individuals with disabilities who are not qualified for the position in question. Nevertheless, to address this confusion, we have revised paragraph (a) of the utilization goal requirement in the final rule by inserting the word ''qualified'' before the term ''individuals with disabilities'' to clarify that the 7 percent utilization goal is for the employment of qualified individuals with disabilities.

OFCCP also received a number of comments objecting to the proposed utilization goal set forth in paragraph (a) on the grounds that job group specific utilization goals are fundamentally unworkable as proposed. Commenters argued that anonymous self-identification will impede a contractor's ability to analyze utilization of individuals with disabilities and furthermore that such goals will ultimately belie any assurance of confidentiality as the identities of disabled persons would become evident as soon as the AAP data were produced to show the representation of individuals with disabilities in each job group. Moreover, commenters expressed concern that a utilization goal will be difficult to attain because many applicants and employees will be unwilling to disclose their disability, particularly hidden disabilities. Still others expressed concern that pre-offer self-identification will render companies vulnerable to lawsuits for wrongfully failing to hire an individual with a disability.

OFCCP disagrees that job group specific utilization goals are unworkable. First, with regard to the concerns that anonymous self-identification will hinder the contractor's ability to perform a utilization analysis by job group, OFCCP concurs that identifying information is in fact needed in order for contractors to assess their utilization of individuals by job group. We have, therefore, revised § 60–741.42, the provision related to self-identification, by removing the anonymity requirement. Second, as explained above in the preamble for § 60–741.42, Invitation to Self-Identify, OFCCP concedes the possibility that self-reported data regarding disability will not be entirely accurate. While not perfect, the data that will result from the invitation to self-identify will provide the contractor and OFCCP with important data that do not now exist pertaining to the participation of individuals with disabilities in the contractor's applicant pools and labor force. This will allow the contractor and OFCCP to better identify and monitor the contractor's hiring and selection practices with respect to individuals with disabilities. Finally, regarding the concern that pre-offer self-identification will render contractors vulnerable to lawsuits for wrongfully failing to hire an individual with a disability, OFCCP is not persuaded. While knowledge of the existence of a disability is a component of an intentional discrimination claim, the contractor must not only have

[29] The working age population consists of people between the ages of 16 and 64, excluding those in the military and people who are in institutions.

known of the person's disability, but must also have treated the person less favorably because of his/her disability. We note that contractors have long had knowledge of a person's race and gender. Having knowledge of a person's disability should be no different. In addition, we note that contractors have long had knowledge of the disabilities of applicants who have visible disabilities, such as blindness, deafness, or paraplegia, but that OFCCP has had no means of knowing of their presence in the applicant pool or their experience in the application process. Requiring contractors to invite pre-offer self-identification will help fill this void.

Finally, several commenters requested that OFCCP create an exemption from the goal requirement for industries with physically demanding jobs, namely the construction industry, and for safety-sensitive positions, including flight crewmembers, flight attendants, flight instructors, aircraft dispatchers, aircraft maintenance and preventive maintenance workers, ground security coordinators, aviation security screeners, and air traffic controllers. Another commenter requested that AbilityOne contractors be exempt from the goal requirement because they are already operating under high standards. This commenter stated that the AbilityOne program requires that at least 75 percent of the direct labor in a participating nonprofit agency be performed by people who are blind or have other significant disabilities.

OFCCP declines to adopt exemptions from the goal requirement in the final rule. Requests to exempt contractors from meeting the utilization goal for safety sensitive positions or for physically demanding jobs are fundamentally based on the flawed notion that individuals with disabilities as a group are incapable of working in these jobs. OFCCP does not support this belief and will not construct an avenue to permit contractors to avoid hiring individuals with disabilities for certain jobs. OFCCP acknowledges that some individuals with certain disabilities may not be able to perform some jobs, but does not believe exemptions are necessary for two reasons. First, neither section 503 nor this part require a contractor to hire an individual who cannot perform the essential functions of the job, or who poses a direct threat to the health or safety of the individual or others. Second, the goal is not a quota and failure to meet the goal will not, in and of itself, result in any violation or enforcement action. With regard to the request to exempt AbilityOne contractors from the goal requirement, we likewise do not believe that a regulatory exemption is warranted. The final rule applies, not just to ''direct labor,'' but to the entirety of a covered contractor's workforce, and to the entirety of covered subcontractors' workforces, as well. In short, the goal requirement is a management tool from which all contractors can benefit.

• *Comments on sub-goal option*

As noted above, in the NPRM OFCCP indicated that it was considering the option of including within the 7 percent goal for individuals with disabilities a sub-goal of 2 percent for individuals with certain particularly severe disabilities and invited public comment on the sub-goal concept, as well as on which disabilities should be included within the sub-goal. OFCCP specifically sought comments addressing (1) the data or research available that informs the design of an appropriate sub-goal, including which severe disabilities should be covered by the sub-goal and the appropriate sub goal target; (2) how a sub-goal furthers the overall objective of increasing employment opportunities for individuals with severe disabilities; and (3) the data or research available on the need for a sub-goal for specific disabilities.

OFCCP received 126 comments on this sub-goal option. Many commenters from the disability community favored such an approach but urged OFCCP to increase the sub-goal from 2 percent to 5 percent. These commenters stated that any serious effort to measure the effectiveness of one's affirmative action efforts must look not only at the overall group of individuals with disabilities but also at those within that group who have had the greatest barriers to employment and are most in need of affirmative action. Having only an overall goal for the extremely broad group of people with disabilities would permit contractors to employ individuals with less stigmatized disabilities, and would do little to ensure that those individuals with the greatest history of exclusion from the workforce would benefit from affirmative action. These commenters urged OFCCP to increase the sub-goal to 5 percent, because they believe that the group of individuals who would likely be captured by a sub-goal would be greater than 2 percent of the labor force.

In response to OFCCP's request as to which disabilities to include in the sub-goal, a substantial number of commenters from the disability community emphasized the need to fashion a sub-goal that captures individuals ''with the lowest employment rates and greatest barriers to employment.'' These commenters urged OFCCP to not rely on the ''targeted disabilities'' list the Federal government uses to monitor its internal hiring as the source of its sub-goal, but should instead develop its own, more expansive list of ''targeted disabilities.'' Commenters proffered several approaches, discussed below, that OFCCP could use to create a section 503 sub-goal.

One approach would entail OFCCP working with experts from various universities to identify those categories of disabilities that have caused people to face the greatest employment barriers. OFCCP would then create a ''targeted disabilities'' list comprised of the identified disabilities. While several if not all of the conditions currently on the Federal government's list would be on this list, commenters anticipated that this new ''targeted disabilities'' list would also include conditions not on the current list, such as autism spectrum disorders and Down syndrome, among others.

A second approach recommended by these commenters was to base a sub-goal on the statutory definition of ''significant disability,'' at 29 U.S.C. 705(21)(A), that is used for determining selection for vocational rehabilitation services. This definition not only specifies a list of covered conditions, but also requires an assessment of whether each individual's condition is ''a severe physical or mental impairment which seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, work skills) in terms of an employment outcome.'' There are 26 conditions on the covered conditions list, some of which are very specific, such as amputation, paraplegia, quadriplegia, blindness, and deafness. Other listed conditions, though, encompass broad categories of impairments that can vary widely in their nature and severity, such as arthritis, head injury, burn injury, heart disease, musculo-skeletal disorders, and neurological disorders.

A third approach commenters identified was for OFCCP to analyze a variety of data sources, including ACS, the Survey on Income and Program Participation (SIPP), the Current Population Survey (CPS), CDC data, and other data, to identify which individuals with disabilities experience the greatest employment barriers. OFCCP would then design a sub-goal focused on the disabilities associated with these individuals.

Many of the commenters opposed to the utilization goal requirement also opposed a sub-goal option. The reasons for their opposition were similar to

those already expressed in opposition to the 7 percent utilization goal. Many asserted that the 2 percent figure was arbitrary and that it would be incongruous to hold contractors to a standard that the Federal government itself has proven unable to meet. The comments received also stated that there would be many industries for which those with severe disabilities would be unable to work. One commenter highlighted that the sub-goal for individuals with severe disabilities is inconsistent with the Federal Aviation Administration's regulatory scheme regarding medical certification of persons employed in certain safety sensitive positions, and that if a safety exception is not recognized, then OFCCP should establish a lesser goal, because the availability of applicants with severe disabilities qualified for safety sensitive positions would necessarily be fewer. One advocacy organization for individuals with disabilities stated that a sub-goal was not necessary, because it would require a more detailed inquiry regarding the specific nature of an individual's disability by contractors, which would cause discomfort among people with disabilities. A sub-goal also disregards the fact that often the severity of the disability, not just the type of disability, significantly impacts an individual's employment opportunities.

OFCCP declines to adopt a sub-goal option at this time. Although the comments presented a variety of general approaches to designing a sub-goal, none provided a clear methodology or data source for the identification of a sub-goal target. Nor did they provide for the identification of a clear, practicable list of specific conditions that a sub-goal should encompass. We also note that the approach regarding the use of the vocational rehabilitation definition of ''significant disability'' as the basis of a sub-goal would require the application of a definition of ''disability'' that is different from that in section 503. Moreover, it would, in many instances require contractors to ask for detailed disability-related information, beyond the mere existence of a specific condition, so that the contractor could determine whether an individual has a ''severe'' physical or mental impairment that is encompassed by the sub-goal. This does not mean that contractors may not, on their own, establish appropriate mechanisms and goals to affirmatively seek to encourage the employment of individuals with significant or severe disabilities. However, these regulations do not include such requirements.

• *Paragraph (b): Purpose*

Proposed § 60–741.46(b) stated that the purpose of the utilization goal is to establish a benchmark against which the contractor must measure the representation of individuals within each job group in its workforce. Proposed § 60–741.46(b) also stated that the utilization goal serves as an equal employment opportunity objective that should be attainable by complying with all aspects of the affirmative action requirements of this part.

Many commenters opposed to the proposed utilization goal stated that the goal was equivalent to an inflexible ''quota'' because a contractor who fails to achieve the 7 percent utilization goal would be required to take specific measures to address the disparity. According to these commenters, there is nothing aspirational about this requirement and, unlike the Executive Order 11246 regulations implementing the affirmative action requirements for supply and service contractors, the NPRM implementing section 503 failed to state specifically that the utilization goal is not a rigid, inflexible quota nor does it state that quotas are expressly forbidden. Other commenters stated that any required objective or goal that imposes a penalty if not met is a quota. Still another intimated that the utilization goal as proposed would fail to survive a constitutional challenge because such a requirement would be subject to the highest level of judicial scrutiny.

The proposed utilization goal is not an inflexible quota and should not be perceived as one. The goal is intended to serve as a management tool to help contractors measure their progress toward achieving equal employment opportunity for individuals with disabilities and to assess whether barriers to equal employment opportunity remain. OFCCP recognizes that a failure to meet the 7 percent utilization goal does not necessarily mean that the contractor is discriminating against individuals with disabilities. It is for this reason that the NPRM stated in proposed § 60–741.46(f) that a contractor's determination that it has not attained the utilization goal in one or more job groups does not constitute either a finding or admission of discrimination in violation of this part. Nevertheless, in light of the comments, OFCCP has revised the regulatory language to clarify that a failure to meet the utilization goal triggers an assessment of whether there is a barrier to equal employment opportunity, and if so, what the barrier is. Specifically, new paragraph (e) in the final rule states that when the goal has not been met in one or more job groups the contractor must ''determine whether and where impediments to equal employment opportunity exist.'' This determination is to be based on reviews of the contractor's personnel processes and affirmative action efforts that the contractor is already required to perform. Only if a problem or barrier to equal employment opportunity is identified, must the contractor then develop and execute an action-oriented program to address the problem.

With regard to the comment that the proposed utilization goal would fail to survive a constitutional challenge because such a requirement would be subject to the highest level of judicial scrutiny, we again note that the utilization goal established herein is not a quota and does not require disability-based decision making. Rather, the goal is a tool to measure the effectiveness of the Federal contractor's employment practices as they relate to equal employment opportunity for qualified individuals with disabilities. A failure to meet the goal does not result in any violation; it triggers a critical review by the Federal contractor of its employment practices. Furthermore, even if a court were to determine that the framework set forth herein required disability-based decision making, strict scrutiny review is not applied to decisions based on disability. Instead, classifications based on disability are subject to ''rational basis review,'' and are legally permissible so long as the governmental action—in this case, the setting of a 7 percent utilization goal—is rationally related to a legitimate governmental interest. *See, e.g., Contractors Ass'n of E. Pa., Inc.* v. *City of Phila.,* 6 F.3d 990 (3rd Cir. 1993) (applying rational basis review of a city ordinance that established goals for the participation of disability-owned businesses in city contracts); *City of Cleburne, Tex.* v. *Cleburne Living Center,* 473 U.S. 432, 442–45 (1985). OFCCP believes that establishing a utilization goal of 7 percent for individuals with disabilities is clearly related to the legitimate governmental interest of increasing outreach to and employment opportunities for individuals with disabilities—a segment of the population that suffers from staggering levels of unemployment and a significant history of discrimination.

• *Paragraph (c): Periodic review of the goal*

Proposed paragraph (c) stated that the Director of OFCCP will periodically review and update the 7 percent utilization goal requirement as appropriate. One commenter expressed concern that in light of the Federal government's current fiscal situation,

future budget constraints would likely impede OFCCP from ever revising the proposed goal. OFCCP, like many other Federal agencies, has experienced fluctuations in its funding throughout its more than 40 years of continuous operation. We have no reason to anticipate, however, that such fluctuations would impede our ability to periodically review and update the goal, as appropriate, as provided in the final rule.

• *Paragraph (d): Utilization analysis*

Proposed paragraph (d) set forth the purpose of a utilization analysis and required that covered contractors annually evaluate the representation of individuals with disabilities in each job group in the contractor's workforce that the contractor uses for utilization analyses under Executive Order 11246 and compare the rate of representation for each group against the 7 percent utilization goal. For purposes of clarity and in response to numerous commenters' concern that the goal is really a quota, OFCCP has revised proposed paragraph (d)(1), which set forth the purpose of a utilization analysis, by deleting the sentence that states: ''If individuals with disabilities are employed in a job group at a rate less than the utilization goal, the contractor must take specific measures to address this disparity.'' Paragraph (d)(1) is intended to state the purpose of the utilization analysis. This deleted sentence was unrelated to the purpose. Moreover, as explained earlier in the preamble, failure to meet the goal does not automatically trigger the execution of action-oriented programs. For this reason, we found the sentence misleading.

OFCCP received a number of alternatives to the proposed utilization goal, somewhat related to the utilization analysis. Several commenters requested that if the agency were to move forward with the goal requirement, the goal should apply to the entire corporation across all establishments rather than to each job group. One commenter suggested that two goals be implemented—one for supply and service contractors and another for construction contractors. Another recommended that the goal apply by AAP location or organizational unit. Still another suggested that OFCCP remove a set figure and allow each contractor to establish a reasonable utilization goal for its establishments taking into account specific factors involved at each particular workplace. Finally, at least one commenter requested that a range of 4 percent to 10 percent be adopted to allow contractors the flexibility to account for variations in geography, occupational requirements, and nature of disabilities.

OFCCP declines to adopt these proposed alternatives. As explained in the NPRM, we did consider permitting contractors to compare the individuals with disabilities in its workforce as a whole to the proposed 7 percent goal. We decided against adopting this approach on a broad scale because of its potential for masking discrimination and segregation. For example, a contractor that has segregated all of its employees with disabilities into one or two low-paying jobs might be able to conceal this discrimination and satisfy this 7 percent goal if only a single whole-workforce comparison were required by this section.

However, we are mindful that certain small contractors may find it more difficult than other contractors to attain the goal if compelled to apply it to each of their job groups, simply because of their small size. In recognition of this fact, the final rule is revised, with the addition of paragraph (d)(2)(i), to create an exception that permits contractors with a total workforce of 100 or fewer employees to apply the 7 percent goal to their entire workforce as a whole, rather than to each job group. This will ensure that the burden on these small companies is minimized, while still providing them with a yardstick by which to measure the effectiveness of their efforts to recruit and hire individuals with disabilities. These contractors are reminded, though, that while they are permitted to measure their utilization of individuals with disabilities in their workforce as a whole, they may not attain the goal by engaging in the unlawful segregation of employees with disabilities.[30]

OFCCP declines to adopt the other approaches proposed by contractors because they would all result in greater burden on contractors than the approach we have chosen. None of the alternative proposals would allow contractors to use their existing EO 11246 job groups, and all would require contractors to identify organizational units for the purpose of establishing or effectuating a goal, and to explain the factors they applied in making their determinations. A number of commenters expressed concern that contractors may be able to use their relationship with sheltered workshops to circumvent the goal requirement. Some of these commenters fear that contractors will be able to count toward their goal the employees of a sheltered workshop subcontractor. Some fear that contractors will be able to meet their goal by establishing their own sheltered workshop, or by counting toward the goal those individuals being trained for future employment at a sheltered workshop. Still others asked that OFCCP ban sheltered workshops and prohibit contractors from using them at all.

Sheltered workshops are segregated facilities that exclusively or primarily employ persons with disabilities. Many sheltered workshops are authorized to pay special minimum wages under an exemption in section 14(c) of the Fair Labor Standards Act (FLSA), 29 U.S.C. 214(c), after receiving a certificate from the U.S. Department of Labor's Wage and Hour Division. The certificate allows the payment of special minimum wages to certain workers with disabilities for work being performed. The Department's Wage and Hour Division has jurisdiction over the administration of the FLSA, including the provisions of section 14(c). OFCCP thus has no authority to ban sheltered workshops or prohibit contractors from using them. However, § 60–741.45 of the existing section 503 regulations (renumbered section 60–741.47 in the final rule) addresses the relationship between sheltered workshops and contractors' affirmative action obligations. Specifically, this section provides that ''[c]ontracts with sheltered workshops do not constitute affirmative action in lieu of employment and advancement of qualified disabled individuals'' in the contractor's workforce. Merely providing a subcontract to a sheltered workshop is, therefore, not a form of affirmative action. Section 60–741.45 further provides that a contract with a sheltered workshop may only be considered to be affirmative action ''if the sheltered workshop trains employees for the contractor and the contractor is obligated to hire trainees at full compensation'' when they become qualified for the job(s) for which they are being trained. Only after these trainees become employees of the contractor and are receiving full compensation comparable to what other similarly situated employees who did not participate in a sheltered workshop are earning, may they be counted toward the contractor's goal. Contractors may not discriminate in compensation based on disability, which would include discriminating against an

[30] The exception created in paragraph (d)(2)(i) of this section is in addition to the existing exception under Executive Order 11246 that permits contractors with a total workforce of fewer than 150 employees to use the nine broad EEO–1 occupational categories as their job groups. *See* 41 CFR 60–2.12(e).

individual based on his or her past participation in a sheltered workshop.

Commenters also need not be concerned that contractors could circumvent the goal by means of a subcontractor relationship with a sheltered workshop or by establishing their own sheltered workshop. First, we note that contractors may only include in their AAPs and count toward their goal their own applicants and employees. Applicants and employees of subcontractors, whether or not that subcontractor is a sheltered workshop, may not be included in the contractor's AAP or counted toward the contractor's goal. Second, to comply with the goal requirement, contractors must apply the goal to each of its job groups, not to its workforce as a whole. Consequently, even if a contractor established its own sheltered workshop inside the company, that would only satisfy the contractor's goal with respect to the specific job(s) performed by the sheltered workshop in the specific contractor facility where the sheltered workshop is located.

• *Paragraph (e): Action-oriented programs*

Proposed paragraph (e) directed that the contractor develop and execute action-oriented programs designed to correct any identified problem areas when underutilization is identified. The proposed rule stated that examples of such programs may include alternative or additional efforts from among those outreach efforts listed in §§ 60–741.44(f)(1) and 60–741.44(f)(2) and/or any other appropriate actions.

Many commenters opposed to the proposed utilization goal objected in part because proposed paragraph (e) required the development and execution of action-oriented programs when the percentage of individuals with disabilities in one or more job groups fell below the 7 percent utilization goal, regardless of the reason the goal was not met. These commenters argued that proposed paragraph (e) imposed a penalty and therefore, the goal acted more like a quota.

As explained earlier, the goal is not a quota. Nevertheless, it appears that many misunderstood the framework for the goal requirement. To allay these concerns, OFCCP has revised paragraph (e), renumbered it as paragraph (f), and inserted a new paragraph (e) into the final rule that clarifies that a failure to meet the utilization goal requires that the contractor make an assessment as to whether any impediments to equal employment opportunity exist. This assessment is to be based on reviews the contractor is already required to undertake as part of its annual review of its affirmative action program. These include reviews of its personnel processes (§ 60–741.44(b)) and its external outreach and recruitment efforts (§ 60–741.44(f)), and the results of its affirmative action program audit (§ 60–741.44(h)) and any other areas that might affect the success of the affirmative action program. Paragraph (e) is, thus, captioned ''Identification of problem areas.'' Proposed paragraph (e), entitled ''Action-oriented programs'' (paragraph (f) in the final rule) has been revised to direct the contractor to undertake action-oriented programs only when problem areas have been identified. Paragraph (f) also clarifies that action-oriented programs need not be limited to engaging in additional outreach and recruitment efforts. Rather, such programs may also include the modification of personnel processes to ensure equal employment opportunity for individuals with disabilities and/or other actions designed to correct the identified problem areas, such as improving retention of employees with disabilities.

• *Paragraph (f): Failure to meet the goal does not constitute discrimination*

Proposed paragraph (f) clarified that a contractor's determination that it has not attained the utilization goal in one or more job groups does not in and of itself constitute either a finding or admission of discrimination in violation of this part. OFCCP received no comments regarding this provision. We have adopted this provision, as proposed, in the final rule, renumbered as paragraph (g). Failure to meet the goal would not be a violation of this part and would not lead to a fine, penalty or sanction.

As previously noted, if a contractor does not meet the goal, the contractor must take steps to determine whether and where impediments to equal opportunity exist. When making this determination the contractor must assess its personnel processes, the effectiveness of its outreach and recruitment efforts, the results of its affirmative action program audits, and any other areas that might affect the success of the affirmative action program. If the contractor reasonably determines there are no impediments, no further action is necessary. If, as a result of its review, the contractor identifies problem areas, then it must develop and execute action-oriented programs designed to correct the problems, as required by paragraph (f). The contractor may choose the programs to institute. The programs do not need to result in achieving the goal, so long as they are designed to remove obstacles to doing so.

So, for example, if a contractor does not meet the goal, but has developed and implemented an affirmative action program, including conducting outreach and positive recruitment of individuals with disabilities and has evaluated whether barriers to equal opportunity exist and, if they do, implemented action-oriented programs to correct and remove them, the contractor would not be found to be in violation of this part simply because it did not meet the goal.

On the other hand, if, for example, a contractor meets the goal, but fails to develop an AAP, the contractor could be cited for failure to develop an AAP. Goal achievement does not guarantee compliance with section 503 or this part, just as failure to meet the goal does not result in a violation of section 503 or this part.

• *Paragraph (g): Utilization goal is not a quota or a ceiling*

Proposed paragraph (g) stated that the goal proposed in this section must not be used as a quota or ceiling that limits or restricts the employment of individuals with disabilities. This paragraph is adopted, as proposed, in the final rule, renumbered as paragraph (h).

Section 60–741.47 Voluntary Affirmative Action Programs for Employees With Disabilities

The proposed rule added a new section encouraging contractors to voluntarily develop and implement programs that provide priority consideration to individuals with disabilities in recruitment or hiring. The proposal provided examples of priority consideration programs, and required contractors who elect to implement such a program to include in their AAP a description of the program and an annual report describing activities taken pursuant to the program and their outcomes. In addition, the proposal cautioned that a priority consideration program cannot be used to segregate or restrict the employment opportunities of individuals with disabilities.

We received 28 comments concerning this section, primarily from employer groups, but also from disability groups, law firms, and others. The employer groups overwhelmingly opposed this section, asserting that priority consideration amounted to a quota or preferential treatment for persons with disabilities and contradicted equal employment opportunity principles. Contractors, they stated, should only hire the best qualified person for a job. Commenters opposed to this new provision asserted, further, that it would foster discrimination against other protected groups and generate increased

employment discrimination litigation. A few commenters questioned how this section would be implemented; for example, how a contractor would establish a point system. Some commenters requested clarification on the definition of priority consideration.

Those commenters in favor of this section, mostly disability groups, stated that this section would assist in the employment of persons with disabilities and would not result in unlawful discrimination of any kind. They asserted, further, that this section does not violate section 503 or the ADA.

After consideration of the comments, OFCCP adopts the proposed provision into the final rule with modifications to address concerns raised by contractors. First several contractors were concerned that the provision would require contractors to provide priority consideration to individuals with disabilities, including addition ''points'' in the hiring process, that would amount to a quota. This is not OFCCP's intention. By way of background, several contractors in the past have asked OFCCP informally whether it would be permissible to establish a job training or employment program for individuals with specific disabilities, such as traumatic brain injury or developmental disabilities. It has been OFCCP's longstanding policy that such programs are permissible though not required. To address this concern we have clarified the section to refer to voluntary affirmative action programs for employees with disabilities, rather than as providing priority consideration in employment. In addition, we have removed the example of a program assigning a weighted value or additional ''points'' to job applicants who self-identify as having a disability. We reiterate that proposed § 60–741.47 (§ 60–741.46 in the final rule) creates no new obligations or responsibilities with which contractors must comply. Rather, it simply highlights the availability to contractors of an important affirmative action tool, and, provides a non-exhaustive list of examples of voluntary affirmative action programs for employees with disabilities that contractors are permitted to voluntarily develop and implement. A number of private companies have successfully used various types of voluntary affirmative action programs to increase training and employment opportunities for individuals with disabilities, and OFCCP desires to be clear that other companies also may consider their use. However, contractors who do not adopt such programs are not penalized in any way by OFCCP for that decision. OFCCP believes these modifications will allay concerns that this provision amounts to a quota or requires preferential treatment.

We disagree with the suggestion that this provision would foster discrimination against other groups and generate increased litigation. As we noted in the NPRM, the ADA Amendments Act explicitly states that neither the ADA nor the Rehabilitation Act provides ''the basis for a claim . . . that [an] individual was subject to discrimination because of the individual's lack of disability.'' ADAAA at sec. 6(a)(1)(g). We note, too, that having a disability is a characteristic that cuts across race, gender and ethnicity lines, and that affirmative efforts to increase employment opportunities for individuals with disabilities will, therefore, not impede affirmative efforts to include women and minorities. We have added a new paragraph (d) to make clear that this section should not be used to foster discrimination against other groups by stating that this section shall not relieve a contractor from liability for discrimination under any of the laws enforced by OFCCP.

Section 60–741.48 Sheltered workshops

We proposed to make a single technical change to this existing regulation. Specifically, the NPRM proposed to replace the phrase ''qualified disabled individuals'' in the first sentence with ''qualified individuals with disabilities'' to be consistent with the terminology used elsewhere in this part. We received no comments on this change and it is adopted into the final rule as proposed, but the section is renumbered as § 60–741.47. Several commenters expressed concern about the interaction of this existing provision with the new utilization goal requirement in § 60–741.45 of the final rule (originally proposed as § 60–741.46). Those comments are addressed in the preamble to § 60–741.46, above.

Subpart D—General Enforcement and Complaint Procedures

Section 60–741.60 Compliance Evaluations

The proposed rule set forth several changes to the process the contractor and OFCCP will follow in conducting compliance evaluations. We received 28 comments concerning this section, including comments focusing on contractor burden, which are addressed in the Regulatory Procedures section of this preamble. These proposals, the comments to these proposals, and the revisions made to the final rule are discussed in turn below.

• *Paragraph (a)*

The NPRM modified the wording of paragraph (a) to more clearly state the section 503 obligation of the contractor to employ, ''advance in employment and otherwise treat qualified individuals without discrimination on the basis of disability in all employment practices.'' We received no comments to this paragraph and adopt the language into the final rule as proposed.

• *Paragraph (a)(1): Compliance review*

The NPRM proposed adding a sentence to paragraph (a)(1)(i) regarding the temporal scope of desk audits performed by OFCCP, stating that OFCCP ''may extend the temporal scope of the desk audit beyond that set forth in the scheduling letter if OFCCP deems it necessary to carry out its investigation of potential violations of this part.'' Most of the comments concerned this paragraph. Many of these commenters, primarily contractors, employer groups, and law firms, objected to this proposed change and asked that it be withdrawn. These commenters asserted that the language of the proposed rule could result in ''perpetual'' audits of contractors, was contrary to a recent Administrative Law Judge (ALJ) decision in the case *OFCCP* v. *Frito-Lay,* Case No. 2010–OFC–00002, Recommended Decision and Order (ALJ July 23, 2010), and would lead to an increased burden for contractors.

As stated in the NPRM, the purpose of this proposal was to clarify that OFCCP may need to examine information after the date of the scheduling letter during the desk audit in order to determine, for instance, if violations are continuing or have been remedied. While the existing section 503 provision addresses the authority of the agency to conduct desk audits, it does not expressly state the temporal scope of these audits. It has been OFCCP's longstanding position that the agency has authority to obtain information pertinent to the review for periods after the date of the letter scheduling the review, including during the desk audit. However, in 2010 an ALJ disagreed in a recommended decision in the *Frito-Lay* case, in part because the parallel Executive Order 11246 desk audit regulation at issue in the case does not address the temporal scope of a desk audit. *OFCCP* v. *Frito-Lay, Inc.,* Case No. 2010–OFC–00002, ALJ Recommended Decision and Order (July 23, 2010). On May 8, 2012, the Department's Administrative Review Board (ARB) reversed this recommended decision, concluding that a desk audit authorized

by the regulation permitted OFCCP to request additional information relating to periods after the scheduling letter. The ARB concluded that the regulation does not have an inflexible temporal limitation. *OFCCP* v. *Frito-Lay, Inc.,* Case No. 2010–OFC–00002, ARB Final Administrative Order (May 8, 2012). OFCCP views the *Frito-Lay* decision as equally applicable to desk audits concluded under its section 503 authority as to those conducted under its Executive Order 11246 authority. Nevertheless, the final rule makes the clarification explicit in the text of the regulation. OFCCP notes that paragraph (a)(1) also authorizes OFCCP to request during the desk audit additional information pertinent to the review after reviewing the initial submission. *See United Space Alliance* v. *Solis,* 824 F.Supp.2d 68, 81–82 (D.D.C. 2011) (holding that agency's interpretation of its desk audit regulation to authorize additional information requests when necessary was entitled to deference).

Finally, commenters' concerns that this revision will lead to ''never-ending'' audits are unfounded. As stated above, the clarifying language set forth in the final rule does not change OFCCP's longstanding policy, or contractors' obligations, regarding the temporal scope of the desk audit. Further, because the clarification does not represent a change, concerns about increases in burden are similarly unfounded.

• *Paragraphs (a)(3) and (a)(4): Compliance check and focused reviews*

The NPRM revised paragraph (a)(3) to permit OFCCP to review documents pursuant to a compliance check either on-site or off-site, at OFCCP's option. Similarly, paragraph (a)(4) was revised to allow OFCCP to conduct focused reviews, at its discretion, either on-site or off-site. Many employer groups objected to this change, citing confidentiality concerns over the transfer, management, and maintenance of employment and medical records. Some commenters requested safeguards to protect these records, asked for additional guidance concerning confidentiality of medical records, or asked that these records not be subject to the Freedom of Information Act.

We received similar comments concerning the confidentiality of records with regard to § 60–741.81, Access to records, and we address those comments in more detail in the preamble to that section. Briefly, we note that the section 503 regulations have long required contractors to provide relevant medical and related records to OFCCP officials during a compliance evaluation or complaint investigation ''upon request.'' § 60–741.23(d)(1)(iii). This regulation contains no requirement that OFCCP must request such records ''on-site.'' We also note that there is significant precedent for OFCCP obtaining contractor records off-site, as the scheduling letter has long required that contractors scheduled for a compliance evaluation send their AAPs and supporting documentation to OFCCP. The final rule adopts the changes to these paragraphs as proposed.

• *Paragraph (c): Pre-award compliance evaluations*

Finally, the proposed rule added a new paragraph (c) to this section detailing a new procedure for pre-award compliance evaluations under section 503, much like the procedure that currently exists in the Executive Order regulations. *See* 41 CFR 60–1.20(d). A few employer groups objected to the change, asserting that the new paragraph was too prescriptive and questioned how the procedure would work in practice.

These concerns are misplaced. The pre-award compliance evaluation is a long-standing requirement under the Executive Order. This addition simply brings the section 503 regulations in line with the Executive Order regulations and assures that the pre-award compliance evaluation process will also encompass compliance with section 503. OFCCP adopts this new provision into the final rule as proposed.

Section 60–741.62 Conciliation Agreements

The proposed rule renumbered the existing rule as paragraph (a), and added a new paragraph (b) permitting the establishment of benchmarks in conciliation agreements as one possible form of remedial action. As we stated in the NPRM, benchmarks may be established for outreach, recruitment, hiring, or other employment activities of the contractor, as appropriate, and will provide a quantifiable method for measuring the contractor's progress toward correcting identified violations or deficiencies.

We received five comments from employer groups concerning new paragraph (b). None favored the new provision. Some of these commenters asserted that remedial benchmarks for hiring are unnecessary, would be similar to a quota, and recommended that the paragraph be eliminated from the final rule. Others requested that we further define ''benchmark,'' or clarify that a benchmark must be linked to a finding of discrimination.

The use of remedial benchmarks is not a new OFCCP policy or practice. Remedial benchmarks have long been included in conciliation agreements, when appropriate, to resolve violations under the Executive Order. New paragraph (b) simply clarifies that remedial benchmarks may also be used, when appropriate, to remedy violations of section 503. Lastly, we note that § 60–741.62(a) provides that conciliation agreements may be used when ''OFCCP finds a material violation of the act or this part.'' We, therefore, do not believe that further clarification regarding when a benchmark may be used is warranted. Nor do we believe that additional definition of the term ''benchmark,'' which the American Heritage Dictionary of the English Language defines ''a standard by which something can be measured or judged,'' is necessary. Accordingly, paragraph (b) is adopted into the final rule as proposed.

Section 60–741.68 Reinstatement of Ineligible Contractors

The proposed rule added a sentence at the end of paragraph (a) to clarify that the Director shall issue a written decision on a contractor's request for reinstatement. No comments were received regarding this change, and OFCCP adopts it into the final rule as proposed.

Subpart E—Ancillary Matters

Section 60–741.80 Recordkeeping

This section describes the recordkeeping requirements that apply to the contractor under section 503, and the consequences for the failure to preserve records in accordance with these requirements. The NRPM modified this provision to incorporate the five (5) year records retention timeframe required under proposed § 60–741.44(f)(4) (linkage agreements and other outreach and recruiting efforts), and proposed § 60–741.44(k) (collection of referral, applicant and hire data).

While comments regarding the proposed recordkeeping requirements under § 60–741.44(f)(4) and § 60–741.44(k) are addressed in the discussions of those provisions, a total of 25 comments were received specific to § 60–741.80. Commenters included disability, employer, veterans and other associations, contractors, law firms, government offices and individuals. Generally, the disability and veterans associations favored the longer record retention period, while other commenters argued that this was overly burdensome, inconsistent with OFCCP's

other recordkeeping requirements, and confusing.

As previously noted in this preamble, in response to comments regarding the burden associated with maintaining records for five years, the final rule reduces the recordkeeping requirements for §§ 60–741.44(f)(4) and 60–741.44(k) to three years. To reduce any potential for confusion, the final rule includes a new paragraph (b) in § 60–741.80 specifying in one place those records that have the three-year requirement, and renumbering paragraph (b) of the existing rule as paragraph (c). OFCCP feels strongly that extending the recordkeeping requirements for these particular provisions, which are primarily related to recruitment and outreach, will enable contractors to better determine the effectiveness of their recruitment and outreach activities over time. As noted in the NPRM, the absence of data makes it nearly impossible for contractors and OFCCP to perform even rudimentary evaluations of the availability of individuals with disabilities in the workforce, or to make any quantitative assessments of how effective contractor outreach and recruitment efforts have been in attracting candidates with disabilities. These records will give contractors historical data that can be used for analyzing their compliance efforts.

Paragraph (d) of the existing rule provides that the ''requirements of this section shall apply only to records made or kept on or after August 19, 1996,'' the effective date of a previous amendment to the section 503 implementing regulations. The final rule deletes this paragraph, as it is now obsolete.

Section 60–741.81 Access to records

This section describes a contractor's obligations to permit OFCCP to access its records during compliance evaluations and complaint investigations. The NPRM proposed two changes to the current regulation. First, it added a sentence requiring the contractor to provide off-site access to materials if requested by OFCCP investigators or officials as part of a compliance evaluation or complaint investigation. Second, it required that the contractor specify to OFCCP all formats (including specific electronic formats) in which its records are available, and produce records to OFCCP in the formats selected by OFCCP.

Sixteen comments were received from contractors, employer associations and law firms regarding this proposal. Most of the commenters requested that OFCCP eliminate the proposed changes. A few commenters objected specifically to the requirement to provide records in the format(s) OFCCP selects, and almost all expressed concern that allowing OFCCP access to records off-site raised potential confidentiality risks.

The final rule retains the proposed requirement that contractors provide OFCCP off-site access to materials upon request. As an initial matter, we note that access to company records off-site is not a novel approach, as Executive Order 11246 contains no limitation on the location of access to records for a scheduled compliance evaluation, and indeed specifically references off-site access. The final rule's general access regulation conforms to those principles. Moreover, in light of contractors' increased use of readily portable electronic records in multiple locations, this change will provide OFCCP with greater flexibility during evaluations and investigations, promoting increased efficiency.

However, OFCCP modified § 60–741.81 of the final rule in response to concerns regarding record confidentiality. Section 60–741.81 now includes the following language: ''OFCCP will treat records provided by the contractor to OFCCP under this section as confidential to the maximum extent the information is exempt from public disclosure under the Freedom of Information Act, 5 U.S.C. 552.'' It is the practice of OFCCP not to release data where the contractor is still in business, and the contractor indicates, and through the Department of Labor review process it is determined, that the data are confidential and sensitive and that release of the data would subject the contractor to commercial harm. This language affirms OFCCP's commitment to ensure confidentiality to the fullest extent allowed by law. Further, all OFCCP Compliance Officers receive training on the importance of keeping records confidential during compliance evaluations and complaint investigations. OFCCP will continue to stress this policy to ensure that contractor records are kept secure by the agency at all times.

The final rule also clarifies the provision regarding OFCCP's ability to request records in specific formats. The final rule states that: ''[t]he contractor must provide records and other information in any of the formats in which they are maintained, as selected by OFCCP.'' This language makes clear that the provision will not require contractors to invest time or resources creating records in a specific format, or creating a documented ''list'' of the formats in which they have documents available. Rather, contractors merely need to inform OFCCP of the formats in which they maintain their records and other information, and allow OFCCP to select the format(s) in which the records or other information will be provided. This provision should result in more efficient OFCCP evaluations and investigations.

Appendix A to Part 60–741—Guidelines on a Contractor's Duty To Provide Reasonable Accommodation

The proposed rule included several changes to Appendix A to reflect updated terminology and revisions made elsewhere in the regulations. Specifically, we: (1) Proposed changing the term ''otherwise qualified'' to ''qualified,'' in paragraph 1, to conform more closely to the terminology used in the ADA, as amended, and this part; (2) added a reference to the proposed new requirement, in proposed § 60–741.45, that contractors develop written reasonable accommodation procedures; (3) proposed revising paragraph 2 to reflect the new requirement, in § 60–741.42, that contractors invite applicants to self-identify as an individual with a disability at the pre-offer stage; (4) noted that the invitation to self-identify also invites individuals with disabilities to request any reasonable accommodation that they might need; (5) proposed requiring, in paragraph 4, that, in the event that a needed reasonable accommodation constitutes an undue hardship for the contractor, the individual with a disability be given the option of providing the accommodation or paying the portion of the cost that constitutes the undue hardship for the contractor; (6) proposed revising paragraph 5 to require the contractor to seek the advice of the individual with a disability when providing reasonable accommodation; (7) proposed changing the reference to ''§ 60–741.2(v)'' in paragraphs 5 and 8 of the appendix to ''§ 60–741.2(t)'' to reflect the revised alphabetical structure of the rule's definitions; and (8) updated the reference to various information resources, and replaced the term ''TDD'' with ''TTY'' to reflect current technology.

Just one commenter addressed the proposed revisions to Appendix A. This commenter recommended that we add a network of State vocational rehabilitation agencies to the examples of reasonable accommodation resources referenced in paragraph 5. OFCCP declines to add this reference as State vocational rehabilitation services agencies are already listed as a reasonable accommodation resource for contractors. OFCCP, therefore, adopts the proposed changes into the final rule

with the following modifications: (1) The reference to the proposed requirement to establish written reasonable accommodation procedures is deleted, consistent with the elimination of proposed § 60–741.45; (2) the third sentence of paragraph 2 is revised to reflect the use of a single voluntary self-identification form for the pre-offer and post-offer invitations to self-identify as an individual with a disability; and (3) the reference to the definition of ''reasonable accommodation'' is renumbered § 60–741.2(s).

Regulatory Procedures

Executive Order 13563 and Executive Order 12866

Executive Order 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; tailor the regulation to impose the least burden on society, consistent with obtaining the regulatory objectives; and, in choosing among alternative regulatory approaches, select those approaches that maximize net benefits. Executive Order 13563 recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

This rule is economically significant as it will have an annual effect on the economy of $100 million or more. EO 12866 sec. 3 at (f). In this section, we present a summary of the costs and benefits associated with the revisions to part 60–741. OFCCP estimates that first-year costs in the rule to be in the range of $349,510,926 to $659,877,833. This includes (1) One-time costs; (2) recurring costs; (3) capital start-up costs; and (4) operations and maintenance costs.[31] The recurring costs in years contractors do not invite all employees to voluntarily self-identify as an individual with a disability will range from $162,371,816 to $395,258,387. The recurring costs in the years that contractors do invite all employees to voluntarily self-identify as an individual with a disability will range from $242,345,778 to $480,476,442.

A. *Introduction*

The final regulatory impact analysis is substantially different from the preliminary regulatory impact analysis presented in the section 503 NPRM based on comments received during the public and interagency comment period. First, the final rule has been scaled down significantly so that it focuses on requirements essential to creating accountability, and supporting the ability of contractors to conduct meaningful self-assessments using more data. This rule also minimizes the costs to contractors while not sacrificing the agency's ability to conduct effective compliance evaluations. A detailed discussion of the proposals in the NPRM that OFCCP did not adopt in the final rule is included in the Discussion of Impacts section below. Second, OFCCP increased the number of contractor establishments affected by the rule to take into account some of the public comments at the NPRM phases of the rulemaking. Third, the analysis acknowledges that some establishments and/or companies may incur higher costs under the final rule and illustrates a range of costs to implement several provisions. The analysis considers, when appropriate, costs that may be incurred by contractors' headquarters versus establishments, and differences between contractors with automated human resources and systems and those with manual systems.

1. Eliminated Several Proposals in the NPRM

While all the proposals in the NPRM had value, after assessing the comments received on the NPRM published on December 9, 2011, we made several changes in the final rule. OFCCP reconsidered whether the cost of several proposals in the NPRM could be justified by their potential benefits, and whether alternative methods or approaches could achieve comparable or acceptable benefits for less cost or burden. We retain in the final rule those provisions proposed in the NPRM that create greater contractor accountability through enhanced data collection and recordkeeping. Therefore, as an example, the final rule does not require each contractor to establish three ''linkage'' agreements with various disability service organizations to facilitate disability recruitment.

Other examples of how the final rule takes a tailored approach include, but are not limited to, eliminating the proposal that contractors reproduce the entire equal opportunity clause in all contracts and subcontracts; the proposal that contractor staff training must cover a list of specific training items; the proposal to mandate the adoption of written reasonable accommodation procedures; the proposal to mandate annual reviews of personnel policies; and the proposal to mandate that contractors identify the official responsible for the affirmative action program on all communications are also eliminated in the final rule.

2. Increased the Contractor Establishment Count

OFCCP received comments on the estimated number of contractor establishments, including a recommendation to accept a count of 285,390 using the Veterans Employment Training Services (VETS) annual report. While OFCCP declines to exclusively rely on the VETS report, we present an estimated high end for the range of the cost of the rule based on a contractor establishment number of 251,300. This number is based on 2010 VETS data from their pending Information Collection Request.[32]

All costs and hours in the burden analysis of this final rule are calculated using these revised numbers for Federal contractor establishments. Federally-assisted construction contractors are not subject to these regulations and, therefore, are not included in this total. *See* § 60–741.2(i) for the definition of ''Government contract.''

3. Revised and Increased Burden Estimates

OFCCP received approximately 130 comments on the burden imposed by the section 503 NPRM from individuals, disability associations, companies and industry groups. A few commenters stated that the benefits of the proposed rule outweigh the costs. The majority of comments on the burden of the proposed rule expressed different views. Commenters noted that OFCCP dramatically underestimated the burden associated with the rule. Several commenters provided their own burden estimates, though often with little discussion or explanation of their methodology, that they asserted more accurately reflected the impact that the proposed provisions would have on contractors. The estimates provided by commenters were significantly higher than those used in the NPRM and resulted in total costs that far exceeded the NPRM's estimate. Commenters also expressed concern that the proposals in the NPRM seeking to require contractors to collect data and engage in other personnel activities would change their business functions and would not lead to jobs for individuals with disabilities. Commenters especially emphasized the costs of modifying their existing human

[31] These costs include both establishment and contractor company level costs.

[32] OMB Control Number 1293–0005, Federal Contractor Veterans' Employment Report, VETS—100/VETS–100A, *http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201104–1293–003* (last accessed Aug. 13, 2013).

resources information systems in order to collect new categories of data on individuals with disabilities.

OFCCP acknowledges that it is challenging to estimate the precise amount of time each establishment or headquarters, as appropriate, will take to engage in certain activities. However, in response to public comments, the final regulatory impact analysis attempts to account for the fact that smaller contractors may not have the same human resources capabilities as larger contractors. OFCCP does so by providing low and high range estimates for certain requirements. This approach is taken to distinguish between contractors with automated application and human resources information systems represented at the low end of the range in terms of burden, and contractors with manual systems represented at the high end of the range. The distinction is applied, for example, when estimating burden related to meeting the data collection requirements of the final rule. The high end of the range estimate is based on the assumption that smaller contractors with 50–100 employees may still use manual application or human resources processes. These contractors would likely expend more time conducting the kind of data collection and analysis required under the final rule. The range also factors in varying estimates for the number of applicants who would fill out the invitation to self-identify.

In addition, as mentioned earlier, OFCCP presents burden estimates based on two different contractor establishment numbers in order to reflect the range of opinions about the size of the universe of contractors affected by this rule.

Elsewhere in this issue of the **Federal Register**, OFCCP is publishing a final rule amending the VEVRAA implementing regulations at 41 CFR part 60–300. Many of the revisions contained in this section 503 final rule mirror revisions contained in the VEVRAA final rule. In consideration of the fact that contractors will, thus, already be required to perform certain activities, OFCCP eliminated the burden in this analysis for provisions that mirror requirements in part 60–300. OFCCP also decreased the burden for one-time or capital and start-up costs that are substantially similar to those that are already required under the VEVRAA final rule.

B. The Need for the Regulation

Employment discrimination and underutilization of qualified workers, such as individuals with disabilities and veterans, contribute to broader societal problems such as income inequality and poverty. The median household income for ''householders'' with a disability, aged 18 to 64, was $25,420 compared with a median income of $59,411 for households with a householder who did not report a disability.[33] Controlling for age and race we find that workers with a disability, on average, earn less than private sector workers without a disability. The mean hourly wage of those with a disability is $17.62 (with a median of $13.73) compared to $21.67 (median $16.99) for those without a disability.[34] Controlling for age and race, male workers with a disability earn 23 percent less than males without a disability. The disability gap for females is 20 percent.[35] While 28.8 percent of individuals, ages 18 to 64, with a disability were in poverty in 2011, the data show that 12.5 percent of those individuals without a disability were in poverty.[36]

Based on our analysis of the American Community Survey (ACS) 2008–2010 Public Use Microdata (PUMS), and controlling for age and race we found that:[37]

- Males with disability had a 7.2 percentage point higher unemployment rate than males without a disability.
- Females with disability had a 6.5 percentage point higher unemployment rate than females without a disability.
- Females with a disability had a 29.2 percentage point higher probability of not being in the labor force than females without a disability.

A 2009 report found that ''having a disability is associated with lower earnings due to decreased ability to work, prejudice, and other factors.''[38] There are a number of hypotheses concerning disparities in labor force participation, employment rates, and wages. While knowledge of opportunities, differences in access and attainment of training and education, and underutilization of individuals with disabilities likely contribute to these disparities, the culture of the typical workplace and discrimination are also factors in some employment settings. However, there is little empirical data upon which to base targeted interventions. Data collection remains a critical need.

The final rule is intended to provide contractors with the tools needed to evaluate their own compliance and proactively identify and correct any deficiencies in their employment practices. Because the existing regulations implementing section 503 do not provide contractors with adequate tools to assess whether they are complying with their nondiscrimination and affirmative action obligations to recruit and employ qualified individuals with disabilities, the revisions of the final rule will assist contractors in averting potentially expensive violation findings by OFCCP.

C. Discussion of Impacts

In this section, OFCCP presents a summary of the costs associated with the revisions to part 60–741. The estimated cost to contractors is based on Bureau of Labor Statistics data in the publication ''Employer Costs for Employee Compensation'' (September 2011), which lists total compensation for management, professional, and related occupations as $50.11 per hour and administrative support as $23.72 per hour. OFCCP estimates that 52 percent of the burden hours will be management, professional, and related occupations and 48 percent will be administrative support.

[33] *Income, Poverty and Health Insurance Coverage in the United States: 2011,* Current Population Reports, issued September 2012, *http://www.census.gov/prod/2012pubs/p60–243.pdf* (last accessed July 8, 2013), p. 10. A ''householder'' is the person (or one of the people) in whose name the home is owned or rented and the person to whom the relationship of other household members is recorded. Typically, it is the head of a household. Only one person per household is designated the ''householder.''

[34] OFCCP ran wage regressions using the natural log of effective hourly wages calculated as real income divided by usual hours per week and weeks per year. The weeks per year variable is categorical so the midpoint of each category was used as a proxy for the number of weeks worked. Explanatory variables include age and race. The sample was restricted to individuals aged 18 to 64 employed in the private sector. Individuals currently in the armed forces were not included in the sample. All OFCCP models used ACS 2008–2010 Public Use Microdata (PUMS).

[35] Id.

[36] *Income, Poverty and Health Insurance Coverage in the United States: 2011,* Current Population Reports, issued September 2012, *http://www.census.gov/prod/2012pubs/p60–243.pdf* (last accessed July 8, 2013).

[37] OFCCP ran wage regressions using the natural log of effective hourly wages calculated as real income divided by usual hours per week and weeks per year. The weeks per year variable is categorical so the midpoint of each category was used as a proxy for the number of weeks worked. Explanatory variables include age and race. The sample was limited to individuals aged 18 to 64 employed in the private sector. All OFCCP models used ACS 2008–2010 Public Use Microdata (PUMS).

[38] *Changing Demographic Trends that Affect the Workplace and Implications for People with Disabilities,* Executive Summary (Nov. 30, 2009), p. 4. ''Studies agree that disability incidence is related to income and earnings. A number of intertwined relationships, however, make it somewhat difficult to sort out cause and effect.''

TABLE 1—CONTRACTOR NEW REQUIREMENTS—171,275 ESTABLISHMENTS

Burden	Low cost	High cost
One-Time Burden		
EO Clause, Parag 10 (Include "Disability" EEO Statement)	$320,660.14	$320,660.14
741.5(d) (Modify EO Clause)	1,603,263.00	1,603,263.00
741.42 (Modify Application Systems)	2,101,102.72	2,583,328.54
Total	4,025,025.86	4,507,251.68
Recurring Burden		
741.42 (Invitation to Self-Identify)	9,619,542.08	9,619,542.08
741.42 (Invitation to Self-Identify Employee Burden)	68,751,157.00	68,751,157.00
741.42 (Recordkeeping)	1,603,263.25	1,603,263.25
741.44(f) (Review Outreach and Recruitment)	3,174,438.00	3,174,438.00
741.44(f)(4) (Outreach and Recruitment Recordkeeping)	1,068,842.17	1,068,842.17
741.44(h) (AAP Audit Recordkeeping)	1,068,842.17	1,068,842.17
741.44(k) (Data Collection and Analysis)	3,740,925.75	6,840,549.94
741.45 (Utilization Analysis)	6,413,015.00	8,978,223.00
741.45 (Utilization Analysis Recordkeeping)	1,068,842.00	1,068,842.00
Total	96,508,867.42	102,173,699.61
Capital and Start-up	28,312,120.00	39,086,481.00
Rule Familiarization	8,582,590.25	34,330,361.00
Operations and Maintenance	616,590.00	1,356,498.00
Reasonable Accommodations	114,770,291.00	114,770.291.00
Total	252,815,484.53	296,224,582.29

TABLE 2—CONTRACTOR NEW REQUIREMENTS—251,300 ESTABLISHMENTS

Provision	Low cost	High cost
One-Time Burden		
EO Clause, Parag 10 (Include "Disability" EEO Statement)	$470,468.00	$470,468.00
741.5(d) (Modify EO Clause)	784,115.00	784,115.00
741.42 (Modify Application Systems)	3,102,510.41	3,814,616.30
Total	4,357,093.41	5,069,199.30
Recurring Burden		
741.42 (Invitation to Self-Identify)	14,114,063.00	14,114,063.00
741.42 (Invitation to Self-Identify Employee Burden)	68,751,667.00	68,751,667.00
741.42 (Recordkeeping)	2,352,344.00	2,352,344.00
741.44(f) (Review Outreach and Recruitment)	4,704,687.82	4,704,687.82
741.44(f)(4) (Outreach and Recruitment Recordkeeping)	1,568,229.27	1,568,229.27
741.44(h) (AAP Audit Recordkeeping)	1,568,229.27	1,568,229.27
741.44(k) (Data Collection and Analysis)	5,488,802.46	10,036,667.35
741.45 (Utilization Analysis)	9,409,375.64	13,173,125.90
741.45 (Utilization Analysis Recordkeeping)	1,568,229.27	1,568,229.27
Total	109,525,627.73	117,837,242.88
Capital and Start-up	41,555,091.78	57,716,207.82
Rule Familiarization	12,592,643.00	50,370,572.00
Operations and Maintenance	904,680.00	1,990,296.00
Reasonable Accommodation	114,770,291.00	114,770,291.00
Costs to Companies	283,705,426.92	347,753,809.00

TABLE 3—COMPLETING PRE-OFFER SELF-IDENTIFICATION

Provision	171,275 establishments		251,300 establishments	
	Low cost	High cost	Low cost	High cost
741.42(a)	$96,695,442.00	$212,729,213.00	$141,874,556.25	$312,124,023.75

1. Regulatory Familiarization

Several commenters noted that the proposed rule did not quantify the burden of reading and understanding the section 503 revisions on contractors. OFCCP acknowledges that 5 CFR 1320.3(b)(1)(i) requires agencies to include in the burden analysis for new information collection requirements the estimated time it takes for contractors to review and understand the instructions for compliance. In order to minimize the burden, OFCCP will publish compliance assistance materials including, but not limited to, factsheets and ''Frequently Asked Questions.'' OFCCP will also host webinars for the contractor community that will describe the key provisions in the final rule, and conduct listening session to identify any specific challenges contractors believe they face, or may face, when complying with the requirements of the final rule.

OFCCP estimates it will take, at a minimum, 1 hour to have a management professional at each establishment either read compliance assistance materials provided by OFCCP or participate in an OFCCP webinar to learn about the new requirements of the final rule. OFCCP believes that this is a reasonable estimate since there are substantially fewer new requirements in the final rule than proposed in the NPRM, and contractors already have at least one person that is responsible for overseeing their compliance with OFCCP's regulations. The estimated cost of this burden is based on data from the Bureau of Labor Statistics in the publication ''Employer Costs for Employee Compensation'' (September 2011), which lists total compensation for a management professional at $50.11. Therefore, the estimated burden for rule familiarization is 171,275 hours (171,275 contractor establishments × 1 hour = 171,275 hours). We calculate the total estimated minimum costs as $8,582,590 (171,275 hours × $50.11/hour = $8,582,590) or $50 per establishment.

Commenters suggested that reviewing the requirements of the final rule would take up to 6 hours. OFCCP declines to adopt this calculation since it is based on reviewing the proposed rule which included a significant number of additional requirements that are not in the final rule. Therefore, OFCCP estimates the maximum for reviewing the rule would be 4 hours for a total of 685,100 (171,275 contractor establishments × 4 hour = 685,100 hours). We calculate the total maximum estimated start-up costs as $34,330,361 (685,100 × $50.11/hour = $34,330,361) or $200 per establishment.

Assuming there are 251,300 establishments impacted by the final rule, the estimated minimum burden for rule familiarization would be 251,300 hours (251,300 contractor establishments × 1 hour = 251,300 hours). The total estimated minimum costs would be $12,592,643 (251,300 hours × $50.11/hour = $12,592,643) or $50 per establishment. OFCCP estimates the maximum for reviewing the rule would be 4 hours for a total of 1,005,200 hours (251,300 contractor establishments × 4 hour = 1,005,200 hours). The total maximum estimated maximum costs would be $50,370,572 (1,005,200 hours × $50.11/hour = $50,370,572) or $200 per establishment.

2. Section 60–741.5 Equal Opportunity Clause (EO Clause)

EO Clause, Paragraph 4

Paragraph 4 of the final rule clarifies the contractor's duty to provide notices of employee rights and contractor obligations in a manner that is accessible and understandable to persons with disabilities. The final rule revises the parenthetical at the end of the sentence by replacing the outdated suggestion of ''hav[ing] the notice read to a visually disabled person'' as an accommodation with the suggestion to provide Braille, large print, or other versions that allow persons with disabilities to read the notices themselves. The NPRM estimated that it would take contractors ten (10) minutes to receive an accommodation request and maintain records of compliance.

Upon further consideration, OFCCP determines that there are no new costs related to this provision. The nondiscrimination requirements of section 503 currently require contractors to provide reasonable accommodation. *See* 41 CFR 60–741.21(f). This modification simply updates the example of a possible accommodation that contractors may provide to a visually impaired person, and does not impose any new obligation on contractors.

Paragraph 4 of the final rule also allows contractors to post notices regarding employee rights and their equal employment opportunity obligations electronically if the contractor has actual knowledge that employees will have access to them. OFCCP estimates no additional burden for contractors that opt to post relevant notices electronically. This provision simply provides contractors with another, more expedient, means to meet its existing obligations.

Paragraph 4 of the final rule requires contractors to electronically post a notice of job applicants' rights if the contractor utilizes an electronic application. The existing regulations require contractors to post notices regarding employee rights and equal employment opportunity obligations in conspicuous places for employees and applicants. *See* 41 CFR 60–741.5(a)(4). The final rule clarifies how contractors can meet this existing obligation for on-line applicants. Therefore, there is no new burden for this provision.

EO Clause, Paragraph 7

Under existing Federal requirements, including EO 11246, contractors are required to state in solicitations and advertisements that the company is an equal opportunity employer. *See* 41 CFR 60–1.4(a)(2). The NPRM proposed adding a new paragraph 7 to the EO Clause that would require the contractor to also state in solicitations and advertisements that it is an equal opportunity employer of individuals with disabilities. The NPRM estimated that it would take contractors five (5) minutes to comply with this provision. A few commenters noted that this would increase the costs of solicitations and advertisements since some newspapers and other publications charge for each word of a solicitation.

The final rule incorporates the requirement for contractors to state in all solicitations and advertisements that the company is an equal opportunity employer of individuals with disabilities. OFCCP acknowledges that some contractors may experience an increased cost in light of this requirement. However, there is no indication based on the comments that OFCCP received on this issue that this would be a significant problem for a substantial number of contractors. In fact, the cost of many advertisements and solicitations are based on size (i.e., quarter-page, half-page, full-page) or by listing, rather than the number of words in the text. Moreover, the cost of an advertisement will also depend on the publication's circulation and location. The number of words in the text actually appears be a lesser factor when determining cost. After some research, OFCCP determined that the average cost per word nationally is between 10 and 20 cents for a classified advertisement. Therefore, the cost would not be greatly impacted by adding individuals with disabilities to the affirmative action statement in advertisements.

Information from OFCCP field staff indicates that many contractors already include ''disabilities'' in their equal employment opportunity statement for solicitations. Therefore, based on field experience evaluating contractor

practices, OFCCP estimates that approximately 40 percent of contractor establishments, or 68,510, currently comply with this requirement. OFCCP estimates that the remaining 102,765 contractor establishments will have a one-time burden of 5 minutes for amending their existing standard equal employment opportunity statement to include ''individuals with disabilities'' or similar language. Therefore, the total burden for this provision is 8,564 hours (102,765 contractor establishments × 5 minutes/60 = 8,564 hours). The cost for this provision is approximately $320,660.

Assuming there are 251,300 contractor establishments impacted by the final rule, the burden for this provision would be 12,565 hours (150,780 contractor establishments × 5 minutes/60 = 12,565 hours). The total cost of the provision would be $470,469.

Section 60–741.5(d)

The NPRM proposed requiring the entire EO Clause be included verbatim in Federal contracts. The NPRM estimated that it would take contractors 5 minutes to download and incorporate the required text in contract templates. OFCCP received nineteen comments regarding the proposed provision. Commenters primarily asserted that the proposed requirement would be too burdensome, since the length of contracts would increase significantly, and requested that incorporation by reference be retained. In response to these comments, the final rule permits incorporation of the EO Clause by reference with the addition of some additional language that OFCCP has provided in the regulatory text summarizing VEVRAA's purpose. OFCCP estimates that contractors will spend approximately 15 minutes modifying existing contract templates to ensure the additional language is included. The burden for this provision is 42,819 hours (171,275 contractor establishments × 5 minutes/60 = 42,819 hours). The cost for this provision is $1,603,263.

Assuming there are 251,300 contractor establishments impacted by the final rule, the burden for this provision would be 20,942 hours (251,300 contractor establishments × 5 minutes/60 = 20,942 hours). The cost for this provision would be $784,115.

3. Section 60–741.41 Availability of the Affirmative Action Program

The NRPM proposed requiring contractors to inform off-site employees of the availability of the affirmative action program for review. The burden for this provision was accounted for in the Paperwork Reduction Act Analysis of the VEVRAA NPRM. The final rule does not incorporate this proposal. Instead, the final rule retains the language in the existing § 60–741.41, but notes that the data metrics required by § 60–741.44(k) are not required to be made available to the contractor's employees or applicants. Therefore, no new burden is created.

4. Section 60–741.42 Invitation to Self-Identify

The NPRM proposed several significant revisions to this section, including requiring the contractor to invite all applicants to self-identify as an individual with a disability prior to an offer of employment and adding a new requirement for contractors to annually invite all employees to self-identify as an individual with a disability, among other things. The NPRM estimated that it would take 5 minutes for the contractor to download and save the text prescribed by OFCCP for the invitation to self-identify into a separate document that it can store electronically, include it in electronic applications, or print out to include in a hard copy application package, as needed. The NPRM further estimated that it would take contractors 5 minutes to download and save the prescribed text for the annual survey to invite employees to self-identify as an individual with a disability. Finally, the NPRM estimated that it would take contractors 1 minute to maintain the self-identification forms.

Several commenters expressed concern about the burden associated with the pre-offer invitation to self-identify. Commenters stated that OFCCP's estimate of 5 minutes was unreasonable. Commenters asserted that the pre-offer invitation to self-identify would require substantial modifications to contractors' application systems. Human resources personnel would also have to expend time and resources gathering and filing the documents. Commenters further asserted that the administrative costs would greatly outweigh the benefits of the pre-offer self-identification. At least two commenters stated that the pre-offer self-identification should not present a significant burden since contractors currently invite individuals to self-identify their race, gender, and status as a protected veteran.

The final rule adopts the voluntary, pre-offer self-identification invitation requirement. *See* 41 CFR 60–741.42 (a). However, in order to ease the burden on contractors, OFCCP is creating a single, one-page form entitled ''Voluntary Self-Identification of Disability.'' This standard form will be used for the pre-offer, post-offer, and the invitation to self-identify; it will be made available on the OFCCP Web site. This should decrease the administrative time that contractors will need to spend putting policies and procedures in place to comply with this requirement.

OFCCP modified its approach to this calculation to specifically distinguish between contractors with web-based or automated systems and those relying on manual or paper-based systems. Larger contractors, those with more than 100 employees are more likely to have web-based systems. OFCCP estimates that 72 percent of contractor companies utilize Web-based application systems.[39] Working at the corporate level, contractors will take 1.5 hours to review and retrieve existing sample invitations to self-identify, adopt the sample ''as is'' or make revisions to their existing form, save the invitation to self-identify and incorporate the document in the contractor's application form. This burden estimate should be considered in conjunction with the start-up costs associated with this rule. OFCCP allotted 18 hours in the section 503 final rule to modify human resources information systems or establish a process to comply with the rules' new data collection requirements. This is in addition to costs specified for incorporating the invitation to self-identify in the application process. Taken together, contractors will have over 21 hours to modify their existing application process. The burden for these contractors would be 49,676 hours (33,117 contractor companies × 1.5 hours = 49,676 hours). The remaining contractors would simply have to incorporate the invitation to self-identify in paper applications. OFCCP estimates this will take approximately 30 minutes. The burden for these contractors would be 6,440 hours (12,879 × 30 minutes/60 = 6,440 hours). The minimum cost for this provision is approximately $2,101,103. If all contractors used a web-based application the one-time burden of preparing the form and making the IT changes for this provision is 68,994 hours (45,996 contractor companies × 90 minutes/60 = 68,994 hours). The maximum cost for this provision is $2,583,328.

Assuming there are 251,300 contractor establishments, or 67,919 contractor companies,[40] in OFCCP's

[39] This estimate is based on the assumption that 72 percent of regulated contractor companies have greater than 100 employees and will likely use a web-based application system.

[40] OFCCP utilized the same ratio (approximately 3.7) of parent companies to number of

jurisdiction, contractors working at the corporate level, will take 1.5 hours to review and retrieve existing sample invitations to self-identify, adopt the sample ''as is'' or make revisions to their existing form, save the invitation to self-identify and incorporate the document in the contractor's application form. The burden for these contractors would be 73,352 hours (48,901 contractor companies × 1.5 hours = 73,352 hours). The remaining contractors would simply have to incorporate the invitation to self-identify in paper applications. OFCCP estimates this will take approximately 30 minutes. The burden for these contractors would be 9,509 hours (19,017 contractor companies × 30 minutes/60 = 9,509 hours). The minimum cost for this provision would be approximately $3,102,510.

If all contractors used a web-based application the one-time burden of preparing the form and making the IT changes for this provision is 101,879 hours (67,919 contractor companies × 90 minutes/60 = 101,879 hours). The maximum cost for this provision would be approximately $3,814,616.

Applicants for available positions with covered Federal contractors will have a minimal burden complying with section 60–741.42(a) in the course of completing their application for employment with the contractor. Section 60–741.42(a), on pre-offer self-identification, requires contractors to invite all applicants to self-identify whether or not they are an individual with a disability. OFCCP estimates that there will be a minimum of 15 applicants per job vacancy for on average 15 vacancies per year. OFCCP further estimates that it will take applicants approximately 5 minutes to complete the form. The burden for this provision is 3,211,406 hours (171,275 contractor establishments × 15 listings × 15 applicants × 5 minutes/60 = 3,211,406 hours). The minimum costs for this provision is $96,695,442. OFCCP estimates that there will be a maximum of approximately 33 applicants per job vacancy for on average 15 vacancies per year per establishment. OFCCP further estimates that it will take applicants approximately 5 minutes to fill out the self-identification form. The burden for this provision is 7,065,093 hours (171,275 contractor establishments × 15 listings × 33 applicants × 5 minutes/60 = 7,065,093 hours). The maximum costs for this provision would be $212,729,213.

Assuming that 251,300 establishments are impacted by the final rule, the minimum burden for this provision would be 4,711,875 hours (251,300 contractor establishments × 15 listings × 15 applicants × 5 minutes/60 = 4,711,875 hours). The minimum costs for this provision would be $141,874,556. OFCCP estimates that there will be a maximum of approximately 33 applicants per job vacancy for on average 15 vacancies per year per establishment. OFCCP further estimates that it will take applicants approximately 5 minutes to fill out the self-identification form. The burden under this scenario would be 10,366,125 hours (251,300 contractor establishments × 15 listings × 15 applicants × 5 minutes/60 = 10,366,125 hours). The costs would be $312,124,024.

Commenters also expressed concern about the proposed requirement to anonymously survey all employees to provide an opportunity to voluntarily self-identify as an individual with a disability. Commenters were particularly concerned about the administrative costs related to this provision. A few commenters suggested that complying with this requirement would cost thousands of dollars. These commenters emphasized the costs related to conducting the survey, securely maintaining the data, or consulting with an outside entity to administer the survey. Several commenters noted that the information would lack any value because it would be highly unreliable.

The final rule, at § 60–741.42(c), requires contractors to invite each of their employees to self-identify as an individual with a disability during the first year it becomes subject to the requirements of this section, and at five year intervals, thereafter. At least once during the years between each invitation, contractors must remind their employees that they may voluntarily update their disability status at any time. As noted earlier, the invitation to self-identify is a critical component to allowing contractors, and subsequently OFCCP, to collect valuable, targeted data on the number of individuals with disabilities in the contractors' workforce. Furthermore, inviting self-identification on a periodic basis will enable contractors to capture employees who may become disabled after their hire date or may feel more comfortable self-identifying once he or she has been employed for some time. Contractors will incur the costs of the invitation essentially every other year.

In light of the various comments raised regarding the burden associated with this requirement, the final rule revises the burden estimate for this provision. The contractors' employees will be asked to self-identify utilizing the same ''Voluntary Self-Identification of Disability'' form provided by OFCCP to be used at the pre-offer and post-offer invitation. Therefore, the time needed by employees to review and complete the form for the voluntary self-identification should be nominal. The form will be simple, written plainly, and will provide employees the option of selecting between one of two identification options.

The employee invitation to self-identify does not require creating an entirely new database or methodology for capturing employee data. Nor does this requirement necessitate procuring an outside consultant to administer this invitation. Rather, OFCCP envisions that this process will require a dedicated period of time during which contractors will enable existing employees to voluntarily self-identify as an individual with a disability using the same ''Voluntary Self-Identification of Disability'' form mentioned previously. Contractors can also track the data in the same manner that they use for other required invitations to self-identify.

However, OFCCP acknowledges that this process may take longer than the 5 minutes estimated by the NPRM. The final rule estimates that it will take contractors 1.5 hours to conduct the invitation to self-identify. This includes the time needed to develop communications regarding the invitation, distribute communications, and collect and track self-identification forms. OFCCP believes this process will become much more streamlined over time and will likely require significantly less than 1.5 hours in subsequent years. The estimated burden for this provision is 256,913 hours (171,275 contractor establishments × 90 minutes/60 = 256,913 hours). The approximate cost of this provision is $9,619,542.

Assuming there are 251,300 establishments impacted by the final rule, the burden for this provision would be 376,950 hours (251,300 contractor establishments × 5 minutes/60 = 376,950 hours). The total cost of the provision would be $14,114,063.

Contractor employees will have to spend some time reviewing and/or completing the survey. There are approximately 27,400,000 Federal contractor employees. OFCCP estimates that employees will take 5 minutes to complete the self-identification form. The burden for this provision is 2,283,333 hours (27,400,000 employees

establishments from the EEO–1 data to determine that among the universe of 251,300 establishments there are approximately 67,919 Federal contractor companies

× 5 minutes/60 = 2,283,333 hours). Utilizing Bureau of Labor Statistics data in the publication ''Employer Costs for Employee Compensation'' (September 2011), which lists an average total compensation for all civilian workers as $30.11 per hour, the cost of this provision would be $68,751,157.

OFCCP further estimates that it will take contractors 15 minutes to maintain self-identification forms. This time includes either manually storing the forms in a filing cabinet or saving them to an electronic database. The burden for this provision is 42,819 hours (171,275 contractor establishments × 15 minutes/60 = 42,819 hours). The approximate cost of this provision is $1,603,263.

Assuming there are 251,300 establishments impacted by the final rule, the burden for this provision would be 62,825 hours (251,300 contractor establishments × 15 minutes/60 = 62,825 hours). The cost for this provision would be $2,352,344.

5. Section 60–741.44 Required Contents of the Affirmative Action Program

Paragraph (a): Affirmative Action Policy Statement

Section 60–741.44(a) of the final rule clarifies the contractor's duty to make the equal opportunity policy statement accessible to all employees. The final rule revises the parenthetical at the end of the sentence by replacing the outdated suggestion of ''hav[ing] the notice read to a visually disabled person'' as an accommodation with the suggestion to provide Braille, large print, or other versions that allow persons with disabilities to read the notices themselves. It also requires the policy statement to indicate the top United States executive, such as the Chief Executive Officer (CEO) or the President of the United States Division of a foreign company, who supports the contractor's affirmative action program. The NPRM estimated that it would take contractors 10 minutes to receive requests for accommodation, provide the document in an alternative format, and maintain records of compliance. Some commenters expressed concern that contractors would have a significant burden making the affirmative action policy available in multiple formats to accommodate various disabilities.

Upon further consideration, OFCCP determines that there is no additional cost for this provision in the final rule. The nondiscrimination requirements of OFCCP's existing regulations require contractors to provide reasonable accommodation. *See* 41 CFR 60–741.21(f)(1). This modification simply updates the example of a possible accommodation that contractors may provide to a visually impaired person, and does not impose a new obligation on contractors. Similarly, no burden is associated with providing more specificity to the existing requirement that the contractor indicate the CEO's ''attitude on the subject matter.''

Paragraph (b): Review of Personnel Processes

Section 60–741.44(b) currently requires contractors to periodically review personnel processes to ensure that they do not screen out individuals with disabilities. The NPRM proposed requiring contractors to conduct this review annually and mandated specific steps contractors must take during the review, including: (1) Identifying the vacancies and training programs for which protected applicants and employees were considered; (2) providing a statement of reasons explaining the circumstances for rejecting individuals with disabilities for vacancies and training programs and a description of considered accommodations; and (3) describing the nature and type of accommodations for individuals with disabilities who were selected for hire, promotion, or training programs. The NPRM did not assign burden for identifying vacancies and training programs since these provisions mirrored proposed requirements in OFCCP's VEVRAA NPRM, 76 FR 23358 (April 26, 2011). The NPRM estimated that it would take contractors 30 minutes to provide a statement explaining the reasons for rejecting individuals with disabilities for vacancies and training programs. Finally, the NPRM estimated that it would take 30 minutes for contractors to describe accommodations for individuals with disabilities who were selected for hire, promotion, or training programs.

Several commenters noted that proposed § 60–741.44(b) would create a significant burden and costs on contractors. Commenters asserted that the proposed provision would require contractors to create documents related to thousands of employment transactions per year. Commenters also asserted that OFCCP's estimate of 30 minutes to develop these records was too low. Several commenters provided their own estimates that were significantly higher than those proposed by OFCCP. In response to these concerns, OFCCP does not adopt the proposal as drafted in the NPRM, and the final rule retains the existing language in § 60–741.44(b). Therefore, there is no new burden associated with this provision.

The NPRM also proposed requiring contractors to ensure that its use of information and communication technology is accessible to applicants and employees with disabilities. Some commenters objected to this provision, stating that it would be costly and time-consuming for contractors to ensure that all of its information and communication technology was fully accessible and up-to-date. The final rule clarifies the language in this section by stating that contractors must ensure that applicants and employees with disabilities have ''equal access to its personnel processes, including those implemented through information and communication technologies.'' Further, contractors must provide ''necessary reasonable accommodation to ensure applicants and employees with disabilities receive equal employment opportunity in the operation of personnel processes.'' Since contractors already have a duty to provide reasonable accommodations for individuals with disabilities, there is no new burden for this provision. *See* 41 CFR 60–741.21(f).

Paragraph (c): Physical and Mental Qualifications

The NPRM proposed requiring contractors to annually review all physical and mental job qualification standards and for contractors to document their annual review. The NPRM also proposed requiring the contractor to document those instances in which it believes that an individual would constitute a ''direct threat'' as understood under the ADA, as defined in these regulations, and to maintain the written statement as set forth in the recordkeeping requirement in § 60–741.80. The NPRM did not assign burden for the proposed provision since it mirrored requirements in section 60–300.44(c) of the VEVRAA proposed rule, 76 FR 23358 at 23417. Several commenters expressed concern with this provision. Commenters noted that annual review of all job qualifications and standards could cost some contractors thousands of dollars, especially larger contractors that may have thousands of job titles. Commenters recommended that OFCCP consider requiring the review less frequently. In order to minimize the burden, the final rule retains the existing language in 41 CFR 60–741.44 requiring periodic review of physical and mental job qualifications to ensure they do not screen out individuals with

disabilities. Therefore, there is no new burden for this provision.

Paragraph (d): Reasonable Accommodation to Physical and Mental Limitations

The NPRM proposed requiring contractors to ensure that its electronic or online job application systems are compatible with assistive technology commonly used by individuals with disabilities, such as screen reading and speech recognition software. OFCCP determined that this requirement is more appropriately addressed in § 60–741.21(a)(6)(iii) as a part of the fundamental reasonable accommodations obligations of contractors. The existing regulations make clear that it is ''unlawful for [a] contractor to fail to make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee.'' 41 CFR 60–741.21(f). Further, the existing definition of ''reasonable accommodation'' includes ''[m]odification or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such applicant desires.'' 41 CFR 60–741.2(v)(1)(i). Since Federal contractors have a duty to ensure that individuals with disabilities who require assistive technology are able to use their job application process, the proposed language does not create any new burden on contractors. The proposal simply clarifies how contractors can meet their existing obligations. Therefore, there is no new burden for this provision.

Paragraph (f): Outreach and Recruitment Efforts

The NPRM proposed several revisions to § 60–741.44(f). The NPRM proposed requiring contractors to list all of their employment opportunities, with limited exceptions, with the nearest Employment One-Stop Career Center. The NPRM did not estimate any burden for this provision since it mirrored an existing VEVRAA requirement. The proposed paragraph (f)(1)(ii) required contractors to enter into three linkage agreements with various entities to help recruit applicants with disabilities. The NPRM estimated that it would take contractors on average 3.2 hours to enter into these linkage agreements. The proposed paragraph (f)(1)(iv) required contractors to notify subcontractors, vendors, and suppliers of the company's affirmative action policies. The NPRM estimated that it would take contractors 5 minutes to revise notices created under a similar proposed requirement in the VEVRAA NPRM to include references to the company's nondiscrimination and affirmative action policies for individuals with disabilities. The proposed paragraph (f)(3) required contractors to conduct self-assessments of their outreach and recruitment efforts. The NPRM estimated that it would take contractors 30 minutes to conduct an assessment of outreach and recruitment in conjunction with correlating assessments under EO 11246 and VEVRAA. Finally, the proposed paragraph (f)(4) clarified the contractor's recordkeeping obligations with regard to these outreach and recruitment efforts.

Several commenters expressed concern regarding the potential burden of the proposed revisions to § 60–741.44(f). Commenters noted that submitting job listings to Employment One-Stop Career Centers in the manner and format required by the center would require a significant expenditure of time. Commenters further noted that it would take much longer than OFCCP estimated to develop meaningful relationships with recruitment entities through linkage agreements. Further, some larger contractors with multiple establishments could be required to enter into hundreds of different linkage agreements. Commenters stated that a less burdensome approach would be for OFCCP to create a job bank that would enable Federal contractors to centrally post all of their job listings to promote recruitment of individuals with disabilities. Other commenters objected to the burden created by the five-year recordkeeping requirements. In response to these concerns, the final rule eliminates the proposed requirements to list all job opportunities with the nearest Employment One-Stop Career Center and enter into linkage agreements. The final rule retains the existing language of § 60–741.44(f), which requires that the contractor undertake ''appropriate outreach and positive recruitment activities,'' and provides a number of suggested resources that contractors may utilize to carry out this general recruitment obligations. Therefore, there is no new burden for these provisions.

The final rule adopts the requirement for contractors to send written notification to subcontractors, vendors, and suppliers of the company's affirmative action policy. Section 60–300.44(f)(1)(ii) of the VEVRAA final rule also requires contractors to send written notification of the company policy related to its affirmative action efforts to all subcontractors, including subcontracting vendors and suppliers. OFCCP therefore expects that contractors will send a single, combined notice, informing subcontractors, vendors and suppliers of their VEVRAA and section 503 policies. Accordingly, OFCCP determined that there is no additional burden for this provision.

Paragraph (f)(3) of the NPRM required contractors to annually review their outreach and recruitment efforts to determine whether they were effective and document its review. Several commenters stated that this requirement would be unduly burdensome and would result in little benefit to contractors' affirmative action efforts. Commenters also stated that OFCCP's estimate of the time required for the review was too low. Commenters offered their own estimates that were significantly higher than that proposed by OFCCP.

Section 60–741.44(f)(3) of the final rule adopts this requirement as proposed. OFCCP expects that contractors will conduct this assessment in conjunction with the correlating assessments required under EO 11246 and VEVRAA. Further, OFCCP believes that if a contractor has been complying with its recruitment, outreach, data collection, and recordkeeping responsibilities throughout the affirmative action program year, as well as its general obligation under § 60–741.40(c) to review and update its affirmative action program on an annual basis (which includes its outreach and recruitment efforts, *see* § 60–741.44(f)), it will take an average of 30 additional minutes for the contractor to conduct the specific effectiveness assessment of its outreach and recruitment efforts, which would include a simple comparison of the annual raw data on applicants and hires that contractors collect pursuant to § 60–741.44(k) to previous years' data, as well as their hiring benchmark, and determining in light of these numbers and any other relevant circumstances whether adjustments in their outreach efforts is necessary. OFCCP estimates that 1 percent of contractors are first-time contractors during an abbreviated affirmative action program year and will be unable to complete the review. The recurring burden for this provision is 84,781 hours (169,562 contractor establishments × 30 minutes/60 = 84,781 hours). The estimated cost for this provision is $3,174,438.

Assuming that 251,300 establishments would be impacted by the final rule, the burden for this provision would be 124,394 hours (248,787 contractor establishments × 30 minutes/60 = 124,394 hours). The cost for this provision would be $4,657,641.

Section 60–741.44(f)(4) of the final rule requires contractors to document all the outreach and recruitment activities they undertake to comply with § 60–741.44(f) and retain these documents for a period of 3 years. Under the existing regulations, contractors are required to establish meaningful outreach and recruitment contacts. Consequently, contractors' outreach and recruitment should already be the subject of some documentation. This documentation may take several forms. It may include, for example, the numbers and types of outreach and recruitment events, the targeted groups or types of participants for each event, the dates or timeframes, location of the events, and who conducted and participated in the outreach and recruitment on behalf of the contractor.

OFCCP estimates that it will take contractors 10 minutes to maintain the outreach and recruitment documentation that would typically be generated as a result of their obligations pursuant to other provisions in the regulations. This does not include any additional time to make the software configuration needed to tell the contractor's computer system to store data for an additional year, as this burden was previously accounted for in the VEVRAA final rule's burden analysis of § 60–300.80(b). Therefore, the recurring burden for this provision is 28,546 hours (171,275 contractor establishments × 10 minutes/60 = 28,546 hours). The approximate cost for this provision is $1,068,842. Assuming there are 251,300 contractor establishments impacted by the final rule, the burden for this provision would be 41,833 hours (251,300 contractor establishments × 10 minutes/60 = 41,833 hours). The cost for this provision would be $1,568,229.

Paragraph (g): Internal Dissemination of Affirmative Action Policy

The NPRM proposed requiring the contractor to take several specific actions to disseminate its affirmative action policy, including incorporating the affirmative action policy in company policy manuals, informing all applicants and employees of the contractor's affirmative action obligations, and conducting meetings with management and company leadership to ensure they are informed about the contractor's obligations. The NPRM also proposed requiring contractors to hold meetings with employees at least once a year to discuss the section 503 affirmative action policy. The NPRM estimated that contractors would have a one-time burden of 20 minutes to develop the employee orientation presentation on the company's affirmative action requirements and an additional burden of 5 minutes to conduct the presentation. The NPRM further estimated that it would take contractors 30 minutes to disseminate the equal employment policy to any entity that the contractor has a collective bargaining agreement with and 5 minutes to maintain records of compliance with § 60–741.44(g).

OFCCP received several comments asserting that the agency underestimated the amount of time it would take to comply with the provision. One commenter provided its own estimates from an internal survey of companies that estimated compliance times ranging from 5 to 20 hours. The commenter further asserted that OFCCP failed to consider the number of meetings required or coordination with the internal communications and web services to disseminate the policy. Finally, commenters stated that OFCCP underestimated the costs of this provision by failing to account for the cost of staff time to attend the meetings. In response to these concerns, the final rule does not incorporate the requirement to have contractors conduct meetings with management and all other employees at least once a year to discuss the section 503 affirmative action policy.

The final rule adopts the requirement to include the affirmative action policy in the contractor's policy manual or otherwise make it available to its employees. The existing regulations currently require contractors to develop some internal procedure to communicate to employees its affirmative action obligation to employ and advance in employment individuals with disabilities. *See* 41 CFR 60–741.44(g)(1). The final rule simply clarifies that one of the means by which contractors can do that is by including this in the policy manual. The final rule also gives contractors the flexibility to disseminate the policy by another means, which can include the method they are currently using to comply with the law. Therefore, there is no new burden related to this provision.

The remaining elements that were required in the NPRM and/or were suggested in the existing rule remain in paragraph (g)(3) of the final rule as actions that the contractor is suggested to take, with the exception of the recordkeeping provision, which has been eliminated.

Section 60–741.44(h) Audit and Reporting System

Section 60–741.44(h)(1)(vi) of the final rule requires contractors to document the actions taken to comply with the obligations of paragraphs (h)(1)(i) through (v) of this section, and retain these documents as employment records subject to the recordkeeping requirements of § 60–741.80. Seven commenters stated that the proposed requirement would impose a burden and require new processes for tracking and recordkeeping.

This section is adopted in the final rule as proposed. Under the existing rule, most contractors should document and maintain their analysis of the affirmative action program as a normal part of their review and assessment process. Compliance officers report that, on request, they review or are provided a range of documents related to the analysis including, for example, reports, summaries and data. In many regards, this provision merely acknowledges and formalizes a current contractor practice. OFCCP estimates that it will take contractors 10 minutes to document the actions taken to comply with § 60–741.44(h) and retain those documents. The recurring burden for this provision is 28,546 hours (171,275 contractor establishments × 10 minutes = 856,375/60 = 28,546 hours). The estimated cost of this provision is $1,068,842. Assuming there are 251,300 establishments impacted by the final rule, the burden for this provision would be 41,833 hours (251,300 contractor establishments × 10 minutes/60 = 41,833 hours). The cost for this provision would be $1,568,229.

Paragraph (i): Responsibility for Implementation

The NPRM proposed requiring contractors to identify the official responsible for affirmative action activities on all internal and external communications regarding the contractor's affirmative action program. In the current regulation, this disclosure is only suggested. Upon further review, OFCCP does not believe that the benefit of this suggested change outweighs the potential burden that it would place on contractors. Accordingly, the language in the existing regulation that contractors should, but are not required to, take this step is retained. Therefore, there is no new burden for this provision.

Paragraph (j): Training

Section 60–741.44(j) of the existing regulation requires training for all personnel involved in recruitment,

hiring and promotion decisions to ensure that the contractor's affirmative action program is implemented. The NPRM proposed revising this paragraph to outline specific topics that must be covered in the training. The NPRM also proposed requiring contractors to make specific records and maintain these records, along with all written or electronic training materials used. Since this provision mirrored a similar proposed requirement in the VEVRAA NPRM, the section 503 NPRM estimated that it would take contractors 40 minutes to develop the section 503 aspects of the training and 20 minutes to present it.

Several commenters raised concerns regarding the burden that the training requirements would place on contractors. Commenters noted it would take hours to create their own training modules to adequately cover all of the information required by the proposed rule. Commenters suggested that OFCCP provide a training module to alleviate the burden of this provision to contractors. Commenters further noted that OFCCP did not adequately assess the cost of the provision since the NPRM did not include the cost of staff time to participate in the trainings.

In consideration of these comments, the final rule does not incorporate the portion of the proposed rule listing specific training items that must be covered by contractors or the specific recordkeeping requirement. Accordingly, no new burden is created by this provision in the final rule.

Paragraph (k): Data Collection Analysis

The NPRM proposed requiring contractors to make several quantitative measurements and comparisons regarding referrals, applicants and hires with disabilities and job fill ratios. The NPRM estimated that it would take contractors 1 hour to conduct the required data analysis.

Several commenters expressed concern about the burden associated with this proposal. Commenters were particularly concerned about the requirement to track and analyze referral data since applicants often do not indicate whether they were referred by a state employment service delivery system on their applications. Commenters further asserted that the newly required data collection and analysis would require expensive modifications to existing HRIS. Some commenters noted that the requirement would place a substantial burden on small businesses or contractors that do not have sophisticated electronic databases. One commenter noted that some contractors would be required to manually search paper records and compile data using pencil and paper. Commenters that were opposed to this requirement further noted that the results of the analysis would be questionable in light of the concerns regarding reliability of self-identification data.

The final rule adopts the requirement to collect and maintain data regarding applicants and hires with disabilities. The final rule eliminates the requirement for contractors to collect, maintain and analyze referral data on individuals with disabilities. The final rule also does not require contractors to calculate applicant, hiring, and job fill ratios in this provision. This eliminates many of the concerns commenters raised regarding this paragraph, and also serves to significantly decrease the burden on contractors. OFCCP also included a substantial initial capital or start-up cost estimate for contractors to put systems in place to efficiently track the data.

OFCCP disagrees with the assertion that a significant number of establishments would have to complete this analysis using paper and pencil. Feedback received from public comments regarding the concerns over costs for modifying human resources information systems further indicate that most contractors will have the capability to conduct the required calculations electronically. There are spreadsheet databases that are commonly used by businesses and have the capability to complete the kind of analysis required by § 60–741.44(k) in a manner of minutes. Contractors using this basic kind of tracking database may need to spend some time entering data by hand. However, the amount of time spent should be minimal, as this section only requires the calculation of a few workforce-wide comparisons regarding applicants and hires with disabilities.

Further, OFCCP clarifies the only ''new'' items in this section are those pertaining to the self-identification applicant and hiring data. The burden for collecting and maintaining the applicant data is already partially calculated under § 60–741.42(a); the burden associated with this section is largely just totaling the raw data on applicants.

OFCCP estimates that it will, at a minimum, take contractors 25 minutes to tabulate the applicant data using an electronic database that is integrated with the contractors' human resources information database where the data is typically stored. In addition, we estimate that an additional 10 minutes is required to electronically or otherwise store the records (e.g., the report or other written documentation generated by the calculations that explain the methodology, the data used, and the findings and conclusions; the data used to conduct the calculations for subsequent validation of the results; and other material used by the contractor for the calculations). The recurring burden for this provision is 99,910 hours (171,275 contractor establishments × 35 minutes/60 = 99,910 hours). The minimum cost for this provision is approximately $3,740,926.

However, some commenters noted that companies may have to calculate this information manually. Commenters stated that these calculations could take more than 6 hours. OFCCP declines to adopt the 6 hour estimate for manual calculations in large part because the estimate and the requirements of this section are significantly scaled back from the proposed rule, as the final rule does not require contractors to tabulate referral data. Accordingly, starting with the 6 hour estimate and scaling it back given the reduced burden of the final rule, OFCCP estimates that establishments without web-based application systems would take approximately 3 hours to tabulate the information required by this section. The burden for these establishments would be 102,765 hours (34,255 contractor establishments × 3 hours= 102,765 hours). The remaining establishments would incur the 35 minute burden, for a total of 79,928 hours (137,020 establishments × 35 minutes/60 = 79,928 hours). The maximum cost for this provision is approximately $6,840,550.

Assuming there are 251,300 contractor establishments impacted by the final rule, OFCCP estimates that it will, at a minimum, take contractors 25 minutes to tabulate the applicant data using an electronic database and an additional 10 minutes to electronically or otherwise store the records (e.g., the report or other written documentation generated by the calculations that explain the methodology, the data used, and the findings and conclusions; the data used to conduct the calculations for subsequent validation of the results; and other material used by the contractor for the calculations). The recurring burden for this provision would be 146,592 hours (251,300 contractor establishments × 35 minutes/60 = 146,592 hours). The minimum cost for this provision would be approximately $5,488,802.

The NPRM also proposed requiring contractors to maintain that data for 5 years. In response to the comments, the final rule reduces the record retention requirement for § 60–741.44(k) to 3

years. No new software needs are anticipated, however, a software switch or configuration may be required to tell the system to retain the records for the additional 1 year (or an additional 2 years in the case of a smaller contract or contractor). According to an IT professional, this is a simple configuration and should take about 15 minutes to execute. No new burden is added because the change required by the recordkeeping provisions of §§ 60–741.44(f)(4) of this final rule and 60–300.(80)(b) of the VEVRAA final rule include this IT change.

OFCCP also solicited comments regarding adding a reporting requirement that would contain the measurements and computations required by proposed paragraph (k), and including the percentage of applicants, new hires, and total workforce for each EEO–1 category. The majority of comments on this proposal asserted that the requirement would impose an unnecessary burden. Several commenters stated that OFCCP did not provide any support or justification for proposing the requirement. As noted in the Section-by-Section analysis, OFCCP weighed the utility of this reporting requirement and found that it may create unnecessary burden. Therefore, the final rule does not adopt the proposed reporting requirement.

6. Section 60–741.45 Utilization Goal

The NPRM proposed a new § 60–741.46 that would establish a single, national utilization goal for individual with disabilities. The proposed § 60–741.46 also outlined steps contractors must take to determine whether they have met the utilization goal and develop and execute ''action–oriented programs'' to correct any identified problems related to attaining the goal. Finally, the NPRM sought comment on whether there should be a sub-goal for individuals with targeted disabilities. The NPRM estimated that it would take 5 minutes of recordkeeping time per contractor to document the goal. The NPRM further estimated that it would take contractors 1 hour in the first year to determine whether the company has met the goal.

Several commenters stated that establishing a utilization goal for individuals with disabilities would be extremely burdensome. Commenters noted that the proposed provision would require a substantial amount of staff time to research and collect the data for the utilization analysis. One commenter noted that the utilization goal would be particularly onerous for larger contractors as the requirement could result in creating thousands of new goals. The burden would be doubled if contractors had to establish a sub-goal.

The final rule adopts the proposed utilization goal of 7 percent, now § 60–741.45 of the final rule. As noted in the preamble, the long-term, employment disparities between individuals with and without a disability necessitate a quantifiable means by which to assess whether contractors are achieving equal employment opportunity. Further, OFCCP received significant support for the goal from commenters. The disability community and those representing their interests, in particular, were strongly in support of this new requirement. For these commenters, affirmative action efforts under section 503 have been largely meaningless without, among other things, measurable goals for the employment of people with disabilities.

OFCCP disagrees with the assertion that this provision would require contractors to create thousands of new goals. The final rule establishes one goal that applies to all contractors and all different job groups. Section 60–741.45 creates no obligation for contractors to independently create goals specific to their organization or any particular job group. Contractors will use the standard 7 percent goal when conducting their utilization analysis.

Individuals with disabilities make up 4.83 percent of the employed.[41] The section 503 rule establishes a utilization goal for employing individuals with disabilities of 7 percent. To meet the goal, OFCCP estimates that Federal contractors would hire an additional 594,580 individuals with disabilities. This amounts to an additional 2.37 employees per establishment or 8.75 employees per company.[42] Some of these new hires may require a reasonable accommodation. According to research conducted by the Job Accommodation Network (JAN), employers in the study reported that 57 percent of accommodations cost absolutely nothing. For the remaining 43 percent, the typical cost of providing a reasonable accommodation was approximately $500.[43] Few employers, about 4 percent, reported incurring ongoing annual costs associated with providing accommodations. We estimate, in light of this information, that 219,338 disabled non-protected veterans may need accommodations with a total cost of $114,770,291 in the year the target is met and $48,524,879 in recurring costs.

A few commenters stated that one hour is not a sufficient amount of time to conduct the required utilization analysis. OFCCP also disagrees with this assertion. As noted earlier, supply and service contractors are already required to conduct a utilization analysis. *See* 41 CFR 60–2.15(a). These contractors should have some mechanisms in place to conduct this analysis efficiently. Furthermore, OFCCP has estimated a substantial amount of initial capital and start-up costs for contractors to put procedures in place for the annual analysis to be conducted efficiently. OFCCP also increased the estimate of the amount of time necessary to conduct the self-identification process, which will inform the utilization analysis. Therefore, the final rule estimates that, at a minimum, contractors will take 1 hour to conduct the utilization analysis. The burden for this provision is 171,275 hours (171,275 contractor establishments × 1 hour = 171,275 hours). The minimum costs for this provision is $6,413,015.

However, some commenters noted that companies may have to calculate this information manually. Utilizing data from the EEO–1 regarding the number of establishments with fewer than 100 employees, OFCCP estimates that 20 percent of establishments may have to conduct the analysis manually. These establishments would take approximately 3 hours to tabulate the information required by this section. The burden for these establishments would be 102,765 hours (34,255 contractor establishments × 3 hours= 102,765). The remaining establishments would incur the 1 hour burden, for a total of 137,020 hours (137,020 contractor establishments × 1 hour = 137,020 hours). The maximum cost for this provision is approximately $8,978,223.

Assuming there are 251,300 contractor establishments impacted by the final rule and they all utilized some form of electronic system to conduct the analysis, the burden for this provision would be 251,300 hours (251,300 contractor establishments × 1 hour = 251,300 hours). The cost for this

[41] U.S. Census Bureau, 2011 American Community Survey. There are a variety of sources for this estimate. The Current Population Survey estimates a lower rate, 3.5 percent, and the Survey of Income and Program Participation estimates 9.4 percent.

[42] This assumes that there are 251,300 contractor establishments and 67,919 companies. Under an alternative scenario of 171,275 establishments and 46,291 companies, the additional number of disabled hires per establishment and company is 3.52 and 13.02, respectively.

[43] Job Accommodation Network, ''Workplace Accommodations: Low Cost, High Impact,'' Sept. 1, 2012. *Accommodation and Compliance Series, http://askjan.org/media/lowcosthighimpact.html* (last accessed Aug. 9, 2013).

provision would be $9,409,376. OFCCP estimates that 20 percent of these establishments may have to conduct the analysis manually. These establishments would take approximately 3 hours to tabulate the information required by this section. The burden would be 150,780 hours (50,260 contractor establishments × 3 hours= 150,780 hours). The remaining establishments would incur the 1 hour burden, for a total of 201,040 hours (201,040 establishments × 1 hour = 201,040 hours). The maximum cost for this provision would be approximately $13,173,126.

OFCCP further estimates that it will take contractors an additional 10 minutes to maintain records of the utilization analysis. This simply requires filing away any records created while conducting the analysis. The recordkeeping burden is 28,546 hours (171,275 contractor establishments × 10 minutes/60 = 28,546 hours). The total cost for this provision is $1,068,836.

Assuming there are 251,300 establishments impacted by the final rule, the burden for this provision would be 41,833 hours (251,300 contractor establishments × 10 minutes/60 = 41,833 hours). The cost for this provision would be $1,568,229. Section 60–741.45(e) requires contractors to make an assessment of whether any impediments to equal employment opportunity for individuals with disabilities exist. This assessment can be based on reviews currently required under §§ 60–741.44(b) (review of personnel processes), 60–741.44(f) (review of outreach and recruitment efforts), and 60–741.44(h) (audit of the affirmative action program). A new paragraph (f) entitled ''Action-oriented programs'' requires contractors to develop action-oriented programs when problem areas have been identified by the utilization analysis. These action-oriented programs may include the modification of personnel processes, alternative or additional outreach and recruitment efforts, and/or other actions designed to correct the identified problem areas and attain the established goal. The existing regulations require contractors to measure the effectiveness of the affirmative action program and correct any identified deficiencies. *See* 41 CFR 60–741.44(h). Therefore, there is no new burden created by paragraphs (f) or (e).

7. Section 60–741.60 Compliance evaluations

Section 60–741.60 of the final rule allows OFCCP to request that contractors make documents available on or off-site during a compliance evaluation and establishes new procedures for pre-award compliance evaluations under section 503. Since contractors are currently required to make documents available to OFCCP during a compliance evaluation, there is no additional cost for allowing OFCCP off-site access to documents. This provision simply affords OFCCP the opportunity to conduct reviews of relevant materials at any appropriate location. The newly created pre-award compliance evaluation requires no action by the contractor and only places a burden on the Federal contracting agency and OFCCP.

8. Section 60–741.80 Recordkeeping

The NPRM proposed requiring contractors to maintain records created pursuant to the proposed §§ 60–741.44(f)(4) and 60–741.44(k) for five years. Commenters stated this requirement was overly burdensome as contractors would be required to maintain a substantial amount of new records either physically or electronically for a longer period of time than required by the existing regulations.

Section 60–741.80 of the final rule requires contractors to maintain data pursuant to §§ 60–741.741(f)(4) (outreach and recruiting efforts) and 60–741.44(k) (applicant and hire data) for 3 years. OFCCP disagrees with the assertion that this requirement would create a need to secure substantial electronic or physical storage space to keep these records. For example, compliance with § 60–741.44(f)(4) can include material evidence that the contractor has attended recruiting events or other similar activities. Since contractors no longer need to maintain referral records, the recordkeeping burden of § 60–741.44(k) requirement is substantially reduced. The primary record contractors would have to maintain is the self-identification forms that the data analysis is based on. As such, there should be no need to secure substantial new storage space beyond what the contractor already maintains in its normal course of business to maintain these forms. There is no additional burden assessed here because it is included in the estimates for §§ 60–741.44(f)(4) and 60–741.44(k). In those sections, we determined that no new software needs are anticipated, however, a software switch or configuration may be required to instruct the system to retain the records for the additional 1 year (or an additional 2 years in the case of a smaller contract or contractor).

9. Section 60–741.81 Access to records

Section 60–741.81 of the final rule requires contractors to specify all available records formats and allow OFCCP to select preferred record formats from those identified by the contractor during a compliance evaluation. Upon request, the contractor must provide OFCCP information about all format(s), including specific electronic formats, in which the contractor maintains its records and other information.

A few commenters objected to the requirement to provide records in formats OFCCP selects. The final rule clarifies this provision to make clear that contractors will not be required to invest time or resources creating records in a specific format, or creating a documented ''list'' of the formats in which they have documents available. Rather, contractors merely need to inform OFCCP of the formats in which they maintain records and other information, and allow OFCCP to select the format(s) in which the records or other information will be provided.

10. Appendix A, Guidelines on a Contractor's Duty To Provide Reasonable Accommodation

Appendix A includes several changes that reflect updated terminology and revisions made elsewhere in the regulations. These revisions create no new costs for contractors, therefore, there is no burden for Appendix A.

11. Appendix B—Developing Reasonable Accommodation Procedures

The NPRM proposed a new provision at § 60–741.45 that would require contractors to establish formal, written reasonable accommodation procedures. The proposed provision required including various elements in the reasonable accommodation procedures; disseminating the procedures to all employees; informing applicants of the reasonable accommodation procedures; training for all managers on the procedures; and documenting specific information regarding reasonable accommodation requests. The NPRM estimated the following related to this provision: 30 minutes to develop the reasonable accommodation procedures; 5 minutes for first-time contractors to designate a responsible official for implementing the procedures; 15 minutes to disseminate the procedures to employees; 2 hours to develop the training on the procedures; and an additional 5 minutes to maintain records of compliance with the provision.

Several commenters stated that the proposed § 60–741.45 was an overly

burdensome requirement. Commenters expressed particular concern about the burden of providing written confirmation of reasonable accommodation requests and explanations of any denials of reasonable accommodation. Some commenters noted that the burden of this requirement would be enormous, such that it was difficult to even quantify how much time it would take to comply with this provision.

Upon further review, OFCCP does not believe that the benefit of this suggested change outweighs the potential burden that it would place on contractors. Therefore, the final rule creates a new Appendix B entitled *Developing Reasonable Accommodation Procedures* that provides specific guidance and sets forth recommended elements similar to those proposed in the NPRM that contractors may use when voluntarily establishing written reasonable accommodation procedures. The final rule also adds a new paragraph (vi) to § 60–741.21(a)(6) that acknowledges that the development and use of written reasonable accommodation procedures is a best practice. However, it does not require that contractors develop such procedures. Therefore, no new burden is assessed for this provision.

12. Initial Capital or Start-Up Costs

Human Resources Information Systems Modifications

Several commenters noted that the new data collection requirements in the proposed rule would require modifications to existing HRIS. In order to estimate the start-up costs for the final rule, OFCCP considered what would be required to modify existing HRIS to track the number of applicants and hires that self-identify as an individual with a disability. Because contractors must already maintain information on their employees by race/ethnicity and sex, contractors should have some mechanism in place to track the newly required information. Further, the VEVRAA final rule requires contractors to make similar revisions to their HRIS to accommodate the new VEVRAA data collection requirements. OFCCP reasonably anticipates that contractors will make the HRIS changes necessitated by this final rule in conjunction with the analogous changes needed to comply with the VEVRAA final rule, resulting in increased efficiency and reduced burden.

The minimum costs for modifying HRIS is based on the estimate that 72 percent of contractors utilize this kind of electronic system.[44] Based on information from IT professionals, OFCCP estimates it would take each contractor company on average 18 hours to make the needed systems modifications to track applicant and hiring information for individuals with disabilities. This includes IT and administrative professionals to make the changes. The estimated costs for these modifications are based on data from the Bureau of Labor Statistics in the publication ''Employer Costs for Employee Compensation'' (September 2011), which lists total compensation for a professional of $47.21 per hour. Therefore, the minimum estimated burden for the capital and start-up costs is 599,706 hours (33,317 contractor companies × 18 hours = 599,706 hours). We calculate the total minimum estimated start-up costs as $28,312,120 (599,706 × $47.21/hour = $28,312,120) or $849 per establishment. Assuming all contractor companies utilize HRIS, the maximum estimated burden for modifying the systems is 827,928 hours (45,996 contractor companies × 18 hours = 827,928 hours). We calculate the total costs as $39,086,480 (827,928 hours × $47.21/hour = $39,086,480).

Assuming there are 251,300 contractor establishments in OFCCP's jurisdiction, or 67,919 companies, the minimum estimated burden for the capital and start-up costs would be 880,218 hours (48,901 contractor companies × 20 hours = 880,218 hours). The total minimum estimated start-up costs would be $41,555,092 (978,020 hours × $47.21/hour = $41,555,092) or $849 per parent company. Assuming all contractor companies utilize HRIS, the maximum burden would be 1,222,542 hours (67,919 contractor companies × 18 hours = 1,222,542 hours). We calculate the total maximum estimated start-up costs as $57,716,208 (1,358,380 hours × $47.21/hour = $57,716,208) or $849 per parent company.

Operations and Maintenance Costs

OFCCP estimates that the contractor will have some operations and maintenance costs in addition to the burden calculated above.

Section 60–741.42 Invitation to Self Identify

OFCCP estimates that the contractor will have some operations and maintenance cost associated with the invitations to self-identify. The contractor must invite all applicants to self-identify at both the pre-offer and post-offer stage of the employment process. Given the increasingly widespread use of electronic applications, any contractor that uses such applications to invite self-identification would not incur copy costs. However, to account for contractors who may still choose to use paper applications, we are including printing and/or copying costs. The final rule reduces the numbers of forms to one to make the self-identification process less paperwork intensive and to reduce costs. We also estimate an average copying cost of $.08 per page. Assuming contractors using a paper-based application system, used 15 applications for an average of 15 listings per establishment, the minimum estimated total cost to contractors will be $616,590 (34,255 contractor establishments × 225 copies × $.08 = $616,590). Assuming contractors using a paper-based application system, used 33 applications for an average of 15 listings per establishment, the maximum estimated cost to contractors will be $1,356,498 (34,255 contractor establishments × 30 × $.08 = $1,356,498).

Assuming that 50,260 of 251,300 contractor establishments with a paper-based application system, used 15 applications for an average of 15 listings per establishment, the minimum estimated total cost to contractors will be $904,680 (50,260 contractor establishments × 225 copies × $.08 = $904,680). Assuming contractors using a paper-based application system, used 33 applications for an average of 15 listings per establishment, the maximum estimated cost to contractors will be $1,990,296 (50,260 contractor establishments × 495 copies × $.08 = $1,990,296).

D. Summary of Benefits

As a result of this Final Rule, it is estimated that 594,580 individuals with disabilities could be hired in the first year alone.[45] There are tangible and intangible benefits from investing in the recruitment and hiring of individuals with disabilities. Among them are employer tax credits, access to a broader talent pool, an expanded pool of job applicants, access to new markets by developing a workforce that mirrors the general customer base, lower turnover

[44] Utilizing EEO–1 data, OFCCP estimates that 72 percent of regulated contractor companies have greater than 100 employees and will likely use an electronic human resources system.

[45] Individuals with disabilities make up 4.83 percent of the employed. The estimate is based on calculating the number of hires needed to reach the 7% goal in the first year, the estimated number of employees working for covered Federal contractors, and the number of contractor establishments covered by OFCCP jurisdiction. To reach the goal, 594,580 additional individuals with disabilities would be hired. This number also assumes that contractors will not exceed the goal.

based on increased employee loyalty, and lower training costs resulting from lower staff turnover.[46] According to the U.S. Business Leadership Network (USBLN), ''corporate CEOs understand that it's cost effective to recruit and retain the best talent regardless of disability.'' [47] Broad public policy considerations also exist related to the decreased demand for and cost of social services as more people move into jobs and pay taxes.

E. Conclusion

OFCCP concludes in the final regulatory impact analysis that the costs of the final rule will range and likely exceed $100 million annually. The variations in costs depend on the number of establishments impacted by the final rule. Costs will also vary by company depending on their existing infrastructure. We estimate that the lower end costs would be $349,510,926 assuming that there are approximately 171,275 contractor establishments impacted by the final rule. The lower end estimate also relies on the assumption that many of these establishments have some form of electronic application and human resources information systems that would make complying with the rules requirements more efficient. The higher end estimate of $659,877,833 assumes that there are 251,300 establishments impacted by the final rule. The higher end further assumes that a portion of those contractors, primarily smaller ones with fewer employees, would have to expend more personnel time complying with the rules requirements. The recurring costs in years contractors do not invite all employees to identify as an individual with a disability will range from $162,371,816 to $395,258,387. The recurring costs in year contractors do invite all employees to identify as an individual with a disability will range from $242,345,778 to $480,476,442. Therefore, the rule will have a significant economic impact. However, OFCCP believes that the final rule will have extensive benefits for individuals with disabilities who are prospective and current employees of Federal contractors and Federal subcontractors. As such, OFCCP concludes that the benefits of the rule justify the costs.

Regulatory Flexibility Act and Executive Order 13272 (Consideration of Small Entities)

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.,* requires agencies promulgating rules to consider the impact they are likely to have on small entities. More specifically, the RFA requires agencies to ''review rules to assess and take appropriate account of the potential impact on small businesses, small governmental jurisdictions, and small organizations.'' If a rule is expected to have a ''significant economic impact on a substantial number of small entities,'' the agency must prepare an initial regulatory flexibility analysis (IRFA). If, however, a rule is not expected to have a significant economic impact on a substantial number of small entities, the agency may so certify, and need not perform an IRFA.

Based on the analysis below, in which OFCCP has estimated the impact on small entities that are covered contractors of complying with the requirements contained in this rule, OFCCP certifies that this rule will not have a significant economic impact on a substantial number of small entities.

In making this certification, OFCCP first determined the approximate number of small regulated entities that would be subject to the rule. OFCCP's review of the FY 2009 EEO–1 data revealed that the final rule directly impacts 20,490 Federal contractors with between 50 and 500 employees.[48] OFCCP analyzed the number of small entities impacted by the rule as compared to the agency's entire universe of regulated entities of approximately 45,996 Federal contractors.[49] OFCCP estimates that approximately 44 percent of the total number of Federal contractors, or 20,490, are small entities with between 50 and 500 employees. OFCCP further refined the analysis to compare the impacted small entities to just the universe of 21,541 small entities in OFCCP's jurisdiction. Under this scenario, approximately 95 percent of small entities would be impacted by the requirements of the rule. Utilizing these comparisons, the final rule may have an impact on a substantial number of small entities.

OFCCP has determined, though, that the impact on entities affected by the final rule would not be significant. In order to further inform our analysis of the economic impact of this rule on small entities, we considered the cost impact of the rule on 2 sizes of entities. We estimated the compliance costs of the final rule on Federal contractors with 50 to 100 employees and 100 to 500 employees. Contractors with less than 50 employees would not be subject to the new requirements affirmative action requirements in subpart C of the rule. OFCCP's analysis of the impact on small entities compared the estimated cost of compliance with the final rule for small entities to the estimated annual receipts of these entities as provided by the SBA. If the estimated compliance costs are less than 1 percent of the estimated revenues, OFCCP considers it appropriate to conclude that there is no significant economic impact.[50]

Contractors With 50–100 Employees

We estimate the first-year cost of this rule to a contractor with 50 to 100 employees to be approximately $3,318. The first-year cost of the rule is the year with the highest compliance cost as the contractor is incurring the start-up costs of the rule. This primarily includes the time contractors will expend reviewing the new requirements of the rule and costs for reasonable accommodations for approximately five newly hired individuals with disabilities.[51]

In order to estimate the cost of this rule on an entity with 50 to 100 employees, we are applying the same

[46] Job Accommodation Network, ''Workplace Accommodations: Low Cost, High Impact,'' Sept. 1, 2012. *Accommodation and Compliance Series, http://askjan.org/media/lowcosthighimpact.html* (last accessed Aug. 9, 2013).

[47] USBLN Disability at Work, and U.S. Chamber of Commerce, ''Leading Practices on Disability Inclusion,'' *http://www.usbln.org/pdf-docs/Leading_Practices_on_Disability_Inclusion.pdf* (last accessed Aug. 9, 2013). The USBLN and Chamber report shares best practices from larger corporations for hiring and providing reasonable accommodations.

[48] The Small Business Administration (SBA) Office of Advocacy reports that there are 27.4 million small entities in the United States. Since Federal contracts are not limited to specific industries, OFCCP assessed the impact of this final rule on small entities overall. If OFCCP used this approach, the final rule will impact less than .07% of non-employer firms and .34% of employer firms nationwide.

[49] The EEO–1data base separately identifies contractor entities (companies) and the facilities that comprise them. The FPDS –NG data base, by contrast, identifies contractor facilities, but does not identify the larger entities of which they are a part. OFCCP utilized the ratio (approximately 3.7) of parent companies to number of establishments from the EEO–1 data to determine that among the universe of 171,275 contractor establishments there are approximately 45,996 Federal contractor companies.

[50] Id. at 18 (impact could be significant if the costs of compliance with the rule ''exceeds 1% of the gross revenues of the entities in a particular sector.'')

[51] Individuals with disabilities make up 4.83 percent of the employed. The utilization goal under the final rule is 7 percent. To close the gap, federal contractors would need to hire an additional 594,580 disabled people. This amounts to an additional 2.37 employees per establishment or 8.75 employees per company. Some of these new hires may require reasonable accommodation. According to research conducted by the Job Accommodation Network (JAN), employers in the study reported that a high percentage (57%) of accommodations cost absolutely nothing. For the remaining 43%, the typical cost of providing a reasonable accommodation was approximately $500.

type of compliance cost structure previously described in the above cost analysis. However, for this small contractor, we assume they would have a manual application process and not require costly human resources information systems changes. We further assume these contractors would expend: 3 hours manually conducting the data analysis required by the new 41 CFR 60–741.44(k); 3 hours conducting the utilization analysis; 4 hours having a manager review the new requirements of the rule; and incur approximately $40 in copying costs in order to print out the newly required pre-offer invitation to self-identify for applicants. This also includes a cost of approximately $2,500 for providing reasonable accommodation to at least five newly hired individuals with disabilities.[52]

Utilizing data from the SBA Office of Advocacy regarding average receipts for firms, OFCCP determined that entities with 50 to 100 employees average receipts of approximately $14,079,844 per year.[53] The $3,318 costs of compliance with the final rule in the first year would be approximately .02 percent of the average value of receipts for these entities. Therefore, there is not a significant economic impact on contractors with 50 to 100 employees.

Contractors With 100–500 Employees

We estimate the first-year cost of this rule to contractors with 100 to 500 employees to be approximately $5,197. The first-year cost is the year with the highest compliance cost as the contractor is incurring the start-up costs of the rule. The start-up for contractors with 100 to 500 employees primarily includes modifying any existing web-based application and human resources information systems to include the pre-offer invitation to self-identify, becoming familiar with the new requirements of the rule, and costs for reasonable accommodations for approximately five newly hired individuals with disabilities.

In order to estimate the cost of this rule on contractors with 100 to 500 employees, we are applying the same type of compliance cost structure previously described in the above cost analysis. However, for this small contractor, we assume they may incur more costs analyzing data, establishing benchmarks, and modifying human resources information systems. Specifically, we assume these contractors would expend: 3 hours manually conducting the data analysis required by the new 41 CFR 60–741.44(k); 3 hours conducting the utilization analysis; 4 hours having a manager review the new requirements of the rule; and incur approximately $40 in copying costs in order to print out the newly required pre-offer invitation to self-identify for applicants. We further assume these contractors will spend approximately $850 modifying their human resources information systems to accommodate the new pre-offer invitation to self-identify. This also includes a cost of approximately $2,500 for providing reasonable accommodation to at least five newly hired individuals with disabilities.

Utilizing data from the SBA Office of Advocacy regarding average receipts for firms, OFCCP determined that entities with 100 to 500 employees average receipts of approximately $43,547,170 per year.[54] The $5,197 costs of compliance with the final rule in the first year would be approximately .01 percent of the average value of receipts for these entities. Therefore, there is not a significant economic impact on contractors with 50 to 500 employees.

Notwithstanding our determination that there is not a significant impact as a result of this rule, OFCCP considered and implemented a number of alternatives in the final rule as compared to what was proposed in the NPRM. As noted in the preamble, the final rule provides an exception that permits contractors with a total workforce of 100 or fewer employees to compare the individuals with disabilities in their entire workforce to the 7 percent goal. Further, the final rule does not adopt the following proposals: Review personnel processes on an annual basis (§ 60–741.44(b)); review physical and mental qualification standards on an annual basis (§ 60–741(c)); establish linkage agreements with three disability-related agencies or organizations to increase connections between contractors and individuals with disabilities seeking employment (§ 60–741.44(f)); take certain specified actions to internally disseminate its affirmative action policy (§ 60–741.44(g)); and train personnel on specific topics related to the employment of individuals with disabilities (§ 60–741.44(j)). After consideration of the comments and taking into account the expected utility of these provisions in light of the burden that contractors would incur to comply with the proposals, OFCCP decided not to incorporate the majority of these proposals into the final rule, and instead retains the language in the existing rule. These changes will substantially decrease the burden on small entities.

The significant benefits to individuals with disabilities, as well as to contractors, are discussed extensively in the Section-by-Section Analysis of the final rule and in the discussion of the final rule's conformity with Executive Order 12866. Although the primary objective of the final rule is to strengthen the affirmative action requirements of section 503 to employ and advance in employment individuals with disabilities, the rule will benefit both individuals with disabilities and contractors. As modified, the final rule provides contractors mechanisms for collecting data on applicants and employees with disabilities and promotes accountability by requiring contractors to review the effectiveness of their affirmative action efforts. The benefits of proactive recruitment particularly will accrue to individuals with disabilities who may face significant barriers in obtaining employment. The revisions will also promote access to a well-trained, job-ready employment pool for contractors.

Paperwork Reduction Act

Effective Date: This final rule is effective March 24, 2014.

Compliance Dates: Affected parties do not have to comply with the new information collection requirements in §§ 60–741.5(a), paragraph 7; 60–741.42; 60–741.44(f)(4); 60–741.44(k); 60–741.45; and 60–741.80(a) (requirement to maintain records under §§ 60–741.44(f)(4) and 60–741.44(k)) until the

[52] To close the current gap that exists between the target rate of employment for disabled individuals and the actual rate, firms would need to hire an additional 594,580 disabled individuals. This amounts to an additional 2.37 employees per establishment or 8.75 employees per company. This assumes 251,300 establishments and 67,919 companies. Under an alternative scenario of 171,275 establishments and 46,291 companies, the additional number of disabled hires per establishment and company is 3.52 and 13.02, respectively. According to research conducted by the Job Accommodation Network (JAN), employers in the study reported that a high percentage (57%) of accommodations cost absolutely nothing. For the remaining 43%, the typical cost of providing a reasonable accommodation was approximately $500.

[53] In order to calculate this figure, OFCCP averaged the total receipts of firms with 50 to 99 employees provided by the SBA, Office of Advocacy. See Firm Size Data, *available at www.sba.gov/advo/research/data.html#us.* Since the data was issued in 2007, OFCCP utilized a compound 2007–2008 Consumer Price Index inflation rate equaling 6.8% (1.0285 × 1.0385) to calculate the 2009 average receipts of $14,079,844 per year.

[54] In order to calculate this figure, OFCCP averaged the total receipts of firms with 100 to 499 employees provided by the SBA, Office of Advocacy. See Firm Size Data, available at *www.sba.gov/advo/research/data.html#us.* Since the data was issued in 2007, OFCCP utilized a compound 2007–2008 Consumer Price Index inflation rate equaling 6.8% (1.0285 x 1.0385) to calculate the 2009 average receipts of $43,547,170 per year.

Department publishes a Notice in the Federal Register stating that the Office of Management and Budget (OMB) has approved these information collection requirements under the Paperwork Reduction Act of 1995 (PRA), or until this rule otherwise takes effect, whichever date is later.

The Department notes that no person is required to respond to a collection of information request unless the collection of information has a valid OMB Control Number. The new collections of information contained in this rulemaking have been submitted for review to OMB, in accordance with the PRA, under Control Number 1250–0004. That review is ongoing; consequently, the Control Number has not been activated. OFCCP will publish a Notice in the Federal Register announcing the results of OMB's review and the date the information collection requirements will take effect.

The information collection requirements in this final rule relate to the information required to be maintained by contractors regarding their nondiscrimination and affirmative action obligations concerning individuals with disabilities and disclosures workers may make to their employers.

Sections 60–741.40 through 60–741.44 contain currently approved collections of information. Section 60–741.40 requires contractors with 50 or more employees and contracts of $50,000 or more to develop an affirmative action program for individuals with disabilities. An affirmative action program is a written program in which contractors annually outline the steps the contractor will take and has already taken to ensure equal employment opportunity for individuals with disabilities. Section 60–741.41 describes a contractor's responsibility to make the affirmative action program available to all employees. Section 60–741.42 outlines the contractor's responsibilities and the process through which applicants are invited to self-identify as an individual with a disability.

Section 60–741.44 outlines the required contents of the affirmative action program. Contractors must develop and include an equal opportunity policy statement in the program. Contractors must also periodically review their personnel processes to ensure that individuals with disabilities are provided equal opportunity and that the contractor is engaged in outreach to recruitment sources. Further, contractors must develop procedures for disseminating the policy internally and externally and establish an audit and reporting system to measure the effectiveness of the affirmative action program.

The currently approved collections of information for these sections are OMB Control Number 1250–0004 (VEVRAA). Information collection package 1250–0004 covers the nondiscrimination and affirmative action requirements of VEVRAA and its implementing regulations. The VEVRAA information collection package estimates that first-time contractors will take 18 hours to develop and document a joint section 503/VEVRAA written affirmative action program. It estimates that existing contractors take 7.5 hours to document and maintain material evidence of annually updating the affirmative action program. These estimates are based on previously approved information collection requests that quantified the estimated time to develop and maintain a joint section 503/VEVRAA written affirmative action program.

A. Number of Respondents

OFCCP estimates that 171,275 Federal contractor establishments will be impacted by the final rule. However, OFCCP received comments on the estimated number of contractor establishments, including recommending an establishment count of 285,390 using the Veterans Employment Training Services (VETS) annual report. While OFCCP declines to exclusively rely on the VETS report number, we present an estimated high end for the range of the cost of the rule based on a contractor establishment number of 251,300. This number is based on 2010 VETS data from their pending information collection request.[55]

For the purposes of this information collection request, OFCCP averaged the 171,275 and 251,300 contractor establishment figures to come up with a total of 211,287 establishments that will have to respond to the information collection requirements. All costs and hours in the burden analysis of this final rule are calculated using this adjusted number of federal contractor establishments. Further, the burden for several information collection requirements in the final rule are presented in ranges. These estimates are also averaged for this information collection request.

B. Information Collections

OFCCP's new information collection request under Control Number 1250–0005 for section 503 includes the burden hours and costs for the new information collection requirements outlined in the final rule. The burden for several information collection requirements in the final rule are presented in ranges. These estimates are averaged for the purposes of this information collection request.

New Standard Form—Voluntary Self-Identification of Disability

This information collection package requests approval of a new standard form entitled ''Voluntary Self-Identification of Disability.'' Pursuant to § 60–741.42, contractors will use this standard form to invite applicants, hires and employees, to identify as an individual with a disability pre-offer, post-offer, and through an invitation to all employees.

Section 60–741.42(a) requires contractors to extend a pre-offer invitation to self-identify as an ''individual with a disability.'' OFCCP estimates that contractors working at the company level will take 1.5 hours to review and retrieve existing sample invitations to self-identify, adopt the sample ''as is'' or make revisions to their existing form, save the invitation to self-identify and incorporate the document in the contractor's application form.[56] The burden for this provision is 85,656 hours (57,104 contractor companies × 1.5 hours = 85,656 hours).

Applicants for available positions with covered Federal contractors will have a minimal burden complying with § 60–741.42(a) in the course of completing their application for employment with the contractor. Section 60–741.42(a), on pre-offer self-identification, requires contractors to invite all applicants to self-identify whether or not they are a protected veteran. OFCCP estimates that there will be an average of 24 applicants per job vacancy for on average 15 vacancies per year. OFCCP further estimates that it will take applicants approximately 5 minutes to complete the form. The burden for this provision is 6,388,610 hours (211,287 contractor establishments × 15 listings × 24 applicants × 5 minutes/60 = 6,388,610 hours). This is a third-party disclosure.

OFCCP estimates that it will take contractors 1.5 hours to conduct the

[55] OMB Control Number 1293–0005, Federal Contractor Veterans' Employment Report, VETS—100/VETS–100A, *http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201104-1293-003* (last accessed Aug. 13, 2013).

[56] OFCCP utilized the same ratio (approximately 3.7) of parent companies to number of establishments from the EEO–1 data to determine that among the universe of 251,300 establishments there are approximately 57,104 Federal contractor companies.

invitation to self-identify survey. This includes the time needed to set up procedures to conduct the invitation, distribute communications, and collect and track self-identification forms. OFCCP believes this process will become much more streamlined over time and will likely require significantly less than 1.5 hours in subsequent years. The estimated burden for this provision is 316,931 hours (211,287 contractor establishments × 90 minutes/60 = 316,930 hours).

Contractor employees will have to spend some time reviewing and/or completing the survey. There are approximately 27,400,000 Federal contractor employees. OFCCP estimates that employees will take 5 minutes to complete the self-identification form. The burden for this provision is 2,283,333 hours (27,400,000 employees × 5 minutes/60 = 2,283,333 hours). Utilizing Bureau of Labor Statistics data in the publication ''Employer Costs for Employee Compensation'' (September 2011), which lists an average total compensation for all civilian workers as $30.11 per hour, the cost of this provision would be $68,751,157.

OFCCP further estimates that it will take contractors 15 minutes to maintain self-identification forms. This time includes either manually storing the forms in a filing cabinet or saving them to an electronic database. The burden for this provision is 52,822 hours (211,287 contractor establishments × 15 minutes/60 = 52,822 hours).

Section 60–741.44 Required Contents of the Affirmative Action Program

OMB Control Number 1250–0004 contains the burden estimates for documenting and maintaining material evidence of annually updating a joint section 503 and VEVRAA affirmative action program. Therefore, there is no additional burden for this provision in this information collection request. OFCCP separately identified below, in § 60–741.44, provisions that are not included in burden estimates currently approved by 1250–0004.

• *Section 60–741.44(f) External Dissemination of Policy, Outreach and Positive Recruitment*

Section 60–741.44(f)(1)(ii) requires contractors to send written notification of the company's affirmative action program policies to subcontractors, vendors, and suppliers. Section 60–300.44(f)(1)(ii) of the VEVRAA final rule also requires contractors to send written notification of the company policy related to its affirmative action efforts to all subcontractors, including subcontracting vendors and suppliers. OFCCP therefore expects that contractors will send a single, combined notice, informing subcontractors, vendors and suppliers of their VEVRAA and section 503 policies. Accordingly, OFCCP estimates that there is no additional burden for this provision.

Section 60–741.44(f)(4) requires a contractor to document all activities it undertakes to comply with the obligations of this paragraph, and retain these documents for a period of 3 years. OFCCP estimates that it will take contractors 10 minutes to maintain the outreach and recruitment documentation that would typically be generated as a result of their obligations pursuant to other provisions in the regulations. This does not include any additional time to make the software configuration needed to tell the contractor's computer system to store data for an additional year, as this burden was previously accounted for in the VEVRAA final rule's burden analysis of § 60–300.80(b). Therefore, the recurring burden for this provision is 35,215 hours (211,287 contractor establishments × 10 minutes/60 = 35,215 hours).

• *Section 60–741.44(h) Audit and Reporting System*

Section 60–741.44(h)(1)(vi) requires contractors to document the actions taken to meet the requirements of 60–741.44(h), as mandated in the current regulations. OFCCP estimates that it will take contractors 10 minutes to document compliance with this existing provision. Documentation may include, as an example, the standard operating procedure of the system including roles and responsibilities, and audit and reporting timeframes and lifecycles. Because contractors are currently required to have an audit and reporting system, it is expected that some documentation of the process and operation of the system audit already exists. The annual recordkeeping burden of this provision is 35,215 (211,287 contractor establishments × 10 minutes = 856,375/60 = 35,215 hours).

• *Section 60–741.44(k) Data Collection and Analysis*

Section 60–741.44(k) requires contractors to collect and analyze certain categories of data. Based on feedback received from public comments expressing concerns about the costs of modifying human resources information systems, OFCCP believes that most contractors will have the capability to conduct the required calculations electronically. However, some companies may have to calculate this information manually. Therefore, OFCCP estimates that the average time to conduct the analysis and maintain the relevant documentation would be 1 hour 25 minutes. Relevant documentation could include the report or other written documentation generated by the calculations that explain the methodology, the data used, and the findings and conclusions; the data used to conduct the calculations for subsequent validation of the results; and other material used by the contractor for the calculations. The recurring burden for this provision is 299,233 hours (251,300 contractor establishments × 85 minutes/60 = 299,233 hours).

No new software needs are anticipated for compliance with § 60–741.44(k), however, a software switch or configuration may be required to tell the system to retain the records for the additional 1or 2 years, as appropriate. The estimated time needed for making this switch is included with the burden estimate for § 60–71.44(f)(4).

Section 60–741.45 Utilization Goal

Section 60–741.45 of the final rule requires contractors to conduct a utilization analysis to evaluate the representation of individuals with disabilities in each job group within the contractor's workforce with the utilization goal established in paragraph (a) of this section. OFCCP estimates that contractors will take 1 hour to conduct the utilization analysis. The burden for this provision is 211,287 hours (211,287 contractor establishments × 1 hour = 211,287 hours).

OFCCP further estimates that it will take contractors an additional 10 minutes to maintain records of the utilization analysis. The recordkeeping burden is 35,215 hours (211,287 contractor establishments × 10 minutes/60 = 35,215 hours).

Section 60–741.81 Access to Records

Section 60–741.81 of the final rule requires contractors who are the subject of a compliance evaluation or complaint investigation to specify all available record formats and allow OFCCP to select preferred record formats from those identified by the contractor during a compliance evaluation. Pursuant to the regulations implementing the PRA at 5 CFR 1320.4(a)(2), this information collection is excluded from the PRA requirements because it is related to an ''administrative action, investigation, or audit involving an agency against specific individuals or entities.''

C. Summary of Costs

The estimated cost to contractors is based on Bureau of Labor Statistics data in the publication ''Employer Costs for

Employee Compensation'' (September 2011), which lists total compensation for management, professional, and related occupations as $50.11 per hour and administrative support as $23.72 per hour. OFCCP estimates that 52 percent of the burden hours will be management, professional, and related occupations and 48 percent will be administrative support.

TABLE 1—TOTAL BURDEN FOR §§ 60–741.42; 60–741.44; AND 60–741.45

Recordkeeping Burden Hours	633,861
Reporting Burden Hours	0
Third Party Disclosure Burden Hours	9,077,352
Total Burden Hours	9,711,213

TABLE 2—SUMMARY OF BURDEN HOURS AND COSTS FOR CONTRACTORS

PRA burden	Burden hours	Total
741.42 (Survey)	316,931	$11,866,765.33
741.42 (Survey Employee Burden)	2,283,333	68,751,166.67
741.42 (Modifying Application System)	85,656	2,342,234.35
741.42 (Recordkeeping)	52,822	1,977,794.22
741.44(f)(4) (Recordkeeping Outreach Activities)	52,822	1,977,794.22
741.44(h) (Recordkeeping Affirmative Action Program Audit)	35,215	1,318,529.48
741.44(k) (Data Collection and Analysis)	299,323	11,207,500.59
741.45 (Utilization Analysis)	211,287	7,911,176.88
741.45 (Utilization Analysis Recordkeeping)	35,215	1,318,529.48
Total	3,372,603	108,671,491.22

TABLE 3—SUMMARY OF NON-CONTRACTOR BURDEN HOURS AND COSTS

Existing requirement	Burden hours	Burden costs
Section 60–741.42 (Self-Identification)	6,338,610	$190,855,547

The total estimated cost for applicants to fill out the self-identification form is based on Bureau of Labor Statistics data in the publication ''Employer Costs for Employee Compensation'' (September 2011), which lists an average total compensation for all civilian workers as $30.11.

D. Initial Capital or Start-Up Costs

Human Resources Information Systems

OFCCP estimates on average it will take each contractor, working at the company level, on average 18 hours to have a professional make the needed systems modifications to track applicant and hiring information for individuals with disabilities. This includes IT and administrative professionals to make any necessary changes. The estimated costs for these modifications are based on data from the Bureau of Labor Statistics in the publication ''Employer Costs for Employee Compensation'' (September 2011), which lists total compensation for a professional of $47.21 per hour. The cost for these modifications is $48,525,837 (57,104 contractor companies × $47.21 = $48,525,837).

5 CFR 1320.3(b)(1)(i)—Reviewing Instructions

Several commenters noted that the proposed rule did not quantify the burden of reading and understanding the section 503 revisions on contractors. OFCCP acknowledges that 5 CFR 1320.3(b)(1)(i) requires agencies to include in the burden analysis for new information collection requirements the estimated time it takes for contractors to review and understand the instructions for compliance. In order to minimize the burden, OFCCP will publish several compliance assistance materials including factsheets and ''Frequently Asked Questions.'' OFCCP will also host webinars for the contractor community that will describe the key provisions in the final rule.

OFCCP estimates it will take, on average, 2.5 hours to have a management professional at each establishment either read compliance assistance materials provided by OFCCP or participate in an OFCCP webinar to learn about the new requirements of the final rule. The estimated cost of this burden is based on data from the Bureau of Labor Statistics in the publication ''Employer Costs for Employee Compensation'' (September 2011), which lists total compensation for a management professional at $50.11. Therefore, the estimated burden for the capital and start-up costs is 528,217 hours (211,287 contractor establishments × 2.5 hours = 528,217 hours). We calculate the total estimated cost for rule familiarization as $26,468,979 (528,217 hours × $50.11/hour = $26,468,979).

Operations and Maintenance Costs

OFCCP estimates that the contractor will have some operations and maintenance costs in addition to the burden calculated above.

Section 60–741.42 Invitation to Self Identify

OFCCP estimates that the contractor will have some operations and maintenance cost associated with the invitations to self-identify. The contractor must invite all applicants to self-identify at both the pre-offer and post-offer stage of the employment process. Given the increasingly widespread use of electronic applications, any contractor that uses such applications would not incur copy costs. However, to account for contractors who may still choose to use paper applications, we are including printing and/or copying costs. Therefore, we estimate a single one page form for both the pre- and post-offer invitation. Assuming contractors using a paper-based application system, used 24 applications for an average of 15 listings per establishment, the minimum estimated total cost to contractors will be $1,217,002 (42,257 establishments × 360 copies × $.08 = $1,217,002).

These paperwork burden estimates are summarized as follows:

Type of Review: New collection.

Agency: Office of Federal Contract Compliance Programs, Department of Labor.

Title: Section 503 of the Rehabilitation Act of 1973, as amended

OMB ICR Reference Number: 1250–0005

Affected Public: Business or other for-profit; individuals.

Estimated Number of Annual Responses: 9,711,213.

Frequency of Response: On occasion.

Estimated Total Annual Burden Hours:

Estimated Total Initial and Other Costs: $375,738,856.

The estimated $375,738,856 is the total of the PRA costs resulting from the new requirements of this final rule.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

Unfunded Mandates Reform Act of 1995

For purposes of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, this final rule includes a Federal mandate that may result in excess of $100 million in expenditures in the private sector in any one year. Accordingly, in compliance with 2 U.S.C. 1532, OFCCP provides the following written statement. All references to other sections of this final rule are incorporated by reference pursuant to 2 U.S.C. 1532(c).

(1) The final rule is authorized by the section 503 of the Rehabilitation Act.

(2) A qualitative and quantitative assessment of the anticipated costs and benefits of this final rule, including the costs and benefits to the private sector, are set forth in the Regulatory Procedures section of the final rule (specifically the sections describing Executive Orders 12866 and 13563, the Regulatory Flexibility Act, and the Paperwork Reduction Act) and the Section-by-Section Analysis in the preamble to the final rule. OFCCP anticipates no effect of the final rule on health, safety, and the natural environment not otherwise discussed in the sections set forth above.

(3) Estimates of future compliance costs are set forth in the Regulatory Procedures section of the final rule (specifically the sections describing Executive Orders 12866 and 13563, the Regulatory Flexibility Act, and the Paperwork Reduction Act). OFCCP anticipates none of the disproportionate budgetary effects of the final rule set forth in 2 U.S.C. 1532(a)(3)(B).

(4) To the extent feasible and relevant, OFCCP has estimated the effect of the final rule on the national economy in the Regulatory Procedures section of the final rule (specifically the sections describing Executive Orders 12866 and 13563, the Regulatory Flexibility Act, and the Paperwork Reduction Act).

(5) The provisions of 2 U.S.C. 1532(a)(5) do not apply to this final rule.

Finally, OFCCP identified, considered, and implemented a reasonable number of regulatory alternatives that were the least burdensome alternative. In those cases where OFCCP did not select the least burdensome alternative, it has provided an explanation of the reasons these suggestions were not adopted in the corresponding section of the Section-by-Section Analysis in the preamble to the final rule and/or the Regulatory Procedures section of the final rule (specifically the sections describing Executive Orders 12866 and 13563, the Regulatory Flexibility Act, and the Paperwork Reduction Act).

Executive Order 13132 (Federalism)

OFCCP has reviewed this final rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' This rule will not ''have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This final rule does not have tribal implications under Executive Order 13175 that requires a tribal summary impact statement. The final rule does not 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.

Effects on Families

The undersigned hereby certifies that the final rule would not adversely affect the well-being of families, as discussed under section 654 of the Treasury and General Government Appropriations Act, 1999.

Executive Order 13045 (Protection of Children)

This final rule would have no environmental health risk or safety risk that may disproportionately affect children.

Environmental Impact Assessment

A review of this final rule in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.;* the regulations of the Council on Environmental Quality, 40 CFR part 1500 *et seq.;* and DOL NEPA procedures, 29 CFR part 11, indicates the final rule would not have a significant impact on the quality of the human environment. There is, thus, no corresponding environmental assessment or an environmental impact statement.

Executive Order 13211 (Energy Supply)

This final rule is not subject to Executive Order 13211. It will not have a significant adverse effect on the supply, distribution, or use of energy.

Executive Order 12630 (Constitutionally Protected Property Rights)

This final rule is not subject to Executive Order 12630 because it does not involve implementation of a policy that has takings implications or that could impose limitations on private property use.

Executive Order 12988 (Civil Justice Reform Analysis)

This final rule was drafted and reviewed in accordance with Executive Order 12988 and will not unduly burden the Federal court system. The final rule was: (1) Reviewed to eliminate drafting errors and ambiguities; (2) written to minimize litigation; and (3) written to provide a clear legal standard for affected conduct and to promote burden reduction.

List of Subjects in 41 CFR Part 60–741

Administrative practice and procedure, Civil rights, Employment, Equal employment opportunity, Government contracts, Government procurement, Individuals with disabilities, Investigations, and Reporting and recordkeeping requirements.

Patricia A. Shiu

Director, Office of Federal Contract Compliance Programs.

Accordingly, under authority of 29 U.S.C. 793, Title 41 of the Code of

Federal Regulations, Chapter 60, part 60–741 is revised to read as follows:

PART 60–741—AFFIRMATIVE ACTION AND NONDISCRIMINATION OBLIGATIONS OF FEDERAL CONTRACTORS AND SUBCONTRACTORS REGARDING INDIVIDUALS WITH DISABILITIES

Subpart A—Preliminary Matters, Equal Opportunity Clause

Sec.
60–741.1 Purpose, applicability and construction.
60–741.2 Definitions.
60–741.3 Exceptions to the definitions of ''disability'' and ''qualified individual.''
60–741.4 Coverage and waivers.
60–741.5 Equal opportunity clause.

Subpart B—Discrimination Prohibited

60–741.20 Covered employment activities.
60–741.21 Prohibitions.
60–741.22 Direct threat defense.
60–741.23 Medical examinations and inquiries.
60–741.24 Drugs and alcohol.
60–741.25 Health insurance, life insurance and other benefit plans.

Subpart C—Affirmative Action Program

60–741.40 General purpose and applicability of the affirmative action program requirement.
60–741.41 Availability of affirmative action program.
60–741.42 Invitation to self-identify.
60–741.43 Affirmative action policy.
60–741.44 Required contents of affirmative action programs.
60–741.45 Utilization goals.
60–741.46 Voluntary affirmative action programs for employees with disabilities.
60–741.47 Sheltered workshops.

Subpart D—General Enforcement and Complaint Procedures

60–741.60 Compliance evaluations.
60–741.61 Complaint procedures.
60–741.62 Conciliation agreements.
60–741.63 Violations of conciliation agreements.
60–741.64 Show cause notices.
60–741.65 Enforcement proceedings.
60–741.66 Sanctions and penalties.
60–741.67 Notification of agencies.
60–741.68 Reinstatement of ineligible contractors.
60–741.69 Intimidation and interference.
60–741.70 Disputed matters related to compliance with the act.

Subpart E—Ancillary Matters

60–741.80 Recordkeeping.
60–741.81 Access to records.
60–741.82 Labor organizations and recruiting and training agencies.
60–741.83 Rulings and interpretations.
Appendix A to Part 60–741—Guidelines on a Contractor's Duty To Provide Reasonable Accommodation
Appendix B to Part 60–741—Developing Reasonable Accommodation Procedures

Authority: 29 U.S.C. 705 and 793; E.O. 11758 (3 CFR, 1971–1975 Comp., p. 841).

Subpart A—Preliminary Matters, Equal Opportunity Clause

§ 60–741.1 Purpose, applicability, and construction.

(a) *Purpose.* The purpose of this part is to set forth the standards for compliance with section 503 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 793), which prohibits discrimination against individuals with disabilities and requires Government contractors and subcontractors to take affirmative action to employ and advance in employment qualified individuals with disabilities.

(b) *Applicability.* This part applies to all Government contracts and subcontracts in excess of $10,000 for the purchase, sale or use of personal property or nonpersonal services (including construction): *Provided,* That subpart C of this part applies only as described in § 60–741.40(a). Compliance by the contractor with the provisions of this part will not necessarily determine its compliance with other statutes, and compliance with other statutes will not necessarily determine its compliance with this part: *Provided,* That compliance shall also satisfy the employment provisions of the Department of Labor's regulations implementing section 504 of the Rehabilitation Act of 1973 (see 29 CFR 32.2(b)) when the contractor is also subject to those requirements.

(c) *Construction*—(1) *In general.* Except as otherwise provided in this part, this part does not apply a lesser standard than the standards applied under title I of the Americans with Disabilities Act (ADA) of 1990, as amended, (42 U.S.C. 12101 *et seq.*) or the regulations issued by the Equal Employment Opportunity Commission pursuant to that title (29 CFR part 1630). The Interpretive Guidance on Title I of the Americans with Disabilities Act set out as an appendix to 29 CFR part 1630 issued pursuant to that title may be relied upon for guidance in interpreting the parallel non-discrimination provisions of this part.

(2) *Benefits under State worker's compensation laws.* Nothing in this part alters the standards for determining eligibility for benefits under State worker's compensation laws or under State and Federal disability benefit programs.

(3) *Relationship to other laws.* This part does not invalidate or limit the remedies, rights, and procedures under any Federal law or the law of any State or political subdivision that provides greater or equal protection for the rights of individuals with disabilities as compared to the protection afforded by this part. It may be a defense to a charge of violation of this part that a challenged action is required or necessitated by another Federal law or regulation, or that another Federal law or regulation prohibits an action (including the provision of a particular reasonable accommodation) that would otherwise be required by this part.

§ 60–741.2 Definitions.

For the purpose of this part:

(a) *Act* means the Rehabilitation Act of 1973, as amended, 29 U.S.C. 706 and 793.

(b) *Compliance evaluation* means any one or combination of actions OFCCP may take to examine a Federal contractor's or subcontractor's compliance with one or more of the requirements of section 503 of the Rehabilitation Act of 1973.

(c) *Contract* means any Government contract or subcontract.

(d) *Contractor* means, unless otherwise indicated, a prime contractor or subcontractor holding a contract in excess of $10,000.

(e) *Direct threat* means a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation. The determination that an individual with a disability poses a direct threat shall be based on an individualized assessment of the individual's present ability to perform safely the essential functions of the job. This assessment shall be based on a reasonable medical judgment that relies on the most current medical knowledge and/or on the best available objective evidence. In determining whether an individual would pose a direct threat, the factors to be considered include:

(1) The duration of the risk;

(2) The nature and severity of the potential harm;

(3) The likelihood that the potential harm will occur; and

(4) The imminence of the potential harm.

(f) *Director* means the Director, Office of Federal Contract Compliance Programs of the United States Department of Labor, or his or her designee.

(g) *Disability*—(1) The term disability means, with respect to an individual:

(i) A physical or mental impairment that substantially limits one or more major life activities of such individual;

(ii) A record of such an impairment; or

(iii) Being regarded as having such an impairment (as defined in paragraph (v) of this section).

(2) As used in this part, the definition of ''disability'' must be construed in favor of broad coverage of individuals, to the maximum extent permitted by law. The question of whether an individual meets the definition under this part should not demand extensive analysis.

(3) An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.

(4) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

(5) See paragraphs (m), (o), (t), (v), and (z) of this section, respectively, for definitions of ''major life activities,'' ''physical or mental impairment,'' ''record of such an impairment,'' ''regarded as having such an impairment,'' and ''substantially limits.''

(6) See § 60–741.3 for exceptions to the definition of ''disability.''

(h) *Equal opportunity clause* means the contract provisions set forth in § 60–741.5, ''Equal opportunity clause.''

(i) *Essential functions*—(1) *In general.* The term *essential functions* means fundamental job duties of the employment position the individual with a disability holds or desires. The term *essential functions* does not include the marginal functions of the position.

(2) A job function may be considered essential for any of several reasons, including but not limited to the following:

(i) The function may be essential because the reason the position exists is to perform that function;

(ii) The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed; and/or

(iii) The function may be highly specialized so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

(3) Evidence of whether a particular function is essential includes, but is not limited to:

(i) The contractor's judgment as to which functions are essential;

(ii) Written job descriptions prepared before advertising or interviewing applicants for the job;

(iii) The amount of time spent on the job performing the function;

(iv) The consequences of not requiring the incumbent to perform the function;

(v) The terms of a collective bargaining agreement;

(vi) The work experience of past incumbents in the job; and/or

(vii) The current work experience of incumbents in similar jobs.

(j) *Government* means the Government of the United States of America.

(k) *Government contract* means any agreement or modification thereof between any contracting agency and any person for the purchase, sale or use of personal property or nonpersonal services (including construction). The term *Government contract* does not include agreements in which the parties stand in the relationship of employer and employee, and federally assisted contracts.

(1) *Construction,* as used in paragraphs (k) and (x)(1) of this section, means the construction, rehabilitation, alteration, conversion, extension, demolition, or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other on-site functions incidental to the actual construction.

(2) *Contracting agency* means any department, agency, establishment, or instrumentality of the United States, including any wholly owned Government corporation, which enters into contracts.

(3) *Modification* means any alteration in the terms and conditions of a contract, including supplemental agreements, amendments, and extensions.

(4) *Nonpersonal services,* as used in paragraphs (k) and (x)(1) of this section, includes, but is not limited to, the following: utility, construction, transportation, research, insurance, and fund depository.

(5) *Person,* as used in paragraphs (k), (p), (u), (x), and (y) of this section, means any natural person, corporation, partnership or joint venture, unincorporated association, State or local government, and any agency, instrumentality, or subdivision of such a government.

(6) *Personal property,* as used in paragraphs (k) and (x)(1) of this section, includes supplies and contracts for the use of real property (such as lease arrangements), unless the contract for the use of real property itself constitutes real property (such as easements).

(l) *Individual with a disability*—See definition of ''disability'' in paragraph (g) of this section.

(m) *Major life activities* —(1) *In general.* Major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working.

(2) *Major bodily functions.* For purposes of paragraph (m)(1) of this section, a major life activity also includes the operation of a major bodily function, including, but not limited to, functions of the immune system, special sense organs and skin, normal cell growth, digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within a body system.

(3) In determining other examples of major life activities, the term ''major'' shall not be interpreted strictly to create a demanding standard for disability. Whether an activity is a ''major life activity'' is not determined by reference to whether it is of ''central importance to daily life.''

(n) *Mitigating measures*—(1) *In general.* The term mitigating measures includes, but is not limited to:

(i) Medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;

(ii) Use of assistive technology;

(iii) Reasonable accommodations or ''auxiliary aids or services'' (as defined by 42 U.S.C. 12103(1));

(iv) Learned behavioral or adaptive neurological modifications; or

(v) Psychotherapy, behavioral therapy, or physical therapy.

(2) *Ordinary eyeglasses or contact lenses.* The term *ordinary eyeglasses or contact lenses* means lenses that are intended to fully correct visual acuity or to eliminate refractive error.

(3) *Low-vision devices.* The term *low-vision devices* means devices that magnify, enhance, or otherwise augment a visual image, but not including ordinary eyeglasses or contact lenses.

(4) *Auxiliary aids and services.* The term *auxiliary aids and services* includes—

(i) Qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(ii) Qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(iii) Acquisition or modification of equipment or devices; and

(iv) Other similar services and actions.

(o) *Physical or mental impairment* means:

(1) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine; or

(2) Any mental or psychological disorder, such as an intellectual disability (formerly termed mental retardation), organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(p) *Prime contractor* means any person holding a contract in excess of $10,000, and, for the purposes of subpart D of this part, ''General Enforcement and Complaint Procedures,'' includes any person who has held a contract subject to the act.

(q) *Qualification standards* means the personal and professional attributes including the skill, experience, education, physical, medical, safety, and other requirements established by the contractor as requirements which an individual must meet in order to be eligible for the position held or desired.

(r) *Qualified individual* means an individual who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position. See § 60–741.3 for exceptions to this definition.

(s) *Reasonable accommodation*—(1) *In general.* The term *reasonable accommodation* means modifications or adjustments:

(i) To a job application process that enable a qualified applicant with a disability to be considered for the position such applicant desires; [1] or

(ii) To the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or

(iii) That enable the contractor's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by the contractor's other similarly situated employees without disabilities.

(2) *Reasonable accommodation* may include but is not limited to:

(i) Making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(ii) Job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modifications of equipment or devices; appropriate adjustments or modifications of examinations, training materials, or policies; the provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities.

(3) To determine the appropriate reasonable accommodation it may be necessary for the contractor to initiate an informal, interactive process with the qualified individual with a disability in need of the accommodation.[2] This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations. (Appendix A of this part provides guidance on a contractor's duty to provide reasonable accommodation.)

(4) Individuals who meet the definition of ''disability'' solely under the ''regarded as'' prong of the definition of ''disability'' as defined in paragraph (v)(1) of this section are not entitled to receive reasonable accommodation.

(t) *Record of such impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities. An individual shall be considered to have a record of a disability if the individual has a history of an impairment that substantially limited one or more major life activities when compared to most people in the general population, or was misclassified as having had such an impairment.

(u) *Recruiting and training agency* means any person who refers workers to any contractor, or who provides or supervises apprenticeship or training for employment by any contractor.

(v) *Regarded as having such an impairment*—(1) Except as provided in paragraph (v)(4) of this section, an individual is regarded as having such an impairment if the individual is subjected to an action prohibited under subpart B (Discrimination Prohibited) of these regulations because of an actual or perceived physical or mental impairment, whether or not the impairment substantially limits or is perceived to substantially limit a major life activity. Prohibited actions include but are not limited to refusal to hire, demotion, placement on involuntary leave, termination, exclusion for failure to meet a qualification standard, harassment, or denial of any other term, condition, or privilege of employment.

(2) Except as provided in paragraph (v)(4) of this section, an individual is regarded as having such an impairment any time a contractor takes a prohibited action against the individual because of an actual or perceived impairment, even if the contractor asserts, or may or does ultimately establish a defense to such action.

(3) Establishing that an individual is regarded as having such an impairment does not, by itself, establish liability for unlawful discrimination in violation of this part. Such liability is established only when an individual proves that a contractor discriminated on the basis of disability as prohibited by this part.

(4) *Impairments that are transitory and minor.* Paragraph (v)(1) of this section shall not apply to an impairment that is shown by the contractor to be transitory and minor. The contractor must demonstrate that the impairment is *both* ''transitory'' *and* ''minor.'' Whether the impairment at issue is or would be ''transitory and ''minor'' is to be determined objectively. The fact that a contractor subjectively believed the impairment was transitory and minor is not sufficient to defeat an individual's coverage under paragraph (v)(1) of this section.

(i) An impairment is transitory if it has an actual or expected duration of six months or less.

(ii) [Reserved]

(w) *Secretary* means the Secretary of Labor, United States Department of Labor, or his or her designee.

(x) *Subcontract* means any agreement or arrangement between a contractor and any person (in which the parties do

[1] A contractor's duty to provide a reasonable accommodation with respect to applicants with disabilities is not limited to those who ultimately demonstrate that they are qualified to perform the job in issue. Applicants with disabilities must be provided a reasonable accommodation with respect to the application process if they are qualified with respect to that process (e.g., if they present themselves at the correct location and time to fill out an application).

[2] Before providing a reasonable accommodation, the contractor is strongly encouraged to verify with the individual with a disability that the accommodation will effectively meet the individual's needs.

not stand in the relationship of an employer and an employee):

(1) For the purchase, sale or use of personal property or nonpersonal services (including construction) which, in whole or in part, is necessary to the performance of any one or more contracts; or

(2) Under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken, or assumed.

(y) *Subcontractor* means any person holding a subcontract in excess of $10,000 and, for the purposes of subpart D of this part, ''General Enforcement and Complaint Procedures,'' any person who has held a subcontract subject to the act.

(z) *Substantially limits*—(1) *In general.* The term ''substantially limits'' shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by law. *Substantially limits* is not meant to be a demanding standard and should not demand extensive analysis.

(i) An impairment is substantially limiting within the meaning of this section if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population. An impairment need not prevent, or significantly or severely restrict, the individual from performing a major life activity in order to be considered ''substantially limiting.'' Nonetheless, not every impairment will constitute a disability within the meaning of this section.

(ii) The comparison of an individual's performance of a major life activity to the performance of the same major life activity by most people in the general population usually will not require scientific, medical, or statistical analysis. However, nothing in this section is intended to prohibit the presentation of scientific, medical, or statistical evidence to make such a comparison where appropriate.

(iii) In determining whether an individual is substantially limited in a major life activity, it may be useful in appropriate cases to consider, as compared to most people in the general population, the condition under which the individual performs the major life activity; the manner in which the individual performs the major life activity; and/or the duration of time it takes the individual to perform the major life activity, or for which the individual can perform the major life activity. This may include consideration of facts such as the difficulty, effort, or time required to perform a major life activity; pain experienced when performing a major life activity; the length of time a major life activity can be performed; and/or the way an impairment affects the operation of a major bodily function.

(2) *Non-applicability to the ''regarded as'' prong.* Whether an individual's impairment substantially limits a major life activity is not relevant to a determination of whether the individual is regarded as having a disability within the meaning of paragraph (g)(1)(iii) of this section.

(3) *Ameliorative effects of mitigating measures.* Except as provided in paragraph (z)(3)(i) of this section, the determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures as defined in paragraph (n) of this section.

(i) The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered when determining whether an impairment substantially limits a major life activity. See paragraph (n)(2) of this section for a definition of ''ordinary eyeglasses or contact lenses.''

(ii) *Non-ameliorative effects of mitigating measures.* The non-ameliorative effects of mitigating measures, such as negative side effects of medication or burdens associated with following a particular treatment regimen, may be considered when determining whether an individual's impairment substantially limits a major life activity.

(4) In determining whether an individual is substantially limited the focus is on how a major life activity is substantially limited, and not on the outcomes an individual can achieve. For example, someone with a learning disability may achieve a high level of academic success, but may nevertheless be substantially limited in the major life activity of learning because of the additional time or effort he or she must spend to read, write, or learn compared to most people in the general population.

(5) *Predictable assessments.* The determination of whether an impairment substantially limits a major life activity requires an individualized assessment. However, the principles set forth in this section are intended to provide for generous coverage through a framework that is predictable, consistent, and workable for all individuals and contractors with rights and responsibilities under this part. Therefore, the individualized assessment of some types of impairments will, in virtually all cases, result in a determination of coverage under paragraph (g)(1)(i) or (ii) of this section. Given their inherent nature, these types of impairments will, as a factual matter, virtually always be found to impose a substantial limitation on a major life activity. With respect to these types of impairments, the necessary individualized assessment should be particularly simple and straightforward.

(i) *Examples of predictable assessments.* Applying the principles set forth in this section it should easily be concluded that the following types of impairments will, at a minimum, substantially limit the major life activities indicated: deafness substantially limits hearing; blindness substantially limits seeing; an intellectual disability (formerly termed mental retardation) substantially limits brain function; partially or completely missing limbs or mobility impairments requiring the use of a wheelchair substantially limit musculoskeletal function; autism substantially limits brain function; cancer substantially limits normal cell growth; cerebral palsy substantially limits brain function; diabetes substantially limits endocrine function; epilepsy substantially limits neurological function; Human Immunodeficiency Virus (HIV) infection substantially limits immune function; multiple sclerosis (MS) substantially limits neurological function; muscular dystrophy substantially limits neurological function; and major depressive disorder, bipolar disorder, post-traumatic stress disorder (PTSD), obsessive compulsive disorder, and schizophrenia substantially limit brain function. The types of impairments described in this section may also substantially limit additional major life activities not explicitly listed above.

(ii) [Reserved].

(aa) *Undue hardship*—(1) *In general. Undue hardship* means, with respect to the provision of an accommodation, significant difficulty or expense incurred by the contractor, when considered in light of the factors set forth in paragraph (aa)(2) of this section.

(2) *Factors to be considered.* In determining whether an accommodation would impose an undue hardship on the contractor, factors to be considered include:

(i) The nature and net cost of the accommodation needed, taking into consideration the availability of tax credits and deductions, and/or outside funding;

(ii) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at such facility, and the effect on expenses and resources;

(iii) The overall financial resources of the contractor, the overall size of the business of the contractor with respect to the number of its employees, and the number, type and location of its facilities;

(iv) The type of operation or operations of the contractor, including the composition, structure and functions of the work force of such contractor, and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the contractor; and

(v) The impact of the accommodation upon the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the facility's ability to conduct business.

(bb) *United States,* as used herein, shall include the several States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and Wake Island.

§ 60–741.3 Exceptions to the definitions of ''disability'' and ''qualified individual.''

(a) *Current illegal use of drugs*—(1) *In general.* The terms ''disability'' and ''qualified individual'' do not include individuals currently engaging in the illegal use of drugs, when the contractor acts on the basis of such use.

(2) *''Drug'' defined.* The term *drug* means a controlled substance, as defined in schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. 812).

(3) *''Illegal use of drugs'' defined.* The term *illegal use of drugs* means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act, as updated pursuant to that act. Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(4) *Construction.* (i) Nothing in paragraph (a)(1) of this section shall be construed to exclude from the definition of *disability* or *qualified individual* an individual who:

(A) Has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in the illegal use of drugs;

(B) Is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(C) Is erroneously regarded as engaging in such use, but is not engaging in such use.

(ii) In order to be protected by section 503 and this part, an individual described in paragraph (a)(4)(i) of this section must, as appropriate, satisfy the requirements of the definition of *disability* and *qualified individual.*

(5) *Drug testing.* It shall not be a violation of this part for the contractor to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraphs (a)(4)(i)(A) and (B) of this section is no longer engaging in the illegal use of drugs. (See § 60–741.24(b)(1).)

(b) *Alcoholics*— (1) *In general.* The terms *disability* and *qualified individual* do not include an individual who is an alcoholic whose current use of alcohol prevents such individual from performing the essential functions of the employment position such individual holds or desires or whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or to the health or safety of the individual or others.

(2) *Duty to provide reasonable accommodation.* Nothing in paragraph (b)(1) of this section shall relieve the contractor of its obligation to provide a reasonable accommodation for an individual described in paragraph (b)(1) of this section when such an accommodation will enable the individual to perform the essential functions of the employment position such individual holds or desires, or when the accommodation will eliminate or reduce the direct threat to the health or safety of the individual or others posed by such individual, provided that such individual satisfies the requisite skill, experience, education, and other job-related requirements of such position.

(c) *Contagious disease or infection*— (1) *In general.* The terms *disability* and *qualified individual* do not include an individual who has a currently contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of the individual or others or who, by reason of the currently contagious disease or infection, is unable to perform the essential functions of the employment position such individual holds or desires.

(2) *Duty to provide reasonable accommodation.* Nothing in paragraph (c)(1) of this section shall relieve the contractor of its obligation to provide a reasonable accommodation for an individual described in paragraph (c)(1) of this section when such an accommodation will enable the individual to perform the essential functions of the employment position such individual holds or desires, or when the accommodation will eliminate or reduce the direct threat to the health or safety of the individual or others posed by such individual, provided that such individual satisfies the requisite skill, experience, education, and other job-related requirements of such position.

(d) *Homosexuality and bisexuality.* Homosexuality and bisexuality are not impairments and so are not disabilities as defined in this part.

(e) *Other conditions.* The term *disability* does not include:

(1) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(2) Compulsive gambling, kleptomania, or pyromania; or

(3) Psychoactive substance use disorders resulting from current illegal use of drugs.

§ 60–741.4 Coverage and waivers.

(a) *Coverage*— (1) *Contracts and subcontracts in excess of $10,000.* Contracts and subcontracts in excess of $10,000 are covered by this part. No contracting agency or contractor shall procure supplies or services in less than usual quantities to avoid the applicability of the equal opportunity clause.

(2) *Contracts and subcontracts for indefinite quantities.* With respect to indefinite delivery-type contracts and subcontracts (including, but not limited to, open end contracts, requirement-type contracts, Federal Supply Schedule contracts, ''call-type'' contracts, and purchase notice agreements), the equal opportunity clause shall be included unless the contracting agency has reason to believe that the amount to be ordered in any year under such contract will not be in excess of $10,000. The applicability of the equal opportunity clause shall be determined at the time of award for the first year and annually thereafter for succeeding years, if any. Notwithstanding the above, the equal opportunity clause shall be applied to such contract whenever the amount of a single order exceeds $10,000. Once the equal opportunity clause is determined to be applicable, the contract shall continue to be subject to such clause for its duration, regardless of the amounts ordered, or reasonably expected to be ordered in any year.

(3) *Employment activities within the United States.* This part applies only to employment activities within the United States and not to employment activities abroad. The term *employment activities within the United States* includes actual employment within the United States, and decisions of the contractor made within the United States, pertaining to the contractor's applicants and employees who are within the United States, regarding employment opportunities abroad (such as recruiting and hiring within the United States for employment abroad, or transfer of persons employed in the United States to contractor establishments abroad).

(4) *Contracts with State or local governments.* The requirements of the equal opportunity clause in any contract or subcontract with a State or local government (or any agency, instrumentality or subdivision thereof) shall not be applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract or subcontract.

(b) *Waivers*—(1) *Specific contracts and classes of contracts.* The Director may waive the application to any contract of the equal opportunity clause in whole or part when he or she deems that special circumstances in the national interest so require. The Director may also grant such waivers to groups or categories of contracts: where it is in the national interest; where it is found impracticable to act upon each request individually; and where such waiver will substantially contribute to convenience in administration of the act. When a waiver has been granted for any class of contracts, the Director may withdraw the waiver for a specific contract or group of contracts to be awarded, when in his or her judgment such action is necessary or appropriate to achieve the purposes of the act. The withdrawal shall not apply to contracts awarded prior to the withdrawal, except that in procurements entered into by formal advertising, or the various forms of restricted formal advertising, such withdrawal shall not apply unless the withdrawal is made more than 10 calendar days before the date set for the opening of the bids.

(2) *National security.* Any requirement set forth in the regulations of this part shall not apply to any contract whenever the head of the contracting agency determines that such contract is essential to the national security and that its award without complying with such requirements is necessary to the national security. Upon making such a determination, the head of the contracting agency will notify the Director in writing within 30 days.

(3) *Facilities not connected with contracts.* (i) Upon the written request of the contractor, the Director may waive the requirements of the equal opportunity clause with respect to any of a contractor's facilities if the Director finds that the contractor has demonstrated that:

(A) The facility is in all respects separate and distinct from activities of the contractor related to the performance of a contract; and

(B) Such a waiver will not interfere with or impede the effectuation of the act.

(ii) The Director's findings as to whether the facility is separate and distinct in all respects from activities of the contractor related to the performance of a contract shall include consideration of the following factors:

(A) Whether any work at the facility directly or indirectly supports or contributes to the satisfaction of the work performed on a Government contract;

(B) The extent to which the facility benefits, directly or indirectly, from a Government contract;

(C) Whether any costs associated with operating the facility are charged to a Government contract;

(D) Whether working at the facility is a prerequisite for advancement in job responsibility or pay, and the extent to which employees at facilities connected to a Government contract are recruited for positions at the facility;

(E) Whether employees or applicants for employment at the facility may perform work related to a Government contract at another facility, and the extent to which employees at the facility are interchangeable with employees at facilities connected to a Government contract; and

(F) Such other factors that the Director deems are necessary or appropriate for considering whether the facility is in all respects separate and distinct from the activities of the contractor related to the performance of a contract.

(iii) The Director's findings as to whether granting a waiver will interfere with or impede the effectuation of the act shall include consideration of the following factors:

(A) Whether the waiver will be used as a subterfuge to circumvent the contractor's obligations under the act;

(B) The contractor's compliance with the act or any other Federal, State or local law requiring equal opportunity for disabled persons;

(C) The impact of granting the waiver on OFCCP enforcement efforts; and

(D) Such other factors that the Director deems are necessary or appropriate for considering whether the granting of the waiver would interfere with or impede the effectuation of the act.

(iv) A contractor granted a waiver under paragraph (b)(3) of this section shall:

(A) Promptly inform the Director of any changed circumstances not reflected in the contractor's waiver request; and

(B) Permit the Director access during normal business hours to the contractor's places of business for the purpose of investigating whether the facility granted a waiver meets the standards and requirements of paragraph (b)(3) of this section, and for inspecting and copying such books and accounts and records, including computerized records, and other material as may be relevant to the matter under investigation.

(v)(A) A waiver granted under paragraph (b)(3) of this section shall terminate on one of the following dates, whichever is earliest:

(*1*) Two years after the date the waiver was granted.

(*2*) When the facility performs any work that directly supports or contributes to the satisfaction of the work performed on a Government contract.

(*3*) When the Director determines, based on information provided by the contractor under this section or upon any other relevant information, that the facility does not meet the requirements of paragraph (b)(3) of this section.

(B) When a waiver terminates in accordance with paragraph (b)(3)(v)(A) of this section the contractor shall ensure that the facility complies with this part on the date of termination, except that compliance with §§ 60–741.40 through 60–741.44, if applicable, must be attained within 120 days of such termination.

(vi) False or fraudulent statements or representations made by a contractor under paragraph (b)(3) of this section are prohibited and may subject the contractor to sanctions and penalties under this part and criminal prosecution under 18 U.S.C. 1001.

§ 60–741.5 Equal opportunity clause.

(a) *Government contracts.* Each contracting agency and each contractor shall include the following equal opportunity clause in each of its covered Government contracts or subcontracts (and modifications, renewals, or extensions thereof if not included in the original contract):

Equal Opportunity for Workers With Disabilities

1. The contractor will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ and advance in employment individuals with disabilities, and to treat qualified individuals without discrimination on the basis of their physical or mental disability in all employment practices, including the following:

i. Recruitment, advertising, and job application procedures;

ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

iii. Rates of pay or any other form of compensation and changes in compensation;

iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

v. Leaves of absence, sick leave, or any other leave;

vi. Fringe benefits available by virtue of employment, whether or not administered by the contractor;

vii. Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

viii. Activities sponsored by the contractor including social or recreational programs; and

ix. Any other term, condition, or privilege of employment.

2. The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.

3. In the event of the contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.

4. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants with disabilities. The contractor must ensure that applicants or employees with disabilities are provided the notice in a form that is accessible and understandable to the individual applicant or employee (e.g., providing Braille or large print versions of the notice, or posting a copy of the notice at a lower height for easy viewing by a person using a wheelchair). With respect to employees who do not work at a physical location of the contractor, a contractor will satisfy its posting obligations by posting such notices in an electronic format, provided that the contractor provides computers, or access to computers, that can access the electronic posting to such employees, or the contractor has actual knowledge that such employees otherwise are able to access the electronically posted notices. Electronic notices for employees must be posted in a conspicuous location and format on the company's intranet or sent by electronic mail to employees. An electronic posting must be used by the contractor to notify job applicants of their rights if the contractor utilizes an electronic application process. Such electronic applicant notice must be conspicuously stored with, or as part of, the electronic application.

5. The contractor will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of section 503 of the Rehabilitation Act of 1973, as amended, and is committed to take affirmative action to employ and advance in employment, and shall not discriminate against, individuals with physical or mental disabilities.

6. The contractor will include the provisions of this clause in every subcontract or purchase order in excess of $10,000, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to section 503 of the act, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Director, Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

7. The contractor must, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment and will not be discriminated against on the basis of disability.

[End of Clause]

(b) *Subcontracts.* Each contractor shall include the equal opportunity clause in each of its subcontracts subject to this part.

(c) *Adaption of language.* Such necessary changes in language may be made to the equal opportunity clause as shall be appropriate to identify properly the parties and their undertakings.

(d) *Inclusion of the equal opportunity clause in the contract.* It is not necessary to include the equal opportunity clause verbatim in the contract. The clause shall be made a part of the contract by citation to 41 CFR 60–741.5(a) and inclusion of the following language, in bold text, after the citation: ''This contractor and subcontractor shall abide by the requirements of 41 CFR 60–741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.''

(e) *Incorporation by operation of the act.* By operation of the act, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the act and the regulations in this part to include such a clause, whether or not it is physically incorporated in such contract and whether or not there is a written contract between the agency and the contractor.

(f) *Duties of contracting agencies.* Each contracting agency shall cooperate with the Director and the Secretary in the performance of their responsibilities under the act. Such cooperation shall include insuring that the equal opportunity clause is included in all covered Government contracts and that contractors are fully informed of their obligations under the act and this part, providing the Director with any information which comes to the agency's attention that a contractor is not in compliance with the act or this part, responding to requests for information from the Director, and taking such actions for noncompliance as are set forth in § 60–741.66 as may be ordered by the Secretary or the Director.

Subpart B—Discrimination Prohibited

§ 60–741.20 Covered employment activities.

The prohibition against discrimination in this part applies to the following employment activities:

(a) Recruitment, advertising, and job application procedures;

(b) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(c) Rates of pay or any other form of compensation and changes in compensation;

(d) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(e) Leaves of absence, sick leave, or any other leave;

(f) Fringe benefits available by virtue of employment, whether or not administered by the contractor;

(g) Selection and financial support for training, including apprenticeships, professional meetings, conferences and other related activities, and selection for leaves of absence to pursue training;

(h) Activities sponsored by the contractor including social and recreational programs; and

(i) Any other term, condition, or privilege of employment.

§ 60–741.21 Prohibitions.

(a) The term *discrimination* includes, but is not limited to, the acts described in this section and § 60–741.23.

(1) *Disparate treatment.* It is unlawful for the contractor to deny an employment opportunity or benefit or otherwise to discriminate against a qualified individual on the basis of disability.

(2) *Limiting, segregating and classifying.* Unless otherwise permitted by this part, it is unlawful for the contractor to limit, segregate, or classify a job applicant or employee in a way that adversely affects his or her employment opportunities or status on the basis of disability. For example, the contractor may not segregate employees into separate work areas or into separate lines of advancement on the basis of disability.

(3) *Contractual or other arrangements*—(i) *In general.* It is unlawful for the contractor to participate in a contractual or other arrangement or relationship that has the effect of subjecting the contractor's own qualified applicant or employee with a disability to the discrimination prohibited by this part.

(ii) *Contractual or other arrangement defined.* The phrase *contractual or other arrangement or relationship* includes, but is not limited to, a relationship with: an employment or referral agency; a labor organization, including a collective bargaining agreement; an organization providing fringe benefits to an employee of the contractor; or an organization providing training and apprenticeship programs.

(iii) *Application.* This paragraph (a)(3) applies to the contractor, with respect to its own applicants or employees, whether the contractor offered the contract or initiated the relationship, or whether the contractor accepted the contract or acceded to the relationship. The contractor is not liable for the actions of the other party or parties to the contract which only affect that other party's employees or applicants.

(4) *Standards, criteria or methods of administration.* It is unlawful for the contractor to use standards, criteria, or methods of administration, that are not job-related and consistent with business necessity, and that:

(i) Have the effect of discriminating on the basis of disability; or

(ii) Perpetuate the discrimination of others who are subject to common administrative control.

(5) *Relationship or association with an individual with a disability.* It is unlawful for the contractor to exclude or deny equal jobs or benefits to, or otherwise discriminate against, a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a family, business, social, or other relationship or association.

(6) *Not making reasonable accommodation.* (i) It is unlawful for the contractor to fail to make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee with a disability as defined in §§ 60–741.2(g)(1)(i) or (ii), unless such contractor can demonstrate that the accommodation would impose an undue hardship on the operation of its business.

(ii) It is unlawful for the contractor to deny employment opportunities to an otherwise qualified job applicant or employee with a disability based on the need of such contractor to make reasonable accommodation to such an individual's physical or mental impairments.

(iii) The reasonable accommodation obligation extends to the contractor's use of electronic or online job application systems. If a contractor uses such a system, it must provide necessary reasonable accommodation to ensure that an otherwise qualified individual with a disability who is not able to fully utilize that system is nonetheless provided with equal opportunity to apply and be considered for all jobs. Though not required by this part, it is a best practice for the contractor to make its online job application system accessible and compatible with assistive technologies used by individuals with disabilities.

(iv) A qualified individual with a disability is not required to accept an accommodation, aid, service, opportunity, or benefit which such qualified individual chooses not to accept. However, if such individual rejects a reasonable accommodation, aid, service, opportunity or benefit that is necessary to enable the individual to perform the essential functions of the position held or desired, and cannot, as a result of that rejection, perform the essential functions of the position, the individual will not be considered a qualified individual with a disability.

(v) A contractor is not required to provide reasonable accommodation to an individual who satisfies only the ''regarded as having such an impairment'' prong of the definition of ''disability,'' as defined in § 60-741.2(v)(1).

(vi) *Reasonable accommodation procedures.* The development and use of written procedures for processing requests for reasonable accommodation is a best practice that may assist the contractor in meeting its reasonable accommodation obligations under section 503 and this part. Such procedures help ensure that applicants and employees are informed as to how to request a reasonable accommodation and are aware of how such a request will be processed by the contractor. They also help ensure that the contractor's supervisors and managers know what to do should they receive a request for reasonable accommodation, and that all requests for accommodation are processed swiftly, within a reasonable period of time. The development and use of written reasonable accommodation procedures is not required by this part, and it is not a violation of this part for a contractor not to have or use such procedures. However, Appendix B of this part provides guidance to contractors that choose to develop and use written reasonable accommodation procedures.

(7) *Qualification standards, tests and other selection criteria*—(i) *In general.* It is unlawful for the contractor to use qualification standards, employment tests, or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities, on the basis of disability, unless the standard, test, or other selection criterion, as used by the contractor, is shown to be job-related for the position in question and is consistent with business necessity. Selection criteria that concern an essential function may not be used to exclude an individual with a disability if that individual could satisfy the criteria with provision of a reasonable accommodation. Selection criteria that exclude or tend to exclude an individual with a disability or a class of individuals with disabilities on the basis of disability but concern only marginal functions of the job would not be consistent with business necessity. The contractor may not refuse to hire an applicant with a disability because the applicant's disability prevents him or her from performing marginal functions.

(ii) *Qualification standards and tests related to uncorrected vision.* It is unlawful for the contractor to use qualification standards, employment tests, or other selection criteria based on an individual's uncorrected vision unless the standard, test, or other selection criteria, as used by the contractor, is shown to be job-related for the position in question and consistent with business necessity. An individual challenging a contractor's application of a qualification standard, test, or other criterion based on uncorrected vision need not be an individual with a disability, but must be adversely

affected by the application of the standard, test, or other criterion.

(iii) The Uniform Guidelines on Employee Selection Procedures, 41 CFR part 60–3, do not apply to the Rehabilitation Act and are similarly inapplicable to this part.

(8) *Administration of tests.* It is unlawful for the contractor to fail to select and administer tests concerning employment in the most effective manner to ensure that, when a test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, the test results accurately reflect the skills, aptitude, or whatever other factor of the applicant or employee that the test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant, except where such skills are the factors that the test purports to measure.

(9) *Compensation.* In offering employment or promotions to individuals with disabilities, it is unlawful for the contractor to reduce the amount of compensation offered because of any income based upon a disability-related pension or other disability-related benefit the applicant or employee receives from another source. Nor may the contractor reduce the amount of compensation offered to an individual with a disability because of the actual or anticipated cost of a reasonable accommodation the individual needs or may request.

(b) *Claims of No Disability.* Nothing in this part shall provide the basis for a claim that an individual without a disability was subject to discrimination because of the lack of disability, or because an individual with a disability was granted an accommodation that was denied to an individual without a disability.

§ 60–741.22 Direct threat defense.

The contractor may use as a qualification standard the requirement that an individual be able to perform the essential functions of the position held or desired without posing a direct threat to the health or safety of the individual or others in the workplace. (See § 60–741.2(e) defining *direct threat.*)

§ 60–741.23 Medical examinations and inquiries.

(a) *Prohibited medical examinations or inquiries.* Except as stated in paragraphs (b) and (c) of this section, it is unlawful for the contractor to require a medical examination of an applicant or employee or to make inquiries as to whether an applicant or employee is an individual with a disability or as to the nature or severity of such disability.

(b) *Permitted medical examinations and inquiries*—(1) *Acceptable pre-employment inquiry.* The contractor may make pre-employment inquiries into the ability of an applicant to perform job-related functions, and/or may ask an applicant to describe or to demonstrate how, with or without reasonable accommodation, the applicant will be able to perform job-related functions.

(2) *Employment entrance examination.* The contractor may require a medical examination (and/or inquiry) after making an offer of employment to a job applicant and before the applicant begins his or her employment duties, and may condition an offer of employment on the results of such examination (and/or inquiry), if all entering employees in the same job category are subjected to such an examination (and/or inquiry) regardless of disability.

(3) *Examination of employees.* The contractor may require a medical examination (and/or inquiry) of an employee that is job-related and consistent with business necessity. The contractor may make inquiries into the ability of an employee to perform job-related functions.

(4) *Other acceptable examinations and inquiries.* The contractor may conduct voluntary medical examinations and activities, including voluntary medical histories, which are part of an employee health program available to employees at the work site. These medical examinations and activities do not have to be job-related and consistent with business necessity.

(5) Medical examinations conducted in accordance with paragraph (b)(2) of this section do not have to be job-related and consistent with business necessity. However, if certain criteria are used to screen out an applicant or applicants or an employee or employees with disabilities as a result of such examinations or inquiries, the contractor must demonstrate that the exclusionary criteria are job-related and consistent with business necessity, and that performance of the essential job functions cannot be accomplished with reasonable accommodations as required in this part.

(c) *Invitation to self-identify.* The contractor shall invite the applicant to self-identify as an individual with a disability as specified in § 60–741.42.

(d) *Confidentiality and use of medical information.* (1) Information obtained under this section regarding the medical condition or history of any applicant or employee shall be collected and maintained on separate forms and in separate medical files and treated as a confidential medical record, except that:

(i) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the applicant or employee and necessary accommodations;

(ii) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) Government officials engaged in enforcing the laws administered by OFCCP, including this part, or enforcing the Americans with Disabilities Act, as amended, shall be provided relevant information on request.

(2) Information obtained under this section regarding the medical condition or history of any applicant or employee shall not be used for any purpose inconsistent with this part.

§ 60–741.24 Drugs and alcohol.

(a) *Specific activities permitted.* The contractor:

(1) May prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees;

(2) May require that employees not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace;

(3) May require that all employees behave in conformance with the requirements established under the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*);

(4) May hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior to which the contractor holds its other employees, even if any unsatisfactory performance or behavior is related to the employee's drug use or alcoholism;

(5) May require that its employees employed in an industry subject to such regulations comply with the standards established in the regulations (if any) of the Departments of Defense and Transportation, and of the Nuclear Regulatory Commission, and other Federal agencies regarding alcohol and the illegal use of drugs; and

(6) May require that employees employed in sensitive positions comply with the regulations (if any) of the Departments of Defense and Transportation, and of the Nuclear Regulatory Commission, and other Federal agencies that apply to employment in sensitive positions subject to such regulations.

(b) *Drug testing*—(1) *General policy.* For purposes of this part, a test to determine the illegal use of drugs is not

considered a medical examination. Thus, the administration of such drug tests by the contractor to its job applicants or employees is not a violation of § 60–741.23. Nothing in this part shall be construed to encourage, prohibit, or authorize the contractor to conduct drug tests of job applicants or employees to determine the illegal use of drugs or to make employment decisions based on such test results.

(2) *Transportation employees.* Nothing in this part shall be construed to encourage, prohibit, or authorize the otherwise lawful exercise by contractors subject to the jurisdiction of the Department of Transportation of authority to test employees in, and applicants for, positions involving safety-sensitive duties for the illegal use of drugs or for on-duty impairment by alcohol; and remove from safety-sensitive positions persons who test positive for illegal use of drugs or on-duty impairment by alcohol pursuant to paragraph (b)(1) of this section.

(3) Any information regarding the medical condition or history of any employee or applicant obtained from a test to determine the illegal use of drugs, except information regarding the illegal use of drugs, is subject to the requirements of § 60–741.23(b)(5) and (c).

§ 60–741.25 Health insurance, life insurance, and other benefit plans.

(a) An insurer, hospital, or medical service company, health maintenance organization, or any agent or entity that administers benefit plans, or similar organizations may underwrite risks, classify risks, or administer such risks that are based on or not inconsistent with State law.

(b) The contractor may establish, sponsor, observe, or administer the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law.

(c) The contractor may establish, sponsor, observe, or administer the terms of a bona fide benefit plan that is not subject to State laws that regulate insurance.

(d) The contractor may not deny an individual with a disability equal access to insurance or subject an individual with a disability to different terms or conditions of insurance based on disability alone, if the disability does not pose increased risks.

(e) The activities described in paragraphs (a), (b), and (c) of this section are permitted unless these activities are used as a subterfuge to evade the purposes of this part.

Subpart C—Affirmative Action Program

§ 60–741.40 General purpose and applicability of the affirmative action program requirement.

(a) *General purpose.* An affirmative action program is a management tool designed to ensure equal employment opportunity and foster employment opportunities for individuals with disabilities. An affirmative action program institutionalizes the contractor's commitment to equality in every aspect of employment and is more than a paperwork exercise. An affirmative action program is dynamic in nature and includes measurable objectives, quantitative analyses, and internal auditing and reporting systems that measure the contractor's progress toward achieving equal employment opportunity for individuals with disabilities.

(b) *Applicability of the affirmative action program.* (1) The requirements of this subpart apply to every Government contractor that has 50 or more employees and a contract of $50,000 or more.

(2) Contractors described in paragraph (b)(1) of this section shall, within 120 days of the commencement of a contract, prepare and maintain an affirmative action program at each establishment. The affirmative action program shall set forth the contractor's policies and procedures in accordance with this part. This program may be integrated into or kept separate from other affirmative action programs.

(3) The affirmative action program shall be reviewed and updated annually by the official designated by the contractor pursuant to § 60–741.44(i).

(c) *Submission of program to OFCCP.* The contractor shall submit the affirmative action program within 30 days of a request from OFCCP, unless the request provides for a different time. The contractor also shall make the affirmative action program promptly available on-site upon OFCCP's request.

§ 60–741.41 Availability of affirmative action program.

The full affirmative action program, absent the data metrics required by § 60–741.44(k), shall be available to any employee or applicant for employment for inspection upon request. The location and hours during which the program may be obtained shall be posted at each establishment.

§ 60–741.42 Invitation to self-identify.

(a) *Pre-offer.* (1) As part of the contractor's affirmative action obligation, the contractor shall invite applicants to inform the contractor whether the applicant believes that he or she is an individual with a disability as defined in § 60–741.2(g)(1)(i) or (ii). This invitation shall be provided to each applicant when the applicant applies or is considered for employment. The invitation may be included with the application materials for a position, but must be separate from the application.

(2) The contractor shall invite an applicant to self-identify as required in paragraph (a) of this section using the language and manner prescribed by the Director and published on the OFCCP Web site.

(b) *Post-offer.* (1) At any time after the offer of employment, but before the applicant begins his or her job duties, the contractor shall invite the applicant to inform the contractor whether the applicant believes that he or she is an individual with a disability as defined in § 60–741.2(g)(1)(i) or (ii).

(2) The contractor shall invite an applicant to self-identify as required in paragraph (b) of this section using the language and manner prescribed by the Director and published on the OFCCP Web site.

(c) *Employees.* The contractor shall invite each of its employees to voluntarily inform the contractor whether the employee believes that he or she is an individual with a disability as defined in § 60–741.2(g)(1)(i) or (ii). This invitation shall be extended the first year the contractor becomes subject to the requirements of this section and at five year intervals, thereafter, using the language and manner prescribed by the Director and published on the OFCCP Web site. At least once during the intervening years between these invitations, the contractor must remind their employees that they may voluntarily update their disability status.

(d) The contractor may not compel or coerce an individual to self-identify as an individual with a disability.

(e) The contractor shall keep all information on self-identification confidential, and shall maintain it in a data analysis file (rather than in the medical files of individual employees). *See* § 60–741.23(d). The contractor shall provide self-identification information to OFCCP upon request. Self-identification information may be used only in accordance with this part.

(f) Nothing in this section shall relieve the contractor of its obligation to take affirmative action with respect to those applicants or employees of whose disability the contractor has knowledge.

(g) Nothing in this section shall relieve the contractor from liability for

discrimination in violation of section 503 or this part.

§ 60–741.43 Affirmative action policy.

Under the affirmative action obligations imposed by the act, contractors shall not discriminate because of physical or mental disability and shall take affirmative action to employ and advance in employment qualified individuals with disabilities at all levels of employment, including the executive level. Such action shall apply to all employment activities set forth in § 60–741.20.

§ 60–741.44 Required contents of affirmative action programs.

Acceptable affirmative action programs shall contain, but not necessarily be limited to the following elements:

(a) *Policy statement.* The contractor shall include an equal opportunity policy statement in its affirmative action program, and shall post the policy statement on company bulletin boards. The contractor must ensure that applicants and employees with disabilities are provided the notice in a form that is accessible and understandable to the individual with a disability (e.g., providing Braille or large print versions of the notice, or posting a copy of the notice at a lower height for easy viewing by a person using a wheelchair). The policy statement shall indicate the top United States executive's (such as the Chief Executive Officer or the President of the United States Division of a foreign company) support for the contractor's affirmative action program, provide for an audit and reporting system (see paragraph (h) of this section) and assign overall responsibility for the implementation of affirmative action activities required under this part (see paragraph (i) of this section). Additionally, the policy shall state, among other things that the contractor will: recruit, hire, train, and promote persons in all job titles, and ensure that all other personnel actions are administered without regard to disability; and ensure that all employment decisions are based only on valid job requirements. The policy shall state that employees and applicants shall not be subjected to harassment, intimidation, threats, coercion, or discrimination because they have engaged in or may engage in any of the following activities:

(1) Filing a complaint;

(2) Assisting or participating in an investigation, compliance evaluation, hearing, or any other activity related to the administration of section 503 or any other Federal, State, or local law requiring equal opportunity for individuals with disabilities;

(3) Opposing any act or practice made unlawful by section 503 or its implementing regulations in this part, or any other Federal, State or local law requiring equal opportunity for individuals with disabilities; or

(4) Exercising any other right protected by section 503 or its implementing regulations in this part.

(b) *Review of personnel processes.* The contractor shall ensure that its personnel processes provide for careful, thorough, and systematic consideration of the job qualifications of applicants and employees with known disabilities for job vacancies filled either by hiring or promotion, and for all training opportunities offered or available. The contractor shall ensure that its personnel processes do not stereotype individuals with disabilities in a manner which limits their access to all jobs for which they are qualified. In addition, the contractor shall ensure that applicants and employees with disabilities have equal access to its personnel processes, including those implemented through information and communication technologies. The contractor is required to provide necessary reasonable accommodation to ensure applicants and employees with disabilities receive equal opportunity in the operation of personnel processes. The contractor is also encouraged to make its information and communication technologies accessible, even absent a specific request for reasonable accommodation.[3] The contractor shall periodically review such processes and make any necessary modifications to ensure that these obligations are carried out. A description of the review and any necessary modifications to personnel processes or development of new processes shall be included in any affirmative action programs required under this part. The contractor must design procedures that facilitate a review of the implementation of this requirement by the contractor and the Government.

(c) *Physical and mental qualifications.* (1) The contractor shall provide in its affirmative action program, and shall adhere to, a schedule for the review of all physical and mental job qualification standards to ensure that, to the extent qualification standards tend to screen out qualified individuals with disabilities, they are job-related for the position in question and are consistent with business necessity.

(2) Whenever the contractor applies physical or mental qualification standards in the selection of applicants or employees for employment or other change in employment status such as promotion, demotion or training, to the extent that qualification standards tend to screen out qualified individuals on the basis of disability, the standards shall be related to the specific job or jobs for which the individual is being considered and consistent with business necessity. The contractor shall have the burden to demonstrate that it has complied with the requirements of this paragraph (c).

(3) The contractor may use as a defense to an allegation of a violation of paragraph (c)(2) of this section that an individual poses a direct threat to the health or safety of the individual or others in the workplace. (*See* § 60–741.2(e) defining direct threat.)

(d) *Reasonable accommodation to physical and mental limitations.* (1) As is provided in § 60–741.21(a)(6), as a matter of nondiscrimination, the contractor must make reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability unless it can demonstrate that the accommodation would impose an undue hardship on the operation of its business. As a matter of affirmative action, if an employee with a known disability is having significant difficulty performing his or her job and it is reasonable to conclude that the performance problem may be related to the known disability, the contractor shall confidentially notify the employee of the performance problem and inquire whether the problem is related to the employee's disability. If the employee responds affirmatively, the contractor shall confidentially inquire whether the employee is in need of a reasonable accommodation.

(2) *Reasonable accommodation procedures.* The development and use of written procedures for processing requests for reasonable accommodation is a best practice that may assist the contractor in meeting its reasonable

[3] Contractors are encouraged to make their information and communication technology accessible. There are a variety of resources that may assist contractors in assessing and ensuring the accessibility of its information and communication technology. These include the Web Content Accessibility Guidelines (WCAG 2.0) of the World Wide Web Consortium Web Accessibility Initiative, online at *www.w3.org/WAI/intro/wcag.php,* and the regulations implementing the accessibility requirements for Federal agencies prescribed in section 508 of the Rehabilitation Act. Information on section 508 may be found online at *http://www.section508.gov/index.cfm.* This Web site also provides information about various State accessibility requirements and initiatives.

accommodation obligations under section 503 and this part. Such procedures help ensure that applicants and employees are informed as to how to request a reasonable accommodation and are aware of how such a request will be processed by the contractor. They also help ensure that the contractor's supervisors and managers know what to do should they receive a request for reasonable accommodation, and that all requests for accommodation are processed swiftly, within a reasonable period of time. The development and use of written reasonable accommodation procedures is not required by this part, and it is not a violation of this part for a contractor not to have or use such procedures. However, Appendix B of this part provides guidance to contractors that choose to develop and use written reasonable accommodation procedures.

(e) *Harassment.* The contractor must develop and implement procedures to ensure that its employees are not harassed on the basis of disability.

(f) *External dissemination of policy, outreach, and positive recruitment*—(1) *Required outreach efforts.* (i) The contractor shall undertake appropriate outreach and positive recruitment activities such as those listed in paragraph (f)(2) of this section that are reasonably designed to effectively recruit qualified individuals with disabilities. It is not contemplated that the contractor will necessarily undertake all the activities listed in paragraph (f)(2) of this section or that its activities will be limited to those listed. The scope of the contractor's efforts shall depend upon all the circumstances, including the contractor's size and resources and the extent to which existing employment practices are adequate.

(ii) The contractor must send written notification of company policy related to its affirmative action efforts to all subcontractors, including subcontracting vendors and suppliers, requesting appropriate action on their part.

(2) Examples of *outreach and recruitment activities.* Below are examples of outreach and positive recruitment activities referred to in paragraph (f)(1) of this section.

(i) Enlisting the assistance and support of the following persons and organizations in recruiting, and developing on-the-job training opportunities for individuals with disabilities, in order to fulfill its commitment to provide equal employment opportunity for such individuals:

(A) The State Vocational Rehabilitation Service Agency (SVRA), State mental health agency, or State developmental disability agency in the area of the contractor's establishment;

(B) The Employment One-Stop Career Center (One-Stop) or American Job Center nearest the contractor's establishment;

(C) The Department of Veterans Affairs Regional Office nearest the contractor's establishment (*www.va.gov*);

(D) Entities funded by the Department of Labor that provide recruitment or training services for individuals with disabilities, such as the services currently provided through the Employer Assistance and Resource Network (EARN) (*www.earnworks.com*);

(E) Local Employment Network (EN) organizations (other than the contractor, if the contractor is an EN) listed in the Social Security Administration's Ticket to Work Employment Network Directory (*www.yourtickettowork.com/endir*);

(F) Local disability groups, organizations, or Centers for Independent Living (CIL) near the contractor's establishment;

(G) Placement or career offices of educational institutions that specialize in the placement of individuals with disabilities; and

(H) Private recruitment sources, such as professional organizations or employment placement services that specialize in the placement of individuals with disabilities.

(ii) The contractor should also consider taking the actions listed below to fulfill its commitment to provide equal employment opportunities to individuals with disabilities:

(A) Formal briefing sessions should be held, preferably on company premises, with representatives from recruiting sources. Contractor facility tours, clear and concise explanations of current and future job openings, position descriptions, worker specifications, explanations of the company's selection process, and recruiting literature should be an integral part of the briefing. At any such briefing sessions, the company official in charge of the contractor's affirmative action program should be in attendance when possible. Formal arrangements should be made for referral of applicants, follow up with sources, and feedback on disposition of applicants.

(B) The contractor's recruitment efforts at all educational institutions should incorporate special efforts to reach students who are individuals with disabilities.

(C) An effort should be made to participate in work-study programs for students, trainees, or interns with disabilities. Such programs may be found through outreach to State and local schools and universities, and through EARN.

(D) Individuals with disabilities should be made available for participation in career days, youth motivation programs, and related activities in their communities.

(E) The contractor should take any other positive steps it deems necessary to attract individuals with disabilities not currently in the work force who have requisite skills and can be recruited through affirmative action measures. These individuals may be located through State and local agencies supported by the U.S. Department of Education's Rehabilitation Services Administration (RSA) (*http://rsa.ed.gov/*), local Ticket-to-Work Employment Networks, or local chapters of groups or organizations that provide services for individuals with disabilities.

(F) The contractor, in making hiring decisions, should consider applicants who are known to have disabilities for all available positions for which they may be qualified when the position(s) applied for is unavailable.

(3) *Assessment of external outreach and recruitment efforts.* The contractor shall, on an annual basis, review the outreach and recruitment efforts it has taken over the previous twelve months to evaluate their effectiveness in identifying and recruiting qualified individuals with disabilities. The contractor shall document each evaluation, including at a minimum the criteria it used to evaluate the effectiveness of each effort and the contractor's conclusion as to whether each effort was effective. Among these criteria shall be the data collected pursuant to paragraph (k) of this section for the current year and the two most recent previous years. The contractor's conclusion as to the effectiveness of its outreach efforts must be reasonable as determined by OFCCP in light of these regulations. If the contractor concludes the totality of its efforts were not effective in identifying and recruiting qualified individuals with disabilities, it shall identify and implement alternative efforts listed in paragraphs (f)(1) or (f)(2) of this section in order to fulfill its obligations.

(4) *Recordkeeping obligation.* The contractor shall document all activities it undertakes to comply with the obligations of this section, and retain these documents for a period of three (3) years.

(g) *Internal dissemination of policy.* (1) A strong outreach program will be ineffective without adequate internal

support from supervisory and management personnel and other employees. In order to assure greater employee cooperation and participation in the contractor's efforts, the contractor shall develop the internal procedures listed in paragraph (g)(2) of this section for communication of its obligation to engage in affirmative action efforts to employ and advance in employment qualified individuals with disabilities. It is not contemplated that the contractor's activities will be limited to those listed. These procedures shall be designed to foster understanding, acceptance and support among the contractor's executive, management, supervisory, and other employees and to encourage such persons to take the necessary actions to aid the contractor in meeting this obligation.

(2) The contractor shall implement and disseminate this policy internally as follows:

(i) Include it in the contractor's policy manual or otherwise make the policy available to employees;

(ii) If the contractor is a party to a collective bargaining agreement, it shall notify union officials and/or employee representatives of the contractor's policy and request their cooperation;

(3) The contractor is encouraged to additionally implement and disseminate this policy internally as follows:

(i) Inform all employees and prospective employees of its commitment to engage in affirmative action to increase employment opportunities for individuals with disabilities. The contractor should periodically schedule special meetings with all employees to discuss policy and explain individual employee responsibilities;

(ii) Publicize it in the company newspaper, magazine, annual report and other media;

(iii) Conduct special meetings with executive, management, and supervisory personnel to explain the intent of the policy and individual responsibility for effective implementation making clear the chief executive officer's support for the affirmative action policy;

(iv) Discuss the policy thoroughly in both employee orientation and management training programs;

(v) Include articles on accomplishments of individuals with disabilities in company publications; and

(vi) When employees are featured in employee handbooks or similar publications for employees, include individuals with disabilities.

(h) *Audit and reporting system.* (1) The contractor shall design and implement an audit and reporting system that will:

(i) Measure the effectiveness of the contractor's affirmative action program;

(ii) Indicate any need for remedial action;

(iii) Determine the degree to which the contractor's objectives have been attained;

(iv) Determine whether known individuals with disabilities have had the opportunity to participate in all company sponsored educational, training, recreational, and social activities;

(v) Measure the contractor's compliance with the affirmative action program's specific obligations; and

(vi) Document the actions taken to comply with the obligations of paragraphs (h)(1)(i) through (v) of this section, and retain these documents as employment records subject to the recordkeeping requirements of § 60–741.80.

(2) Where the affirmative action program is found to be deficient, the contractor shall undertake necessary action to bring the program into compliance.

(i) *Responsibility for implementation.* An official of the contractor shall be assigned responsibility for implementation of the contractor's affirmative action activities under this part. His or her identity should appear on all internal and external communications regarding the company's affirmative action program. This official shall be given necessary senior management support and staff to manage the implementation of this program.

(j) *Training.* All personnel involved in the recruitment, screening, selection, promotion, disciplinary, and related processes shall be trained to ensure that the commitments in the contractor's affirmative action program are implemented.

(k) *Data collection analysis.* The contractor shall document the following computations or comparisons pertaining to applicants and hires on an annual basis and maintain them for a period of three (3) years:

(1) The number of applicants who self-identified as individuals with disabilities pursuant to § 60–741.42(a), or who are otherwise known to be individuals with disabilities;

(2) The total number of job openings and total number of jobs filled;

(3) The total number of applicants for all jobs;

(4) The number of applicants with disabilities hired; and

(5) The total number of applicants hired.

§ 60–741.45 Utilization goals.

The utilization goal is not a rigid and inflexible quota which must be met, nor is it to be considered either a ceiling or a floor for the employment of particular groups. Quotas are expressly forbidden.

(a) *Goal.* OFCCP has established a utilization goal of 7 percent for employment of qualified individuals with disabilities for each job group in the contractor's workforce, or for the contractor's entire workforce as provided in paragraph (d)(2)(i) of this section.

(b) *Purpose.* The purpose of the utilization goal is to establish a benchmark against which the contractor must measure the representation of individuals within each job group in its workforce, or within the contractor's entire workforce as provided in paragraph (d)(2)(i) of this section. The utilization goal serves as an equal employment opportunity objective that should be attainable by complying with all aspects of the affirmative action requirements of this part.

(c) *Periodic review of goal.* The Director of OFCCP shall periodically review and update, as appropriate, the utilization goal established in paragraph (a) of this section.

(d) *Utilization analysis*—(1) *Purpose.* The utilization analysis is designed to evaluate the representation of individuals with disabilities in each job group within the contractor's workforce, or to evaluate the representation of individuals with disabilities in the contractor's entire workforce as provided in paragraph (d)(2)(i) of this section, with the utilization goal established in paragraph (a) of this section.

(2) *Grouping jobs for analysis.* The contractor must use the same job groups established for utilization analyses under Executive Order 11246, either in accordance with 41 CFR part 60–2, or in accordance with 41 CFR part 60–4, as appropriate, except as provided below.

(i) *Contractors with 100 or fewer employees.* If a contractor has a total workforce of 100 or fewer employees, it need not use the jobs groups established for utilization analyses under Executive Order 11246, and has the option to measure the representation of individuals with disabilities in its entire workforce with the utilization goal established in paragraph (a) of this section.

(ii) [Reserved].

(3) *Annual evaluation.* The contractor shall annually evaluate its utilization of individuals with disabilities in each job group, or in its entire workforce as provided in paragraph (d)(2)(i) of this section.

(e) *Identification of problem areas.* When the percentage of individuals with disabilities in one or more job groups, or in a contractor's entire workforce as provided in paragraph (d)(2)(i) of this section, is less than the utilization goal established in paragraph (a) of this section, the contractor must take steps to determine whether and where impediments to equal employment opportunity exist. When making this determination, the contractor must assess its personnel processes, the effectiveness of its outreach and recruitment efforts, the results of its affirmative action program audit, and any other areas that might affect the success of the affirmative action program.

(f) *Action-oriented programs.* The contractor must develop and execute action-oriented programs designed to correct any identified problems areas. These action-oriented programs may include the modification of personnel processes to ensure equal employment opportunity for individuals with disabilities, alternative or additional outreach and recruitment efforts from among those listed in § 60–741.44 (f)(1) and (f)(2), and/or other actions designed to correct the identified problem areas and attain the established goal.

(g) A contractor's determination that it has not attained the utilization goal established in paragraph (a) of this section in one or more job groups does not constitute either a finding or admission of discrimination in violation of this part.

(h) The utilization goal established in paragraph (a) of this section shall not be used as a quota or ceiling that limits or restricts the employment of individuals with disabilities.

§ 60–741.46 Voluntary affirmative action programs for employees with disabilities.

(a) The contractor is permitted to develop and implement training and employment for employees with disabilities. Examples include, developing a job training program focused on the specific needs of individuals with certain disabilities such as traumatic brain injury (TBI) or developmental disabilities and utilizing linkage agreements to recruit program trainees. Successful programs such as these have been developed by some contractors and OFCCP desires to make clear they are permissible, though not required.

(1) If a contractor elects to implement a voluntary affirmative action program for employees with disabilities, a description of the program and the policies governing the program, including the name and title of the official responsible for the program, shall be included in the contractor's written affirmative action program. An annual report describing the contractor's activities pursuant to the program and identifying the outcomes achieved should also be included in the contractor's affirmative action program.

(2) Disability-related information from the applicant and/or employee self-identification request required by § 60–741.42 may be used to identify individuals with disabilities who are eligible to benefit from a voluntary affirmative action program for employees with disabilities.

(b) The contractor shall not use such programs to segregate individuals with disabilities or to limit or restrict the employment opportunities of any individual with a disability.

(c) The contractor shall not discriminate against an individual with a disability who has participated in a voluntary affirmative action program for employees with disabilities with respect to any term, condition, or benefit of employment, including, but not limited to, employment acts such as compensation, promotion, and termination, that are listed in § 60–741.20.

(d) These voluntary training and development programs should not result in discrimination against other groups and do not relieve a contractor from liability for discrimination under this act, Executive Order 11246, or the Vietnam Era Vetrans' Readjustment Assistance Act.

§ 60–741.47 Sheltered workshops.

Contracts with sheltered workshops do not constitute affirmative action in lieu of employment and advancement of qualified individuals with disabilities in the contractor's own work force. Contracts with sheltered workshops may be included within an affirmative action program if the sheltered workshop trains employees for the contractor and the contractor is obligated to hire trainees at full compensation when such trainees become ''qualified individuals with disabilities.''

Subpart D—General Enforcement and Complaint Procedures

§ 60–741.60 Compliance evaluations.

(a) OFCCP may conduct compliance evaluations to determine if the contractor is taking affirmative action to employ, advance in employment, and otherwise treat qualified individuals without discrimination on the basis of disability in all employment practices. A compliance evaluation may consist of any one or any combination of the following investigative procedures:

(1) *Compliance review.* A comprehensive analysis and evaluation of the hiring and employment practices of the contractor, the written affirmative action program, and the results of the affirmative action efforts undertaken by the contractor. A compliance review may proceed in three stages:

(i) A desk audit of the written affirmative action program and supporting documentation to determine whether all elements required by the regulations in this part are included, whether the affirmative action program meets agency standards of reasonableness, and whether the affirmative action program and supporting documentation satisfy agency standards of acceptability. OFCCP may extend the temporal scope of the desk audit beyond that set forth in the scheduling letter if OFCCP deems it necessary to carry out its investigation of potential violations of this part. The desk audit is conducted at OFCCP offices;

(ii) An on-site review is conducted at the contractor's establishment to investigate unresolved problem areas identified in the affirmative action program and supporting documentation during the desk audit, to verify that the contractor has implemented the affirmative action program and has complied with those regulatory obligations not required to be included in the affirmative action program, and to examine potential instances or issues of discrimination. An on-site review normally will involve an examination of the contractor's personnel and employment policies, inspection and copying of documents related to employment actions, and interviews with employees, supervisors, managers, hiring officials; and

(iii) Where necessary, an off-site analysis of information supplied by the contractor or otherwise gathered during or pursuant to the on-site review;

(2) *Off-site review of records.* An analysis and evaluation of the affirmative action program (or any part thereof) and supporting documentation, and other documents related to the contractor's personnel policies and employment actions that may be relevant to a determination of whether the contractor has complied with the requirements of section 503 and its regulations;

(3) *Compliance check.* A determination of whether the contractor has maintained records consistent with § 60–741.80; OFCCP may request the documents be provided either on-site or off-site; or

(4) *Focused review.* A review restricted to one or more components of the contractor's organization or one or more aspects of the contractor's employment practices.

(b) Where deficiencies are found to exist, reasonable efforts shall be made to secure compliance through conciliation and persuasion pursuant to § 60–741.62.

(c) *Pre-award compliance evaluations.* Each agency will include in the invitation for bids for each formally advertised nonconstruction contract or state at the outset of negotiations for each negotiated contract, that if the award, when let, should total $10 million or more, the prospective contractor and its known first-tier subcontractors with subcontracts of $10 million or more will be subject to a compliance evaluation before the award of the contract unless OFCCP has conducted an evaluation and found them to be in compliance with section 503 within the preceding 24 months. The awarding agency will notify OFCCP and request appropriate action and findings in accordance with this subsection. Within 15 days of the notice, OFCCP will inform the awarding agency of its intention to conduct a pre-award compliance evaluation. If OFCCP does not inform the awarding agency within that period of its intention to conduct a pre-award compliance evaluation, clearance shall be presumed and the awarding agency is authorized to proceed with the award. If OFCCP informs the awarding agency of its intention to conduct a pre-award compliance evaluation, OFCCP will be allowed an additional 20 days after the date that it so informs the awarding agency to provide its conclusions. If OFCCP does not provide the awarding agency with its conclusions within that period, clearance will be presumed and the awarding agency is authorized to proceed with the award.

§ 60–741.61 Complaint procedures.

(a) *Coordination with other agencies.* Pursuant to section 107(b) of the Americans with Disabilities Act of 1990, as amended (ADA), OFCCP and the Equal Employment Opportunity Commission (EEOC) have promulgated regulations setting forth procedures governing the processing of complaints falling within the overlapping jurisdiction of both the act and title I of the ADA to ensure that such complaints are dealt with in a manner that avoids duplication of effort and prevents the imposition of inconsistent or conflicting standards. Complaints filed under this part will be processed in accordance with those regulations, which are found at 41 CFR part 60–742, and with this part.

(b) *Place and time of filing.* Any applicant for employment with a contractor or any employee of a contractor may, personally, or by an authorized representative, file a written complaint with the Director alleging a violation of the act or the regulations in this part. The complaint may allege individual or class-wide violation(s). Complaints may be submitted to the OFCCP, 200 Constitution Avenue NW., Room C–3325, Washington, DC 20210, or to any OFCCP regional, district, or area office. Such complaint must be filed within 300 days of the date of the alleged violation, unless the time for filing is extended by OFCCP for good cause shown.

(c) *Contents of complaints.* (1) *In general.* A complaint must be signed by the complainant or his or her authorized representative and must contain the following information:

(i) Name and address (including telephone number) of the complainant;

(ii) Name and address of the contractor who committed the alleged violation;

(iii) The facts showing that the individual has a disability, a record or history of a disability, or was regarded by the contractor as having a disability;

(iv) A description of the act or acts considered to be a violation, including the pertinent dates (in the case of an alleged continuing violation, the earliest and most recent date that the alleged violation occurred should be stated); and

(v) Other pertinent information available which will assist in the investigation and resolution of the complaint, including the name of any known Federal agency with which the employer has contracted.

(2) *Third party complaints.* When a written complaint is filed by an authorized representative, that complaint need not identify by name the person on whose behalf it is filed. However, the authorized representative must nonetheless provide the name, address and telephone number of the person on whose behalf the complaint is filed to OFCCP, along with the other information specified in paragraph (c)(1) of this section. OFCCP shall verify the authorization of such complaint with the person on whose behalf the complaint is filed. Any such person may request that OFCCP keep his or her identity confidential during the investigation of the complaint, and OFCCP will protect the individual's confidentiality wherever that is possible given the facts and circumstances in the complaint.

(d) *Incomplete information.* Where a complaint contains incomplete information, OFCCP shall seek the needed information from the complainant. If the information is not furnished to OFCCP within 60 days of the date of such request, the case may be closed.

(e) *Investigations.* The Department of Labor shall institute a prompt investigation of each complaint.

(f) *Resolution of matters.* (1) If the complaint investigation finds no violation of the act or this part, or if the Director decides not to refer the matter to the Solicitor of Labor for enforcement proceedings against the contractor pursuant to § 60–741.65(a)(l), the complainant and contractor shall be so notified. The Director, on his or her own initiative, may reconsider his or her determination or the determination of any of his or her designated officers who have authority to issue Notifications of Results of Investigation.

(2) The Director will review all determinations of no violation that involve complaints that are not also cognizable under title I of the Americans with Disabilities Act.

(3) In cases where the Director decides to reconsider the determination of a Notification of Results of Investigation, the Director shall provide prompt notification of his or her intent to reconsider, which is effective upon issuance, and his or her final determination after reconsideration to the person claiming to be aggrieved, the person making the complaint on behalf of such person, if any, and the contractor.

(4) If the investigation finds a violation of the act or this part, OFCCP shall invite the contractor to participate in conciliation discussions pursuant to § 60–741.62.

§ 60–741.62 Conciliation agreements.

(a) If a compliance evaluation, complaint investigation, or other review by OFCCP finds a material violation of the act or this part, and if the contractor is willing to correct the violations and/or deficiencies, and if OFCCP determines that settlement on that basis (rather than referral for consideration of formal enforcement) is appropriate, a written conciliation agreement will be required. The agreement shall provide for such remedial action as may be necessary to correct the violations and/or deficiencies noted, including, where appropriate (but not necessarily limited to) such make whole remedies as back pay and retroactive seniority. The agreement shall also specify the time period for completion of the remedial action; the period shall be no longer

than the minimum period necessary to complete the action.

(b) *Remedial benchmarks.* The remedial action referenced in paragraph (a) of this section may include the establishment of benchmarks for the contractor's outreach, recruitment, hiring, or other employment activities. The purpose of such benchmarks is to create a quantifiable method by which the contractor's progress in correcting identified violations and/or deficiencies can be measured.

§ 60–741.63 Violations of conciliation agreements.

(a) When OFCCP believes that a conciliation agreement has been violated, the following procedures are applicable:

(1) A written notice shall be sent to the contractor setting forth the violation alleged and summarizing the supporting evidence. The contractor shall have 15 days from receipt of the notice to respond, except in those cases in which OFCCP asserts that such a delay would result in irreparable injury to the employment rights of affected employees or applicants.

(2) During the 15-day period the contractor may demonstrate in writing that it has not violated its commitments.

(b) In those cases in which OFCCP asserts that a delay would result in irreparable injury to the employment rights of affected employees or applicants, enforcement proceedings may be initiated immediately without proceeding through any other requirement contained in this chapter.

(c) In any proceedings involving an alleged violation of a conciliation agreement, OFCCP may seek enforcement of the agreement itself and shall not be required to present proof of the underlying violations resolved by the agreement.

§ 60–741.64 Show cause notices.

When the Director has reasonable cause to believe that the contractor has violated the act or this part, he or she may issue a notice requiring the contractor to show cause, within 30 days, why monitoring, enforcement proceedings, or other appropriate action to ensure compliance should not be instituted. The issuance of such a notice is not a prerequisite to instituting enforcement proceedings (see § 60–741.65).

§ 60–741.65 Enforcement proceedings.

(a) *General.* (1) If a compliance evaluation, complaint investigation, or other review by OFCCP finds a violation of the act or this part, and the violation has not been corrected in accordance with the conciliation procedures in this part, or OFCCP determines that referral for consideration of formal enforcement (rather than settlement) is appropriate, OFCCP may refer the matter to the Solicitor of Labor with a recommendation for the institution of enforcement proceedings to enjoin the violations, to seek appropriate relief, and to impose appropriate sanctions, or any combination of these outcomes. OFCCP may seek back pay and other make whole relief for aggrieved individuals identified during a complaint investigation or compliance review. Such individuals need not have filed a complaint as a prerequisite to OFCCP seeking such relief on their behalf. Interest on back pay shall be calculated from the date of the loss and compounded quarterly at the percentage rate established by the Internal Revenue Service (IRS) for the underpayment of taxes.

(2) In addition to the administrative proceedings set forth in this section, the Director may, within the limitations of applicable law, seek appropriate judicial action to enforce the contractual provisions set forth in § 60–741.5, including appropriate injunctive relief.

(b) *Hearing practice and procedure.* (1) In administrative enforcement proceedings the contractor shall be provided an opportunity for a formal hearing. All hearings conducted under the act and this part shall be governed by the Rules of Practice for Administrative Proceedings to Enforce Equal Opportunity Under Executive Order 11246 contained in 41 CFR part 60–30 and the Rules of Evidence set out in the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges contained in 29 CFR part 18, subpart B: *Provided,* That a final administrative order shall be issued within one year from the date of the issuance of the recommended findings, conclusions, and decision of the Administrative Law Judge, or the submission of any exceptions and responses to exceptions to such decision (if any) whichever is later.

(2) Complaints may be filed by the Solicitor, the Associate Solicitor for Civil Rights and Labor-Management, Regional Solicitors and Associate Regional Solicitors.

(3) For the purposes of hearings pursuant to this part, references in 41 CFR part 60–30 to ''Executive Order 11246'' shall mean section 503 of the Rehabilitation Act of 1973, as amended; references to ''equal opportunity clause''' shall mean the equal opportunity clause published at § 60–741.5; and references to ''regulations'' shall mean the regulations contained in this part.

§ 60–741.66 Sanctions and penalties.

(a) *Withholding progress payments.* With the prior approval of the Director, so much of the accrued payment due on the contract or any other contract between the Government contractor and the Federal Government may be withheld as necessary to correct any violations of the provisions of the act or this part.

(b) *Termination.* A contract may be canceled or terminated, in whole or in part, for failure to comply with the provisions of the act or this part.

(c) *Debarment.* A contractor may be debarred from receiving future contracts for failure to comply with the provisions of the act or this part subject to reinstatement pursuant to § 60–741.68. Debarment may be imposed for an indefinite period, or may be imposed for a fixed period of not less than six months, but no more than three years.

(d) *Hearing opportunity.* An opportunity for a formal hearing shall be afforded to a contractor before the imposition of any sanction or penalty.

§ 60–741.67 Notification of agencies.

The Director shall ensure that the heads of all agencies are notified of any debarments taken against any contractor.

§ 60–741.68 Reinstatement of ineligible contractors.

(a) *Application for reinstatement.* A contractor debarred from further contracts for an indefinite period under the act may request reinstatement in a letter filed with the Director at any time after the effective date of the debarment; a contractor debarred for a fixed period may make such a request following the expiration of six months from the effective date of the debarment. In connection with the reinstatement proceedings, all debarred contractors shall be required to show that they have established and will carry out employment policies and practices in compliance with the act and this part. Additionally, in determining whether reinstatement is appropriate for a contractor debarred for a fixed period, the Director also shall consider, among other factors, the severity of the violation which resulted in the debarment, the contractor's attitude towards compliance, the contractor's past compliance history, and whether the contractor's reinstatement would impede the effective enforcement of the act or this part. Before reaching a decision, the Director may conduct a compliance evaluation of the contractor

and may require the contractor to supply additional information regarding the request for reinstatement. The Director shall issue a written decision on the request.

(b) *Petition for review.* Within 30 days of its receipt of a decision denying a request for reinstatement, the contractor may file a petition for review of the decision with the Secretary. The petition shall set forth the grounds for the contractor's objections to the Director's decision. The petition shall be served on the Director and the Associate Solicitor for Civil Rights and Labor-Management and shall include the decision as an appendix. The Director may file a response within 14 days to the petition. The Secretary shall issue the final agency decision denying or granting the request for reinstatement. Before reaching a final decision, the Secretary may issue such additional orders respecting procedure as he or she finds appropriate in the circumstances, including an order referring the matter to the Office of Administrative Law Judges for an evidentiary hearing where there is a material factual dispute that cannot be resolved on the record before the Secretary.

§ 60–741.69 Intimidation and interference.

(a) The contractor shall not harass, intimidate, threaten, coerce, or discriminate against any individual because the individual has engaged in or may engage in any of the following activities:

(1) Filing a complaint;

(2) Assisting or participating in any manner in an investigation, compliance evaluation, hearing, or any other activity related to the administration of the act or any other Federal, State, or local law requiring equal opportunity for individuals with disabilities;

(3) Opposing any act or practice made unlawful by the act or this part or any other Federal, State, or local law requiring equal opportunity for individuals with disabilities; or

(4) Exercising any other right protected by the act or this part.

(b) The contractor shall ensure that all persons under its control do not engage in such harassment, intimidation, threats, coercion, or discrimination. The sanctions and penalties contained in this part may be exercised by the Director against any contractor who violates this obligation.

§ 60–741.70 Disputed matters related to compliance with the act.

The procedures set forth in the regulations in this part govern all disputes relative to the contractor's compliance with the act and this part. Any disputes relating to issues other than compliance, including contract costs arising out of the contractor's efforts to comply, shall be determined by the disputes clause of the contract.

Subpart E—Ancillary Matters

§ 60–741.80 Recordkeeping.

(a) *General requirements.* Except as set forth in paragraph (b) of this section, any personnel or employment record made or kept by the contractor shall be preserved by the contractor for a period of two years from the date of the making of the record or the personnel action involved, whichever occurs later. However, if the contractor has fewer than 150 employees or does not have a Government contract of at least $150,000, the minimum record retention period shall be one year from the date of the making of the record or the personnel action involved, whichever occurs later, except as set forth in paragraph (b) of this section. Such records include, but are not necessarily limited to, records relating to requests for reasonable accommodation; the results of any physical examination; job advertisements and postings; applications and resumes; tests and test results; interview notes; and other records having to do with hiring, assignment, promotion, demotion, transfer, lay-off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship. In the case of involuntary termination of an employee, the personnel records of the individual terminated shall be kept for a period of two years from the date of the termination, except that contractors that have fewer than 150 employees or that do not have a Government contract of at least $150,000 shall keep such records for a period of one year from the date of the termination. Where the contractor has received notice that a complaint of discrimination has been filed, that a compliance evaluation has been initiated, or that an enforcement action has been commenced, the contractor must preserve all personnel records relevant to the complaint, compliance evaluation, or action until final disposition of the complaint, compliance evaluation or action. The term ''personnel records relevant to the complaint, compliance evaluation, or action'' will include, for example, personnel or employment records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person and application forms or test papers completed by an unsuccessful applicant and by all other candidates for the same position as that for which the aggrieved person applied and was rejected.

(b) *Records with three-year retention requirement.* Records required by § 60–741.44(f)(4) and (k) shall be maintained by all contractors for a period of three years from the date of the making of the record.

(c) *Failure to preserve records.* Failure to preserve complete and accurate records as required by this part constitutes noncompliance with the contractor's obligations under the act and this part. Where the contractor has destroyed or failed to preserve records as required by this section, there may be a presumption that the information destroyed or not preserved would have been unfavorable to the contractor: *Provided,* That this presumption shall not apply where the contractor shows that the destruction or failure to preserve records results from circumstances that are outside of the contractor's control.

§ 60–741.81 Access to records.

Each contractor shall permit access during normal business hours to its places of business for the purpose of conducting on-site compliance evaluations and complaint investigations and inspecting and copying such books, accounts, and records, including electronic records, and any other material OFCCP deems relevant to the matter under investigation and pertinent to compliance with the act or this part. Contractors must also provide OFCCP access to these materials, including electronic records, off-site for purposes of conducting compliance evaluations and complaint investigations. Upon request, the contractor must provide OFCCP information about all format(s), including specific electronic formats, in which the contractor maintains its records and other information. The contractor must provide records and other information in any of the formats in which they are maintained, as selected by OFCCP. Information obtained in this manner shall be used only in connection with the administration of the act, the Americans with Disabilities Act of 1990, as amended (ADA), and in furtherance of the purposes of the act and the ADA. OFCCP will treat records provided by the contractor to OFCCP under this section as confidential to the maximum extent the information is exempt from public disclosure under the Freedom of Information Act, 5 U.S.C. 552.

§ 60–741.82 Labor organizations and recruiting and training agencies.

(a) Whenever performance in accordance with the equal opportunity clause or any matter contained in the regulations in this part may necessitate a revision of a collective bargaining agreement, the labor organizations which are parties to such agreement shall be given an adequate opportunity to present their views to OFCCP.

(b) OFCCP shall use its best efforts, directly or through contractors, subcontractors, local officials, vocational rehabilitation facilities, and all other available instrumentalities, to cause any labor organization, recruiting and training agency, or other representative of workers who are employed by a contractor to cooperate with, and to assist in, the implementation of the purposes of the act.

§ 60–741.83 Rulings and interpretations.

Rulings under or interpretations of the act and this part shall be made by the Director.

Appendix A to Part 60–741—Guidelines on a Contractor's Duty To Provide Reasonable Accommodation

The guidelines in this appendix are in large part derived from, and are consistent with, the discussion regarding the duty to provide reasonable accommodation contained in the Interpretive Guidance on title I of the Americans with Disabilities Act, as amended (ADA), set out as an appendix to the regulations issued by the Equal Employment Opportunity Commission (EEOC) implementing the ADA (29 CFR part 1630). Although the following discussion is intended to provide an independent ''free-standing'' source of guidance with respect to the duty to provide reasonable accommodation under this part, to the extent that the EEOC appendix provides additional guidance which is consistent with the following discussion, it may be relied upon for purposes of this part as well. *See* § 60–741.1(c). Contractors are obligated to provide reasonable accommodation and to take affirmative action. Reasonable accommodation under section 503, like reasonable accommodation required under the ADA, is a part of the nondiscrimination obligation. *See* EEOC appendix cited in this paragraph. Affirmative action is unique to section 503, and includes actions above and beyond those required as a matter of nondiscrimination. An example of this is the requirement discussed in paragraph 2 of this appendix that a contractor shall make an inquiry of an employee with a known disability who is having significant difficulty performing his or her job.

1. A contractor is required to make reasonable accommodations to the known physical or mental limitations of a qualified individual with a disability, unless the contractor can demonstrate that the accommodation would impose an undue hardship on the operation of its business. As stated in § 60–741.2(r), an individual with a disability is qualified if he or she satisfies all the skill, experience, education, and other job-related selection criteria, and can perform the essential functions of the position with or without reasonable accommodation. A contractor is required to make a reasonable accommodation with respect to its application process if the individual with a disability is qualified with respect to that process. One is qualified within the meaning of section 503 if he or she is qualified for a job, except that, because of a disability, he or she needs a reasonable accommodation to be able to perform the job's essential functions.

2. Although the contractor would not be expected to accommodate disabilities of which it is unaware, the contractor has an affirmative obligation to provide reasonable accommodation for applicants and employees of whose disabilities the contractor has actual knowledge. As stated in § 60–741.42, as part of the contractor's affirmative action obligation, the contractor is required to invite applicants to inform the contractor whether the applicant believes that he or she is an individual with a disability both prior to an offer of employment, and after an offer of employment but before he or she begins his/her employment duties. That invitation also informs applicants of the contractor's reasonable accommodation obligation and invites individuals with disabilities to request any accommodation they might need. Moreover, § 60–741.44(d) provides that if an employee with a known disability is having significant difficulty performing his or her job and it is reasonable to conclude that the performance problem may be related to the disability, the contractor is required to confidentially inquire whether the problem is disability related and if the employee is in need of a reasonable accommodation.

3. An accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities. Equal employment opportunity means an opportunity to attain the same level of performance, or to enjoy the same level of benefits and privileges of employment as are available to the average similarly situated employee without a disability. Thus, for example, an accommodation made to assist an employee with a disability in the performance of his or her job must be adequate to enable the individual to perform the essential functions of the position. The accommodation, however, does not have to be the ''best'' accommodation possible, so long as it is sufficient to meet the job-related needs of the individual being accommodated. There are three areas in which reasonable accommodations may be necessary: (1) Accommodations in the application process; (2) accommodations that enable employees with disabilities to perform the essential functions of the position held or desired; and (3) accommodations that enable employees with disabilities to enjoy equal benefits and privileges of employment as are enjoyed by employees without disabilities.

4. The term ''undue hardship'' refers to any accommodation that would be unduly costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of the contractor's business. The contractor's claim that the cost of a particular accommodation will impose an undue hardship requires a determination of which financial resources should be considered—those of the contractor in its entirety or only those of the facility that will be required to provide the accommodation. This inquiry requires an analysis of the financial relationship between the contractor and the facility in order to determine what resources will be available to the facility in providing the accommodation. If the contractor can show that the cost of the accommodation would impose an undue hardship, it would still be required to provide the accommodation if the funding is available from another source (*e.g.,* a State vocational rehabilitation agency) or if Federal, State, or local tax deductions or tax credits are available to offset the cost of the accommodation. In the absence of such funding, the individual with a disability must be given the option of providing the accommodation or of paying that portion of the cost which constitutes the undue hardship on the operation of the business.

5. The definition for ''reasonable accommodation'' in § 60–741.2(s) lists a number of examples of the most common types of accommodations that the contractor may be required to provide. There are a number of specific accommodations that may be appropriate for particular situations. The discussion in this appendix is not intended to provide an exhaustive list of required accommodations (as no such list would be feasible); rather, it is intended to provide general guidance regarding the nature of the obligation. The decision as to whether a reasonable accommodation is appropriate must be made on a case-by-case basis. The contractor generally should consult with the individual with a disability in deciding on the appropriate accommodation; frequently, the individual will know exactly what accommodation he or she will need to perform successfully in a particular job, and may suggest an accommodation which is simpler and less expensive than the accommodation the contractor might have devised. Other resources to consult include the appropriate State vocational rehabilitation services agency, the Equal Employment Opportunity Commission (1–800–669–4000 (voice) or 1–800–669–6820 (TTY)), the Job Accommodation Network (JAN)—a service of the U.S. Department of Labor's Office of Disability Employment Policy (1–800–526–7234 (voice) or 1–877–781–9403 (TTY)), private disability organizations, and other employers.

6. With respect to accommodations that can permit an employee with a disability to perform essential functions successfully, a reasonable accommodation may require the contractor to, for instance, modify or acquire equipment. For those visually-impaired, such accommodations may include providing adaptive hardware and software for computers, electronic visual aids, Braille writers, talking calculators, magnifiers, audio recordings, and Braille or large print materials. For persons with hearing

impairments, reasonable accommodations may include providing telephone handset amplifiers, telephones compatible with hearing aids, and TTY machines. For persons with limited physical dexterity, the obligation may require the provision of telephone headsets, mechanical page turners, and raised or lowered furniture.

7. Other reasonable accommodations of this type may include providing personal assistants such as a reader, interpreter, or travel attendant, permitting the use of accrued paid leave or providing additional unpaid leave for necessary treatment. The contractor may also be required to make existing facilities readily accessible to and usable by individuals with disabilities—including areas used by employees for purposes other than the performance of essential job functions—such as restrooms, break rooms, cafeterias, lounges, auditoriums, libraries, parking lots, and credit unions. This type of accommodation will enable employees to enjoy equal benefits and privileges of employment as are enjoyed by employees who do not have disabilities.

8. Another of the potential accommodations listed in § 60–741.2(s) is job restructuring. This may involve reallocating or redistributing those nonessential, marginal job functions which a qualified individual with a disability cannot perform to another position. Accordingly, if a clerical employee is occasionally required to lift heavy boxes containing files, but cannot do so because of a disability, this task may be reassigned to another employee. The contractor, however, is not required to reallocate essential functions, *i.e.,* those functions that the individual who holds the job would have to perform, with or without reasonable accommodation, in order to be considered qualified for the position. For instance, the contractor that has a security guard position which requires the incumbent to inspect identity cards would not have to provide a blind individual with an assistant to perform that duty; in such a case, the assistant would be performing an essential function of the job for the individual with a disability. Job restructuring may also involve allowing part-time or modified work schedules. For instance, flexible or adjusted work schedules could benefit individuals with disabilities who cannot work a standard schedule because of the need to obtain medical treatment, or individuals with mobility impairments who depend on a public transportation system that is not accessible during the hours of a standard schedule.

9. Reasonable accommodation may also include reassignment to a vacant position. In general, reassignment should be considered only when accommodation within the individual's current position would pose an undue hardship. Reassignment is not required for applicants. However, in making hiring decisions, contractors are encouraged to consider known applicants with disabilities for all available positions for which they may be qualified when the position(s) applied for is unavailable. Reassignment may not be used to limit, segregate, or otherwise discriminate against employees with disabilities by forcing reassignments to undesirable positions or to designated offices or facilities. Employers should reassign the individual to an equivalent position in terms of pay, status, etc., if the individual is qualified, and if the position is vacant within a reasonable amount of time. A reasonable amount of time should be determined in light of the totality of the circumstances.

10. The contractor may reassign an individual to a lower graded position if there are no accommodations that would enable the employee to remain in the current position and there are no vacant equivalent positions for which the individual is qualified with or without reasonable accommodation. The contractor may maintain the reassigned individual with a disability at the salary of the higher graded position, and must do so if it maintains the salary of reassigned employees who are not disabled. It should also be noted that the contractor is not required to promote an individual with a disability as an accommodation.

11. With respect to the application process, appropriate accommodations may include the following: (1) Providing information regarding job vacancies in a form accessible to those with vision or hearing impairments (*e.g.,* by making an announcement available in Braille, in large print, or on audio tape, or by responding to job inquiries via TTY); (2) providing readers, interpreters and other similar assistance during the application, testing and interview process; (3) appropriately adjusting or modifying employment-related examinations (*e.g.,* extending regular time deadlines, allowing a blind person or one with a learning disorder such as dyslexia to provide oral answers for a written test, and permitting an applicant, regardless of the nature of his or her disability to demonstrate skills through alternative techniques and utilization of adapted tools, aids and devices); and (4) ensuring an applicant with a mobility impairment full access to testing locations such that the applicant's test scores accurately reflect the applicant's skills or aptitude rather than the applicant's mobility impairment.

Appendix B to Part 60–741—Developing Reasonable Accommodation Procedures

As stated in §§ 60–741.21(a)(6) and 60–741.44(d), the development and use of written procedures for processing requests for reasonable accommodation is a best practice. This Appendix provides guidance contractors may wish to use should they decide to adopt this best practice. As stated in the regulations, contractors are not required to use written reasonable accommodation procedures, and the failure to use such procedures will not result in a finding of violation.

1. *Designation of responsible official.* The contractor should designate an official to be responsible for the implementation of the reasonable accommodation procedures. The responsible official may be the same official who is responsible for the implementation of the contractor's affirmative action program. The responsible official should have the authority, resources, support, and access to top management that is needed to ensure the effective implementation of the reasonable accommodation procedures. The name, title/office, and contact information (telephone number and email address) of the responsible official should be included in the reasonable accommodation procedures, and should be updated when changes occur.

2. *Description of process.* The contractor's reasonable accommodation procedures should contain a description of the steps the contractor takes when processing a reasonable accommodation request, including the process by which the contractor renders a final determination on the accommodation request. If specific information must be provided to the contractor in order to obtain a reasonable accommodation, the description should identify this information. For example, the contractor's reasonable accommodation procedures may state that to obtain a reasonable accommodation, the contractor must be informed of the existence of a disability, the disability-related limitation(s) or workplace barrier(s) that needs to be accommodated, and, if known, the desired reasonable accommodation. The description should also indicate that, if the need for accommodation is not obvious, or if additional information is needed, the contractor may initiate an interactive process with the accommodation requester.

3. *Form of requests for reasonable accommodation.* The reasonable accommodation procedures should specify that a request for reasonable accommodation may be oral or written and should explain that there are no required ''magic words'' that must be used by the requester to request an accommodation. The procedures should also state that requests for reasonable accommodation may be made by an applicant, employee, or by a third party, such as a relative, job coach, or friend, on his or her behalf.

4. *Submission of reasonable accommodation requests by employees.* The reasonable accommodation procedures should identify to whom an employee (or a third party acting on his or her behalf) must submit an accommodation request. At a minimum, this should include any supervisor or management official in the employee's chain of command, and the official responsible for the implementation of the reasonable accommodation procedures.

5. *Recurring requests for a reasonable accommodation.* The reasonable accommodation procedures should provide that in instances of a recurring need for an accommodation (*e.g.,* a hearing impaired employee's need for a sign language interpreter for meetings) the requester will not be required to repeatedly submit or renew their request for accommodation each time the accommodation is needed. In the absence of a reasonable belief that the individual's recurring need for the accommodation has changed, requiring the repeated submission of a request for the accommodation could be considered harassment on the basis of disability in violation of this part.

6. *Supporting medical documentation.* The reasonable accommodation procedures

should explain the circumstances, if any, under which the contractor may request and review medical documentation in support of a request for reasonable accommodation. The procedures should explain that any request for medical documentation may not be open ended, and must be limited to documentation of the individual's disability and the functional limitations for which reasonable accommodation is sought. The procedures should also explain that the submission of medical documentation is not required when the disability for which a reasonable accommodation is sought is known or readily observable and the need for accommodation is known or obvious.

7. *Written confirmation of receipt of request.* The reasonable accommodation procedures should specify that written confirmation of the receipt of a request for reasonable accommodation will be provided to the requester, either by letter or email. The written confirmation should include the date the accommodation request was received, and be signed by the authorized decisionmaker or his or her designee.

8. *Timeframe for processing requests.* The reasonable accommodation procedures should state that requests for accommodation will be processed as expeditiously as possible. Oral requests for reasonable accommodation should be considered received on the date they are initially made, even if the contractor has a reasonable accommodation request form that has not been completed. Requests for reasonable accommodation must be processed within a reasonable period of time. What constitutes a reasonable period of time will depend upon the specific circumstances. However, in general, if supporting medical documentation is not needed, that timeframe should not be longer than 5 to 10 business days. If supporting medical documentation is needed, or if special equipment must be ordered, that timeframe should not exceed 30 calendar days, unless there are extenuating circumstances beyond the control of the contractor. The procedures should explain what constitutes extenuating circumstances. However, reasonable accommodations may need to be provided even more expeditiously for applicants. See the discussion of accommodation requests from applicants in section 10, below.

9. *Delay in responding to request.* If the contractor's processing of an accommodation request will exceed established timeframes, written notice should be provided to the requester. The notice should include the reason(s) for the delay and a projected date of response. The notice should also be dated and signed by the authorized decisionmaker or his or her designee.

10. *Reasonable accommodation requests by applicants.* The reasonable accommodation procedures should include procedures to ensure that all applicants, including those using the contractor's online or other electronic application system, are made aware of the contractor's reasonable accommodation obligation and are invited to request any reasonable accommodation needed to participate fully in the application process. All applicants should also be provided with contact information for contractor staff able to assist the applicant, or his or her representative, in making a request for accommodation. The contractor's procedures should provide that reasonable accommodation requests by or on behalf of an applicant are processed expeditiously, using timeframes tailored to the application process.

11. *Denial of reasonable accommodation.* The contractor's reasonable accommodation procedures should specify that any denial or refusal to provide a requested reasonable accommodation will be provided in writing. The written denial should include the reason for the denial and be dated and signed by the authorized decisionmaker or his or her designee. If the contractor provides an internal appeal or reconsideration process, the written denial should inform the requester about this process.

12. *Confidentiality.* The contractor's reasonable accommodation procedures should indicate that all requests for reasonable accommodation, related documentation (such as request confirmation receipts, requests for additional information, and decisions regarding accommodation requests), and any medical or disability-related information provided to the contractor will be treated as confidential medical records and maintained in a separate medical file, in accordance with section 503 and this part.

13. *Dissemination of procedures to employees.* The contractor should disseminate its written reasonable accommodation procedures to all employees. Notice of the reasonable accommodation procedures may be provided by their inclusion in an employee handbook that is disseminated to all employees and/or by email or electronic posting on a company Web page where work-related notices are ordinarily posted. Notice of the reasonable accommodation procedures should be provided to employees who work off-site in the same manner that notice of other work-related matters is ordinarily provided to these employees.

14. *Training.* The contractor should provide annual training for its supervisors and managers regarding the implementation of the reasonable accommodation procedures. Training should also be provided whenever significant changes are made to the reasonable accommodation procedures. Training regarding the reasonable accommodation procedures may be provided in conjunction with other required equal employment opportunity or affirmative action training.

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Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Parts 25 and 32

2013–2014 Refuge-Specific Hunting and Sport Fishing Regulations; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 25 and 32

[Docket No. FWS–HQ–NWRS–2013–0074]; [FXRS12650900000–134–FF09R20000]

RIN 1018–AZ87

2013–2014 Refuge-Specific Hunting and Sport Fishing Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service proposes to add 6 national wildlife refuges (NWRs) to the list of areas open for hunting and/or sport fishing, add new hunts at 6 refuges, increase the hunting activities available at 20 other refuges, and increase fishing opportunities at two refuges, along with pertinent refuge-specific regulations on other refuges that pertain to migratory game bird hunting, upland game hunting, big game hunting, and sport fishing for the 2013–2014 season.

DATES: We will accept comments received or postmarked on or before October 24, 2013.

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

- *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Search for Docket No. FWS–HQ–NWRS–2013–0074, which is the docket number for this rulemaking. On the resulting screen, find the correct document and submit a comment by clicking on ''Comment Now!''
- *By hard copy:* Submit by U.S. mail or hand delivery: Public Comments Processing, Attn: FWS–HQ–NWRS–2013–0074; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will not accept email or faxes. 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 Request for Comments section below for more information). For information on specific refuges' public use programs and the conditions that apply to them or for copies of compatibility determinations for any refuge(s), contact individual programs at the addresses/phone numbers given in ''Available Information for Specific Refuges'' under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Paul F. Steblein, (703) 358–2678.

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Administration Act of 1966 closes national wildlife refuges in all States except Alaska to all uses until opened. The Secretary of the Interior (Secretary) may open refuge areas to any use, including hunting and/or sport fishing, upon a determination that such uses are compatible with the purposes of the refuge and National Wildlife Refuge System mission. The action also must be in accordance with provisions of all laws applicable to the areas, developed in coordination with the appropriate State fish and wildlife agency(ies), consistent with the principles of sound fish and wildlife management and administration, and otherwise in the public interest. These requirements ensure that we maintain the biological integrity, diversity, and environmental health of the Refuge System for the benefit of present and future generations of Americans.

We annually review refuge hunting and sport fishing programs to determine whether to include additional refuges or whether individual refuge regulations governing existing programs need modifications. Changing environmental conditions, State and Federal regulations, and other factors affecting fish and wildlife populations and habitat may warrant modifications to refuge-specific regulations to ensure the continued compatibility of hunting and sport fishing programs and to ensure that these programs will not materially interfere with or detract from the fulfillment of refuge purposes or the Refuge System's mission.

Provisions governing hunting and sport fishing on refuges are in title 50 of the Code of Federal Regulations in part 32 (50 CFR part 32). We regulate hunting and sport fishing on refuges to:

- Ensure compatibility with refuge purpose(s);
- Properly manage the fish and wildlife resource(s);
- Protect other refuge values;
- Ensure refuge visitor safety; and
- Provide opportunities for quality fish- and wildlife-dependent recreation.

On many refuges where we decide to allow hunting and sport fishing, our general policy of adopting regulations identical to State hunting and sport fishing regulations is adequate in meeting these objectives. On other refuges, we must supplement State regulations with more-restrictive Federal regulations to ensure that we meet our management responsibilities, as outlined in the ''Statutory Authority'' section. We issue refuge-specific hunting and sport fishing regulations when we open wildlife refuges to migratory game bird hunting, upland game hunting, big game hunting, or sport fishing. These regulations list the wildlife species that you may hunt or fish, seasons, bag or creel (container for carrying fish) limits, methods of hunting or sport fishing, descriptions of areas open to hunting or sport fishing, and other provisions as appropriate. You may find previously issued refuge-specific regulations for hunting and sport fishing in 50 CFR part 32. In this rulemaking, we are also proposing to standardize and clarify the language of existing regulations.

Statutory Authority

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee, as amended by the National Wildlife Refuge System Improvement Act of 1997 [Improvement Act]) (Administration Act), and the Refuge Recreation Act of 1962 (16 U.S.C. 460k–460k–4) (Recreation Act) govern the administration and public use of refuges.

Amendments enacted by the Improvement Act, built upon the Administration Act in a manner that provides an ''organic act'' for the Refuge System, are similar to those that exist for other public Federal lands. The Improvement Act serves to ensure that we effectively manage the Refuge System as a national network of lands, waters, and interests for the protection and conservation of our Nation's wildlife resources. The Administration Act states first and foremost that we focus our Refuge System mission on conservation of fish, wildlife, and plant resources and their habitats. The Improvement Act requires the Secretary, before allowing a new use of a refuge, or before expanding, renewing, or extending an existing use of a refuge, to determine that the use is compatible with the purpose for which the refuge was established and the mission of the Refuge System. The Improvement Act established as the policy of the United States that wildlife-dependent recreation, when compatible, is a legitimate and appropriate public use of the Refuge System, through which the American public can develop an appreciation for fish and wildlife. The Improvement Act established six wildlife-dependent recreational uses as the priority general public uses of the Refuge System. These uses are: Hunting, fishing, wildlife observation and photography, and environmental education and interpretation.

The Recreation Act authorizes the Secretary to administer areas within the Refuge System for public recreation as an appropriate incidental or secondary

use only to the extent that doing so is practicable and not inconsistent with the primary purpose(s) for which Congress and the Service established the areas. The Recreation Act requires that any recreational use of refuge lands be compatible with the primary purpose(s) for which we established the refuge and not inconsistent with other previously authorized operations.

The Administration Act and Recreation Act also authorize the Secretary to issue regulations to carry out the purposes of the Acts and regulate uses.

We develop specific management plans for each refuge prior to opening it to hunting or sport fishing. In many cases, we develop refuge-specific regulations to ensure the compatibility of the programs with the purpose(s) for which we established the refuge and the Refuge System mission. We ensure initial compliance with the Administration Act and the Recreation Act for hunting and sport fishing on newly acquired refuges through an interim determination of compatibility made at or near the time of acquisition. These regulations ensure that we make the determinations required by these acts prior to adding refuges to the lists of areas open to hunting and sport fishing in 50 CFR part 32. We ensure continued compliance by the development of comprehensive conservation plans, specific plans, and by annual review of hunting and sport fishing programs and regulations.

Amendments to Existing Regulations

This document proposes to codify in the Code of Federal Regulations all of the Service's hunting and/or sport fishing regulations that are applicable at Refuge System units previously opened to hunting and/or sport fishing. We are doing this to better inform the general public of the regulations at each refuge, to increase understanding and compliance with these regulations, and to make enforcement of these regulations more efficient. In addition to now finding these regulations in 50 CFR part 32, visitors to our refuges will usually find them reiterated in literature distributed by each refuge or posted on signs.

We cross-reference a number of existing regulations in 50 CFR parts 26, 27, 28, and 32 to assist hunting and sport fishing visitors with understanding safety and other legal requirements on refuges. This redundancy is deliberate, with the intention of improving safety and compliance in our hunting and sport fishing programs.

TABLE 1—CHANGES FOR 2013–2014 HUNTING/FISHING SEASON

Refuge/region (*)	State	Migratory bird hunting	Upland game hunting	Big game hunting	Sport fishing
Aransas NWR (2)	Texas	B	closed	Already open	Already open.
Arthur R. Marshall Loxahatchee NWR (4)	Florida	Already open	closed	B	Already open.
Balcones Canyonlands NWR (2)	Texas	C	C	C	closed.
Bandon Marsh NWR (1)	Oregon	C	closed	closed	Already open.
Baskett Slough NWR (1)	Oregon	A	closed	closed	closed.
Cherry Valley NWR (5)	Pennsylvania	A	A	A	closed.
Cokeville Meadows NWR (6)	Wyoming	A	A	A	closed.
Colusa NWR (8)	California	C	C	closed	closed.
Cypress Creek NWR (3)	Illinois	C	C	C	Already open.
Julia Butler Hansen Refuge For the Columbian White-Tailed Deer (1).	Oregon and Washington.	C	closed	Already open	Already open.
Kootenai NWR (1)	Idaho	Already open	D	Already open	Already open.
Malheur NWR (1)	Oregon	C	Already open	Already open	C.
Middle Mississippi River NWR (3)	Illinois	C	C	C	Already open.
Mingo NWR (3)	Missouri	C	C/D	C	Already open.
Neal Smith NWR (3)	Iowa	C/D	C/D	C/D	closed.
Nestucca Bay NWR (1)	Oregon	A	closed	closed	closed.
Northern Tallgrass Prairie NWR (3)	Iowa	C/D	C/D	C/D	closed.
Patoka River NWR and Management Area (3)	Indiana	C	C	C	Already open.
Port Louisa NWR (3)	Iowa	C	C	C	C.
Rachel Carson NWR (5)	Maine	C	C/D	C/D	Already open.
St. Marks NWR (4)	Florida	C	C	C	Already open.
San Andres NWR (2)	New Mexico	closed	closed	D	closed.
Shawangunk Grasslands NWR (5)	New York	closed	closed	A	closed.
Siletz Bay NWR (1)	Oregon	A	closed	closed	closed.
Silvio O. Conte National Fish and Wildlife Refuge (5).	Vermont	C	C	C	closed.
Willapa NWR (1)	Washington	C	Already open	C	Already open.

Key:
* number in ( ) refers to the Region as explained in the preamble to this proposed rule for additional information regarding refuge specific regulations.
A = New Refuge opened.
B = New activity on a refuge previously open to other activities.
C = Refuge already open to activity, but added new lands/waters or modified areas open to hunting or fishing.
D = Refuge already open to activity but added new species to hunt.

The changes for the 2013–14 hunting/fishing season noted in the chart above are each based on a complete administrative record which, among other detailed documentation, also includes a hunt plan, a compatibility determination, and the appropriate National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) analysis, all of which were the subject of a public review and comment process. These documents are available upon request.

Fish Advisory

For health reasons, anglers should review and follow State-issued consumption advisories before enjoying recreational sport fishing opportunities on Service-managed waters. You can

find information about current fish consumption advisories on the Internet at: *http://www.epa.gov/waterscience/fish/.*

Plain Language Mandate

In this proposed rule, we propose some of the revisions to the individual refuge units to comply with a Presidential mandate to use plain language in regulations; as such, these particular revisions do not modify the substance of the previous regulations. These types of changes include using ''you'' to refer to the reader and ''we'' to refer to the Refuge System, using the word ''allow'' instead of ''permit'' when we do not require the use of a permit for an activity, and using active voice (i.e., ''We restrict entry into the refuge'' vs. ''Entry into the refuge is restricted'').

Request for Comments

You may submit comment and materials on this proposed rule by any one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by email or fax or to an address not listed in the **ADDRESSES** section. We will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in the **DATES** section.

We will post your entire comment on *http://www.regulations.gov.* Before including personal identifying information in your comment, you should be aware that we may make your entire comment—including your personal identifying information—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. We will post all hardcopy comments on *http://www.regulations.gov.*

Public Comment

Department of the Interior policy is, whenever practicable, to afford the public a meaningful opportunity to participate in the rulemaking process. The process of opening refuges is done in stages, with the fundamental work being performed on the ground at the refuge and in the community where the program is administered. In these stages, the public is given other opportunities to comment, for example, on the comprehensive conservation plans and the compatibility determinations. The second stage is this document, when we publish the proposed rule in the **Federal Register** for additional comment, commonly for a 30-day comment period.

There is nothing contained in this annual regulation outside the scope of the annual review process where we determine whether individual refuges need modifications, deletions, or additions made to them. We make every attempt to collect all of the proposals from the refuges nationwide and process them expeditiously to maximize the time available for public review. We believe that a 30-day comment period, through the broader publication following the earlier public involvement, gives the public sufficient time to comment and allows us to establish hunting and fishing programs in time for the upcoming seasons. Many of these rules also relieve restrictions and allow the public to participate in recreational activities on a number of refuges. In addition, in order to continue to provide for previously authorized hunting opportunities while at the same time providing for adequate resource protection, we must be timely in providing modifications to certain hunting programs on some refuges.

We considered providing a 60-day, rather than a 30-day, comment period. However, we determined that an additional 30-day delay in processing these refuge-specific hunting and sport fishing regulations would hinder the effective planning and administration of our hunting and sport fishing programs. Such a delay would jeopardize enacting amendments to hunting and sport fishing programs in time for implementation this year and/or early next year, or shorten the duration of these programs.

Even after issuance of a final rule, we accept comments, suggestions, and concerns for consideration for any appropriate subsequent rulemaking.

When finalized, we will incorporate these regulations into 50 CFR part 32. Part 32 contains general provisions and refuge-specific regulations for hunting and sport fishing on refuges.

Clarity of This Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule; your comments should be a specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act [SBREFA] of 1996) (5 U.S.C. 601 *et seq.*), whenever a Federal 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 effect 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 an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for ''significant impact'' and a threshold for a ''substantial number of small entities.'' See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic

impact on a substantial number of small entities.

This proposed rule adds 6 national wildlife refuges to the list of refuges open to hunting, increases hunting activities on 20 additional national wildlife refuges, and increases fishing activities at 2 refuges. As a result, visitor use for wildlife-dependent recreation on these national wildlife refuges will change. If the refuges establishing new programs were a pure addition to the current supply of such activities, it would mean an estimated increase of 19,425 user days (one person per day participating in a recreational opportunity) (Table 2). Because the participation trend is flat in these activities since 1991, this increase in supply will most likely be offset by other sites losing participants. Therefore, this is likely to be a substitute site for the activity and not necessarily an increase in participation rates for the activity.

TABLE 2—ESTIMATED CHANGE IN RECREATION OPPORTUNITIES IN 2013/2014

[dollars in thousands]

Refuge	Additional days	Additional expenditures
Aransas NWR	2,600	121.1
Arthur R. Marshall Loxahatchee NWR	11	0.5
Balcones Canyonlands NWR	93	4.3
Bandon Marsh NWR	108	5.0
Baskett Slough NWR	140	6.5
Cherry Valley NWR	315	14.7
Cokeville Meadows NWR	500	23.3
Colusa NWR	165	7.7
Cypress Creek NWR	0	.....
Julia Butler Hansen Refuge For the Columbian White-Tailed Deer	0	.....
Kootenai NWR	0	.....
Malheur NWR	95	4.4
Middle Mississippi River NWR	11,835	551.2
Mingo NWR	1,500	69.9
Neal Smith NWR	25	1.2
Nestucca Bay NWR	120	5.6
Northern Tallgrass Prairie NWR	10	0.5
Patoka River NWR and Management Area	26	1.2
Port Louisa NWR	0	.....
Rachel Carson NWR	0	.....
St. Marks NWR	30	1.4
San Andres NWR	4	0.2
Shawangunk Grasslands NWR	43	2.0
Siletz Bay NWR	100	4.66
Silvio O. Conte National Fish and Wildlife Refuge	875	40.8
Willapa NWR	830	38.7
TOTAL	19,425	904.8

To the extent visitors spend time and money in the area of the refuge that they would not have spent there anyway, they contribute new income to the regional economy and benefit local businesses. Due to the unavailability of site-specific expenditure data, we use the national estimates from the 2011 National Survey of Fishing, Hunting, and Wildlife Associated Recreation to identify expenditures for food and lodging, transportation, and other incidental expenses. Using the average expenditures for these categories with the maximum expected additional participation of the Refuge System yields approximately $904,800 in recreation-related expenditures (Table 2). By having ripple effects throughout the economy, these direct expenditures are only part of the economic impact of these recreational activities. Using a national impact multiplier for hunting activities (2.27) derived from the report ''Hunting in America: An Economic Force for Conservation'' yields a total economic impact of approximately $2.1 million (2012 dollars) (Southwick Associates, Inc., 2012). Using a local impact multiplier would yield more accurate and smaller results. However, we employed the national impact multiplier due to the difficulty in developing local multipliers for each specific region.

Since we know that most of the fishing and hunting occurs within 100 miles of a participant's residence, then it is unlikely that most of this spending would be ''new'' money coming into a local economy; therefore, this spending would be offset with a decrease in some other sector of the local economy. The net gain to the local economies would be no more than $2.1 million, and most likely considerably less. Since 80 percent of the participants travel less than 100 miles to engage in hunting and fishing activities, their spending patterns would not add new money into the local economy and, therefore, the real impact would be on the order of about $411,000 annually.

Small businesses within the retail trade industry (such as hotels, gas stations, taxidermy shops, bait and tackle shops, and similar businesses) may be impacted from some increased or decreased refuge visitation. A large percentage of these retail trade establishments in the local communities around national wildlife refuges qualify as small businesses (Table 3). We expect that the incremental recreational changes will be scattered, and so we do not expect that the rule will have a significant economic effect on a substantial number of small entities in any region or nationally. As noted previously, we expect approximately $411,000 to be spent in total in the refuges' local economies. The maximum increase at most would be less than one-tenth of 1 percent for local retail trade spending (Table 3).

TABLE 3—COMPARATIVE EXPENDITURES FOR RETAIL TRADE ASSOCIATED WITH ADDITIONAL REFUGE VISITATION FOR 2013/2014

[thousands, 2012 dollars]

Refuge/county(ies)	Retail trade in 2007	Estimated maximum addition from new activities	Addition as % of total	Establish-ments in 2011	Establ. with <10 emp in 2011
Aransas NWR:					
Calhoun, TX	$356,827	$60.6	0.017	61	43
Aransas, TX	267,465	60.6	0.023	70	53
Arthur R Marshall Loxahatchee NWR: Palm Beach, FL	21,395,255	0.5	<0.001	5,256	3,961
Balcones Canyonlands NWR:					
Burnet, TX	708,176	1.4	<0.001	176	146
Travis, TX	15,369,020	1.4	<0.001	3,454	2,398
Williamson, TX	10,982,412	1.4	<0.001	1,237	812
Bandon Marsh NWR: Coos, OR	792,881	5.0	0.001	268	191
Baskett Slough NWR: Polk, OR	415,314	6.5	0.002	135	102
Cherry Valley NWR:					
Monroe, PA	2,231,111	7.3	<0.001	631	422
Northampton, PA	3,770,434	7.3	<0.001	876	608
Cokeville Meadows NWR: Lincoln, WY	245,506	23.3	0.009	79	62
Colusa NWR: Colusa, CA	230,924	7.7	0.003	60	40
Malheur NWR: Harney, OR	96,975	4.4	0.005	28	20
Middle Mississippi River NWR:					
Randolph, IL	367,968	137.8	0.037	105	68
Jackson, IL	757,506	137.8	0.018	225	141
Jefferson, IN	628,548	137.8	0.022	182	132
Monroe, IL	449,266	137.8	0.031	95	65
Mingo NWR:					
Stoddard, MO	482,886	34.9	0.007	120	84
Wayne, MO	72,844	34.9	0.048	37	29
Neal Smith NWR: Jasper, IA	303,361	1	<0.001	116	80
Nestucca Bay NWR: Tillamook, OR	249,040	5.6	0.002	107	89
Northern Tallgrass Prairie NWR: Jasper, IA	303,361	0.5	<0.001	116	80
Patoka River NWR:					
Gibson, IN	490,105	1.2	<0.001	122	84
Pike, IN	61,937	1.2	0.002	31	22
St. Marks NWR:					
Wakulla, FL	185,694	0.5	<0.001	59	46
Jefferson, FL	98,234	0.5	<0.001	47	35
Taylor, FL	229,296	0.5	<0.001	96	75
San Andres NWR: Dona Ana, NM	2,132,201	0.2	<0.001	510	341
Shawangunk Grasslands NWR: Ulster, NY	2,481,614	2.0	<0.001	733	548
Siletz Bay NWR: Lincoln, OR	619,646	4.66	0.001	310	247
Silvio O. Conte National Fish and Wildlife Refuge:					
Essex, VT	16,644	20.4	0.122	20	16
Windham, VT	731,645	20.4	0.003	289	217
Willapa NWR: Pacific, WA	126,764	38.7	0.030	87	77

With the small change in overall spending anticipated from this proposed rule, it is unlikely that a substantial number of small entities will have more than a small impact from the spending change near the affected refuges. Therefore, we certify that this proposed rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial/final regulatory flexibility analysis is not required. Accordingly, a small entity compliance guide is not required.

Small Business Regulatory Enforcement Fairness Act

The proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. We anticipate no significant employment or small business effects. This rule:

a. Would not have an annual effect on the economy of $100 million or more. The minimal impact would be scattered across the country and would most likely not be significant in any local area.

b. Would not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. This proposed rule would have only a slight effect on the costs of hunting opportunities for Americans. If the substitute sites are farther from the participants' residences, then an increase in travel costs would occur. The Service does not have information to quantify this change in travel cost but assumes that, since most people travel less than 100 miles to hunt, the increased travel cost would be small. We do not expect this proposed rule to affect the supply or demand for hunting opportunities in the United States and, therefore, it should not affect prices for hunting equipment and supplies, or the retailers that sell equipment.

c. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This proposed rule represents only a small proportion of recreational

spending at national wildlife refuges. Therefore, this rule would have no measurable economic effect on the wildlife-dependent industry, which has annual sales of equipment and travel expenditures of $72 billion nationwide.

Unfunded Mandates Reform Act

Since this proposed rule would apply to public use of federally owned and managed refuges, it would not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule would not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with E.O. 12630, this proposed rule would not have significant takings implications. This regulation would affect only visitors at national wildlife refuges and describe what they can do while they are on a refuge.

Federalism (E.O. 13132)

As discussed in the Regulatory Planning and Review and Unfunded Mandates Reform Act sections above, this proposed rule would not have sufficient federalism summary impact statement implications to warrant the preparation of a Federalism Assessment under E.O. 13132. In preparing this proposed rule, we worked with State governments.

Civil Justice Reform (E.O. 12988)

In accordance with E.O. 12988, the Office of the Solicitor has determined that the proposed rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. The regulation would clarify established regulations and result in better understanding of the regulations by refuge visitors.

Energy Supply, Distribution or Use (E.O. 13211)

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this proposed rule would increase activities at 21 other refuges, at add new hunts at five refuges and increase fishing opportunities at two refuges, it is not a significant regulatory action under E.O. 12866, and we do not expect it to significantly affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action and no Statement of Energy Effects is required.

Consultation and Coordination With Indian Tribal Governments (E.O. 13175)

In accordance with E.O. 13175, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects. We coordinate recreational use on national wildlife refuges with Tribal governments having adjoining or overlapping jurisdiction before we propose the regulations.

Paperwork Reduction Act

This regulation does not contain any information collection requirements other than those already approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (OMB Control Numbers are 1018–0102 and 1018–0140). In this proposed rule, we propose to revise 50 CFR 25.23 to provide correct information concerning OMB approval for the collections of information contained in subchapter C of title 50 of the Code of Federal Regulations. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Endangered Species Act Section 7 Consultation

We comply with section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), when developing comprehensive conservation plans (CCPs) and step-down management plans (which would include hunting and/or fishing plans) for public use of refuges, and prior to implementing any new or revised public recreation program on a refuge as identified in 50 CFR 26.32. We have completed section 7 consultation on each of the affected refuges.

National Environmental Policy Act

We analyzed this proposed rule in accordance with the criteria of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)), 43 CFR part 46, and 516 Departmental Manual (DM) 8.

A categorical exclusion from NEPA documentation applies to publication of proposed amendments to refuge-specific hunting and fishing regulations since they are technical and procedural in nature, and the environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis (43 CFR 46.210 and 516 DM 8). Concerning the actions that are the subject of this proposed rulemaking, we have complied with NEPA at the project level when developing each proposal. This is consistent with the Department of the Interior instructions for compliance with NEPA where actions are covered sufficiently by an earlier environmental document (43 CFR 46.120).

Prior to the addition of a refuge to the list of areas open to hunting and fishing in 50 CFR part 32, we develop hunting and fishing plans for the affected refuges. We incorporate these proposed refuge hunting and fishing activities in the refuge CCPs and/or other step-down management plans, pursuant to our refuge planning guidance in 602 Fish and Wildlife Service Manual (FW) 1, 3, and 4. We prepare these CCPs and step-down plans in compliance with section 102(2)(C) of NEPA, and the Council on Environmental Quality's regulations for implementing NEPA in 40 CFR parts 1500–1508. We invite the affected public to participate in the review, development, and implementation of these plans. Copies of all plans and NEPA compliance are available from the refuges at the addresses provided below.

Available Information for Specific Refuges

Individual refuge headquarters have information about public use programs and conditions that apply to their specific programs and maps of their respective areas. To find out how to contact a specific refuge, contact the appropriate Regional office listed below:

Region 1—Hawaii, Idaho, Oregon, and Washington. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Eastside Federal Complex, Suite 1692, 911 NE. 11th Avenue, Portland, OR 97232–4181; Telephone (503) 231–6214.

Region 2—Arizona, New Mexico, Oklahoma, and Texas. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Box 1306, 500 Gold Avenue, Albuquerque, NM 87103; Telephone (505) 248–7419.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1 Federal Drive, Federal Building, Fort Snelling, Twin Cities, MN 55111; Telephone (612) 713–5401.

Detroit River International Wildlife Refuge, 9311 Groh Road, Large Lakes Research Station, Grosse Ile, MI 43138; Telephone (734) 692–7608.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the Virgin Islands. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, GA 30345; Telephone (404) 679–7166.

Region 5—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035–9589; Telephone (413) 253–8306.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 134 Union Blvd., Lakewood, CO 80228; Telephone (303) 236–8145.

Region 7—Alaska. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, AK 99503; Telephone (907) 786–3545.

Region 8—California and Nevada. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room W–2606, Sacramento, CA 95825; Telephone (916) 414–6464.

Primary Author

Paul Steblein, Division of Conservation Planning and Policy, National Wildlife Refuge System is the primary author of this rulemaking document.

List of Subjects

50 CFR Part 25

Administrative practice and procedure, Concessions, Reporting and recordkeeping requirements, Safety, Wildlife refuges.

50 CFR Part 32

Fishing, Hunting, Reporting, and recordkeeping requirements, Wildlife, Wildlife refuges.

Proposed Regulation Promulgation

For the reasons set forth in the preamble, we propose to amend title 50, chapter I, subchapter C of the Code of Federal Regulations as follows:

PART 25—[AMENDED]

■ 1. The authority citation for part 25 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i, 3901 et seq.; and Pub. L. 102–402, 106 Stat. 1961.

■ 2. Revise § 25.23 to read as follows:

§ 25.23 What are the general regulations and information collection requirements?

The Office of Management and Budget has approved the information collection requirements contained in subchapter C, parts 25, 26, 27, 29, 30, 31, 32, and 36 under 44 U.S.C. 3501 et seq. and assigned the following control numbers: 1018–0102 for National Wildlife Refuge Special Use Permit Applications and Reports; 1018–0140 for Hunting and Fishing Application Forms and Activity Reports for National Wildlife Refuges; and 1018–0153 for National Wildlife Refuge Visitor Check-In Permit and Use Report. We collect information to assist us in administering our programs in accordance with statutory authorities that require that recreational or other uses be compatible with the primary purposes for which the areas were established. Send comments on any aspect of these forms or the information collection requirements to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 2042–PDM, Washington, DC 20240.

PART 32—[AMENDED]

■ 3. The authority citation for part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd–668ee, and 715i.

■ 4. Amend § 32.7 ''What refuge units are open to hunting and/or sport fishing?'' by:

■ a. Adding an entry for ''Silvio O. Conte National Fish and Wildlife Refuge'' and placing it in alphabetical order in the State of Connecticut;

■ b. Adding an entry for ''Silvio O. Conte National Fish and Wildlife Refuge'' and placing it in alphabetical order in the State of Massachusetts;

■ c. Adding an entry for ''Shawangunk Grasslands National Wildlife Refuge'' and placing it in alphabetical order in the State of New York;

■ d. Adding an entry for ''Baskett Slough National Wildlife Refuge'' and placing it in alphabetical order in the State of Oregon;

■ e. Adding an entry for ''Nestucca Bay National Wildlife Refuge'' and placing it in alphabetical order in the State of Oregon;

■ f. Adding an entry for ''Siletz Bay National Wildlife Refuge'' and placing it in alphabetical order in the State of Oregon;

■ g. Adding an entry for ''Cherry Valley National Wildlife Refuge'' and placing it in alphabetical order in the State of Pennsylvania;

■ h. Adding an entry for ''Silvio O. Conte National Fish and Wildlife Refuge'' and placing it in alphabetical order in the State of Vermont; and

■ i. Adding an entry for ''Cokeville Meadows National Wildlife Refuge'' and placing it in alphabetical order in the State of Wyoming.

■ 5. Amend § 32.20 Alabama by:

■ a. Revising paragraphs B.1, B.2, B.3, B.4, B.5, B.6, B.7, C.1, C.3, C.4, C.5, and D.1; adding paragraphs B.8 and B.9; and removing paragraphs C.6, C.7, C.8, and D.2 under Cahaba River National Wildlife Refuge.

■ b. Revising paragraphs B.5, B.6, B.8, B.9, B.10, C.1, C.2, C.3, C.4, D.1, D.2, and D.8 and adding paragraph C.6 under Choctaw National Wildlife Refuge.

■ c. Revising paragraphs B.1, B.4, and C.1 under Eufaula National Wildlife Refuge.

■ d. Revising paragraphs A.1, A.4, A.5, and B.1 and adding paragraphs A.6, A.7, and B.3 under Key Cave National Wildlife Refuge.

■ e. Revising paragraphs A.1, A.2, A.3, A.4, B.1, B.2, B.3, C.1, and C.4 and adding paragraphs A.5, A.6, A.7, B.4, and B.5 under Mountain Longleaf National Wildlife Refuge.

■ f. Revising paragraph B under Sauta Cave National Wildlife Refuge.

■ g. . Revising paragraphs B.1, B.2, B.4, B.7, B.10, C.1, C.2, C.3, C.4, C.5, and C.7; removing paragraphs C.8 and C.9; and adding paragraphs B.11, B.12, and B.13 under Wheeler National Wildlife Refuge.

These revisions and additions read as follows:

§ 32.20 Alabama.

* * * * *

Cahaba River National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

1. We require hunters to hunt in accordance with Alabama Department of Conservation and Natural Resources' William R. Ireland, Sr.—Cahaba River Wildlife Management Area hunting permit conditions.

2. We require hunters to possess and carry a current and signed Alabama Department of Conservation and Natural Resources' William R. Ireland, Sr.—Cahaba River Wildlife Management Area hunting permit when hunting on the refuge.

3. All youth hunters under age 16 must be supervised by a licensed and permitted adult 21 years of age or older, and must remain with the adult while hunting. One adult may supervise no more than two youth hunters.

4. We prohibit the use of horses, mules, and all-terrain vehicles (ATVs) on the refuge.

5. Hunters may hunt with shotguns using only nontoxic #4 shot or smaller (see § 32.2(k)), rifles and handguns using rim-fire ammunition only, or archery equipment that complies with State and Federal regulations.

6. We prohibit hunting or discharging firearms (including muzzle loaders) from within 50 yards (45 meters) of River Trace Road.

7. Hunting dogs may be used to hunt upland game and must be controlled by the owner/handler at all times (see § 26.21(b) of this chapter).

8. Hunters may only hunt designated game species during specified days, which are published within the Cahaba River National Wildlife Refuge Hunting dates portion of the permit.

9. Hunters must remove tree stands, blinds, or other personal property from the refuge each day (see § 27.93 of this chapter).

C. Big Game Hunting. * * *

1. Conditions B1, B2, B4, B6, and B8 through B10 apply.

* * * * *

3. We allow hunters to hunt from tree stands in accordance with 50 CFR 32.2(i). Hunters must use a body safety harness at all times while hunting from a tree.

4. All youth hunters under age 16 must be supervised by a properly licensed and permitted adult 21 years of age or older, and must remain with the adult while hunting. One adult may supervise no more than one youth hunter.

5. Hunters may not hunt by aid of or participate in drives to take deer or feral hogs.

D. Sport Fishing. * * *

1. Condition B4 applies.

Choctaw National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

* * * * *

5. All persons 15 years of age or younger, while hunting on the refuge, must be in the presence and under direct supervision of a licensed or exempt hunter at least 21 years of age. A licensed hunter supervising a youth as provided in this section must hold a valid State license for the species being hunted. One adult may supervise no more than one youth hunter.

6. The refuge is open every day from 1 hour before sunrise to 1 hour after sunset, except authorized uses. Personal property must be removed from the refuge daily (see § 27.93 of this chapter).

* * * * *

8. Persons possessing, transporting, or carrying firearms on the refuge must comply with all provisions of State and local law. Persons may only use (discharge) firearms in accordance with refuge regulations (see § 27.42 of this chapter and specific refuge regulations in part 32). Persons may only use approved nontoxic shot in shotgun shells (see § 32.2(k)), .22 caliber rimfire or smaller rifles, or legal archery equipment according to State regulations. We prohibit magnum ammunition.

9. We prohibit equestrian use and all forms of motorized off-road vehicles.

10. We allow hunting of designated species with dogs during designated hunts.

C. Big Game Hunting. * * *

1. Conditions B1 through B9 and B11 apply.

2. We allow hunters to hunt from tree stands in accordance with 50 CFR 32.2(i). While climbing a tree, installing a tree stand that uses climbing aids, or while hunting from a tree stand on the refuge, hunters must use a fall-arrest system (full body harness) that is manufactured to Treestand Manufactures Associations standards.

3. We prohibit damaging trees or hunting from a tree that contains an inserted metal object (see § 32.2(i)). Personal property must be removed from the refuge each day except for one portable stand (including tripods and ground blinds) (see § 27.93 of this chapter). The stand is required to be tagged with the hunter's name, address, and phone number permanently and legibly written on or attached to the stand. Stands left on the area do not reserve hunting locations. Portable stands may not be installed on the area prior to 7 days before deer season opens, nor left longer than 7 days after deer season closes. Stands not in compliance with these regulations may be confiscated and disposed of by the U.S. Fish and Wildlife Service.

4. Hunters may not hunt by aid of or harassment of game for purposes of take of deer or feral hogs.

* * * * *

6. Hunter orange is required according to State regulations during gun deer season in Choctaw County, AL. We recommend all user groups wear hunter orange during hunting seasons.

D. Sport Fishing. * * *

1. We allow fishing year-round, except in the waterfowl sanctuary, which is closed from November 15 through March 1.

2. Conditions B2 and B6 apply.

* * * * *

8. We prohibit fishing tournaments on all refuge waters.

Eufaula National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

1. Conditions A1, A2, A3, and A7 through A15 apply.

* * * * *

4. We only allow shotguns as the means of take for upland game hunting.

* * * * *

C. Big Game Hunting. * * *

1. Conditions A1, A7 through A15, and B5 apply.

* * * * *

Key Cave National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

1. We require hunters to possess and carry a current and signed Key Cave National Wildlife Refuge permit, which is included with the Alabama Department of Conservation and Natural Resources' Seven Mile Island Wildlife Management Area hunting permit when hunting on the refuge.

* * * * *

4. All youth hunters under age 16 must be supervised by a licensed and permitted adult 21 years of age or older, and must remain with the adult while hunting. One adult may supervise no more than two youth hunters.

5. We allow hunters to use hunting dogs to hunt migratory game birds and upland game. The dogs must be controlled by the owner/handler at all times (see § 26.21(b) of this chapter).

6. Hunters may only hunt designated game species during specified days, which are published within the Key Cave National Wildlife Refuge Hunting Dates portion of the permit.

7. We prohibit the use of horses, mules or all-terrain vehicles (ATVs) on all refuge hunts.

B. Upland Game Hunting. * * *

1. Conditions A1 and A3 through A7 apply.

* * * * *

3. Hunters may hunt with shotguns using only nontoxic #4 shot or smaller (see § 32.2(k)), rifles and handguns using rim-fire ammunition only, or archery equipment that complies with State regulations. Possession of lead shot shells for hunting is prohibited.

* * * * *

Mountain Longleaf National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

1. We require hunters to hunt in accordance with Alabama Department of Conservation and Natural Resources' Choccolocco Wildlife Management Area hunting permit conditions.

2. We require hunters to possess and carry a current and signed Alabama Department of Conservation and Natural

Resources' Choccolocco Wildlife Management Area hunting permit when hunting on the refuge.

3. All youth hunters under age 16 must be supervised by a properly licensed and permitted adult 21 years of age or older, and must remain with the adult while hunting. One adult may supervise no more than two youth hunters.

4. We prohibit the use of horses, mules and all-terrain vehicles (ATVs) on the refuge.

5. Hunters may only hunt designated game species during specified days, which are published within the Mountain Longleaf National Wildlife Refuge Hunting Dates portion of the permit.

6. Hunters must remove tree stands, blinds, or other personal property from the refuge each day (see § 27.93 of this chapter).

7. Hunters may hunt with shotguns using only nontoxic #4 shot or smaller (see § 32.2(k)). Possession of lead shot shells for hunting is prohibited.

B. Upland Game Hunting. * * *

1. Conditions A1 through A7 apply.

2. Hunters may hunt during daylight hours only.

3. We allow hunters to hunt from tree stands in accordance with 50 CFR 32.2(i). Hunters must use a body safety harness at all times while hunting from a tree.

4. Hunting dogs may be used to hunt quail, squirrel, and rabbit and must be controlled by the owner/handler at all times (see § 26.21(b) of this chapter).

5. Possession of lead shot shells for hunting is prohibited.

C. Big Game Hunting. * * *

1. Conditions A1, A2, and A4 through A7 apply.

* * * * *

4. All youth hunters under age 16 must be supervised by a licensed and permitted adult 21 years of age or older, and must remain with the adult while hunting. One adult may supervise no more than one youth hunter.

* * * * *

Sauta Cave National Wildlife Refuge

* * * * *

B. Upland Game Hunting. We allow hunting of quail, squirrel, rabbit, raccoon, and opossum on designated area of the refuge in accordance with Federal and State regulations subject to the following conditions:

1. We require hunters to hunt in accordance with Alabama Department of Conservation and Natural Resources' North Sauta refuge hunting permit.

2. We require hunters to possess and carry a current and signed Sauta Cave National Wildlife Refuge permit, which is found on the Alabama Department of Conservation and Natural Resources' Jackson County Waterfowl, Management Areas, refuges and Coon Gulf Tract hunting permit, when hunting.

3. Hunters may only hunt designated game species during specified days, which are published within the Sauta Cave National Wildlife Refuge Hunting Dates portion of the permit.

4. Hunters may hunt with shotguns using only nontoxic #4 shot or smaller (see § 32.2(k)), rifles and handguns using rim-fire ammunition only, or archery equipment that complies with State regulations. Possession of lead shot shells for hunting is prohibited.

5. All youth hunters under age 16 must be supervised by a licensed and permitted adult 21 years of age or older, and must remain with the adult while hunting. One adult may supervise no more than two youth hunters.

6. We allow hunters to use hunting dogs to hunt upland game. The dogs must be controlled by the owner/handler at all times (see § 26.21(b) of this chapter).

* * * * *

Wheeler National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

1. We require hunters to possess and carry a current and signed hunting permit, found on the Wheeler National Wildlife Refuge Hunting Brochure, when hunting on the refuge. These brochures are available at the refuge visitor center, refuge headquarters, and on the refuge's Web site.

2. Hunters may hunt with shotguns using only nontoxic #4 shot or smaller (see § 32.2(k)), rifles and handguns using rim-fire ammunition only, or archery equipment that complies with State regulations.

* * * * *

4. We prohibit hunting or discharging firearms (including Flintlocks) in the Triana recreation area or from any road or road shoulder or from within 50 yards (45 meters) of any designated walking trail or boardwalk.

* * * * *

7. All youth hunters under age 16 must be supervised by a licensed and permitted adult 21 years of age or older, and must remain with the adult while hunting. One adult may supervise no more than two youth hunters.

* * * * *

10. Hunting dogs may be used to hunt upland game and must be controlled by the owner/handler at all times (see § 26.21(b) of this chapter).

11. We allow hunters to hunt from tree stands in accordance with 50 CFR 32.2(i). Hunters must use a body safety harness at all times while hunting from a tree.

12. Hunters must remove tree stands, blinds, or other personal property from the refuge each day (see § 27.93 of this chapter).

13. Hunters may only hunt designated game species during specified days, which are published within the Wheeler National Wildlife Refuge Hunting Brochure.

C. Big Game Hunting. * * *

1. Conditions B1, B3 through B6, B8, B9, and B11 through B13 apply.

2. Hunters may not hunt by aid of or harassment of game for purposes of take for deer or feral hogs.

3. Hunters may only hunt with archery equipment that complies with State regulations and flintlocks .40 caliber or larger.

4. All youth hunters under age 16 must be supervised by a licensed and permitted adult 21 years of age or older, and must remain with the adult while hunting. One adult may supervise no more than one youth hunter.

5. Hunters must report the sex, approximate size, and hunt area for any deer or hogs they harvested from the refuge within 72 hours. Reports must be given by phone or in person to the refuge Visitor Center (256/350–6639) or refuge headquarters (256/353–7243).

* * * * *

7. You may only hunt feral hog during the refuge archery and flintlock deer season.

* * * * *

■ 6. Amend § 32.24 California by:

■ a. Revising paragraphs A.3, A.4, A.5, A.6, A.7, A.8, and B.1; adding paragraphs A.9; and removing paragraph B.2 under Colusa National Wildlife Refuge.

■ b. Revising paragraphs A. 4, A.10, A.11, and B.2; and removing paragraphs B.3, B.4, B.5, B.6, B.7, and B.8 under Delevan National Wildlife Refuge.

■ c. Revising paragraphs A.6, A.10, A.11, and B.2; and removing paragraphs B.3, B.4, B.5, B.6, B.7, and B.8 under Sacramento National Wildlife Refuge.

■ d. Revising paragraphs A.3, A.4, A.5, A.6, A.7, A.8, and B.1; adding paragraphs A.9; and removing paragraphs B.2, B.3, B.4, B.5, B.6, and B.7 under Sutter National Wildlife Refuge.

These revisions and additions read as follows:

§ 32.24 California.

* * * * *

Colusa National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

* * * * *

3. Access to the hunt area is by foot traffic only. Bicycles and other conveyances are not allowed. Mobility-impaired hunters must consult the refuge manager for allowed conveyances.

4. We allow boats with electric motors to be used by hunters with disabilities only in designated areas.

5. No person may build or maintain fires. Portable gas stoves are permissible.

6. You may enter or exit only at designated locations.

7. Vehicles may stop only at designated parking areas. We prohibit the dropping of passengers or equipment or stopping between designated parking areas.

8. Overnight stays, using passenger vehicles, motor homes, and trailers, are allowed only at the check station parking areas. Tents are prohibited.

9. We require dogs be kept on a leash, except for hunting dogs engaged in authorized hunting activities and under the immediate control of a licensed hunter.

B. Upland Game Hunting. * * *

1. Conditions A.1 through A.9 apply.

* * * * *

Delevan National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

* * * * *

4. Access to the hunt area is by foot traffic only. Bicycles and other conveyances are not allowed. Mobility-impaired hunters should consult the refuge manager for allowed conveyances.

* * * * *

10. Overnight stays, using passenger vehicles, motor homes, and trailers, are allowed only at the check station parking areas. Tents are prohibited.

11. We require dogs be kept on a leash, except for hunting dogs engaged in authorized hunting activities and under the immediate control of a licensed hunter.

B. Upland Game Hunting. * * *

* * * * *

2. Conditions A.4 through A.11 apply.

* * * * *

Sacramento National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

* * * * *

6. Access to the hunt area is by foot traffic only. Bicycles and other conveyances are not allowed. Mobility-impaired hunters must consult the refuge manager for allowed conveyances.

* * * * *

10. Overnight stays, using passenger vehicles, motor homes, and trailers, are allowed only at the check station parking areas. Tents are prohibited.

11. We require dogs be kept on a leash, except for hunting dogs engaged in authorized hunting activities and under the immediate control of a licensed hunter.

B. Upland Game Hunting. * * *

* * * * *

2. Conditions A.4 through A.11 apply.

* * * * *

Sutter National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

* * * * *

3. Access to the hunt area is by foot traffic only. Bicycles and other conveyances are not allowed. Mobility-impaired hunters should consult the refuge manager for allowed conveyances.

4. Boats with electric motors allowed only by hunters with disabilities in designated areas.

5. No person may build or maintain fires. Portable gas stoves are permissible.

6. You may enter or exit only at designated locations.

7. Vehicles may only stop at designated parking areas. We prohibit the dropping of passengers or equipment or stopping between designated parking areas.

8. Overnight stays, using passenger vehicles, motor homes, and trailers, are allowed only at the check station parking areas. Tents are prohibited.

9. Dogs must be kept on a leash, except for hunting dogs engaged in authorized hunting activities and under the immediate control of a licensed hunter.

B. Upland Game Hunting. * * *

1. Conditions A.1 through A.9 apply.

* * * * *

7. Amend § 32.25 Colorado by revising the introductory text in paragraphs A and B and by adding paragraphs A.6, B.4, D.4, and D.5 under Arapaho National Wildlife Refuge to read as follows:

§ 32.25 Colorado.

* * * * *

Arapaho National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of duck, coot, merganser, Canada goose, snipe, Virginia and Sora rail, and mourning dove on designated areas of the refuge in accordance with State and Federal regulations, subject to the following conditions:

* * * * *

6. Legal method of take for migratory game birds is by shotgun only.

B. Upland Game Hunting. We allow hunting of jackrabbit, cottontail rabbit, and sage grouse on designated areas of the refuge in accordance with State regulations, subject to the following conditions:

* * * * *

4. Legal method of take for upland game is by shotgun only.

* * * * *

D. Sport Fishing. * * *

* * * * *

4. Fishing is closed in Unit C when the refuge is open to big game rifle hunting.

5. Lead sinkers and live bait are not allowed for fishing.

* * * * *

8. Amend § 32.26 Connecticut by adding, in alphabetical order, an entry for Silvio O. Conte National Fish and Wildlife Refuge to read as follows:

§ 32.26 Connecticut.

* * * * *

Silvio O. Conte National Fish and Wildlife Refuge

A. Migratory Game Bird Hunting. [RESERVED]

B. Upland Game Hunting. [RESERVED]

C. Big Game Hunting. [RESERVED]

D. Sport Fishing. [RESERVED]

* * * * *

■ 9. Amend § 32.28 Florida by:

■ a. Revising the introductory text in paragraphs A and D; revising paragraph A.2; removing paragraph A.4; redesignating A.5, A.6, A.7, A.8, A.9, A.10, A.11, A.12, A.13, A.14, A.15, A.16, A.17 and A.18 as paragraphs A.4, A.5, A.6, A.7, A.8, A.9, A.10, A.11, A.12, A.13, A.14, A.15, A.16 and A.17 revising newly designated paragraph A.12; and adding a new paragraph C under Arthur R. Marshall Loxahatchee National Wildlife Refuge.

■ b. Revising paragraphs D.4, D.5, and D.7; redesignating paragraphs D.8, D.9, D.10, D.11, D.12, D.13, D.14, D.15, D.16, D.17, D.18, D.19, and D.20 as paragraphs D.9, D.10, D.11, D.12, D.13, D.14, D.15, D.16, D.17, D.18, D.19, D.20, and D.21, respectively; revising newly designated paragraphs D.13 and D.21; and adding paragraph D.8 under J.N. ''Ding'' Darling National Wildlife Refuge.

■ c. Revising paragraphs A.3, B.1, C.4, C.8, and C.9 and adding paragraphs B.12 and C.12 under St. Marks National Wildlife Refuge.

These additions and revisions read as follows:

§ 32.28 Florida.

* * * * *

Arthur R. Marshall Loxahatchee National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of duck and coot on designated areas of the refuge in accordance with State and Federal regulations subject to the following conditions:

* * * * *

2. We allow hunting in the interior of the refuge south of latitude line 26.27.130 and north of mile markers 12 and 14 (SEE PERMIT MAP). We prohibit hunting from canals or levees and those areas posted as closed.

* * * * *

12. All youth hunters under age 16 must be supervised by a licensed and permitted adult 21 years of age or older, and must remain with the adult while hunting. Youth hunters must have completed a hunter education course.

* * * * *

C. Big Game Hunting. We allow hunting of alligators on designated areas of the refuge in accordance with Federal and State regulations and subject to the following conditions:

1. You must possess and carry a signed refuge alligator hunt permit (signed brochure) while hunting. These brochures are available at the refuge visitor center and on the refuge's Web site (*http://www.fws.gov/loxahatchee/*).

2. We allow hunting in the interior of the refuge south of latitude line 26.27.130 and north of mile markers 12 and 14, including the canals south of that line (SEE PERMIT MAP). We prohibit hunting from levees and those areas posted as closed.

3. Consult the refuge manager for current alligator hunt season dates and times.

4. We allow hunting on the refuge 1 hour before sunset on Friday night through 1 hour after sunrise Saturday morning, and 1 hour before sunset on Saturday night through 1 hour after sunrise Sunday morning. Alligator hunting will be permitted the first two weekends during Harvest Period 1 (August) and the first two weekends during Harvest Period 2 (September). Following the close of Harvest Period 2, the remaining weekends in October will be open for alligator harvest permittees who possess unused CITES tags. Specific dates for the alligator hunt will be provided on the harvest permit.

5. Hunters 18 years and older must be in possession of all necessary State and Federal licenses, permits, and CITES tags, as well as a refuge hunt permit (signed hunt brochure) while hunting on the refuge. They must possess an Alligator Trapping License with CITES tags or an Alligator Trapping Agent License, if applicable.

6. Hunters under the age of 18 may not hunt, but may only accompany an adult of at least 21 years of age who possesses an Alligator Trapping Agent License.

7. Hunters may only enter and leave the refuge at the Hillsboro Area (Loxahatchee Road, Boca Raton).

8. Alligators may be taken using hand-held snares, harpoons, gigs, snatch hooks, artificial lures, manually operated spears, spear guns, and crossbows. Alligators may not be taken using baited hooks, baited wooden pegs, or firearms. Bang sticks (a hand held pole with a pistol or shotgun cartridge on the end in a very short barrel) with non-toxic ammunition are only permitted for taking alligators attached to a restraining line. Once an alligator is captured, it must be killed immediately. Once the alligator is taken or harvested, a CITES tag must be locked through the skin of the carcass within 6 inches of the tip of the tail. The tag must remain attached to the alligator at all times.

9. Hunters must complete a Big Game Harvest Report (FWS Form 3–2359) and place it in an entrance fee canister each day prior to exiting the refuge. A State Alligator Report form required by the State along with the hunt permit (signed refuge brochure) must be submitted to the refuge within 24 hours of taking each alligator.

10. Persons possessing, transporting, or carrying firearms on national wildlife refuges must comply with all provisions of Federal, State, and local law. Persons may only use (discharge) firearms in accordance with refuge regulations (see § 27.42 of this chapter and specific refuge regulations in this part 32).

11. Hunters must remove all personal property (see § 27.93 of this chapter) from the hunting area each day.

12. Conditions A13 through A17 apply.

D. Sport Fishing. We allow fishing on designated areas of the refuge in accordance with Federal and State regulations and subject to the following conditions:

* * * * *

J.N. "Ding" Darling National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

* * * * *

4. We allow the take of blue crabs with the use of dip nets only.

5. The daily limit of blue crabs is 20 per person (including no more than 10 non-eggbearing females).

* * * * *

7. We allow vessels propelled only by polling, paddling, or floating in the posted "no-motor zone" of the J.N. "Ding" Darling Wilderness Area. All motors, including electric motors, must be in a nonuse position (out of the water) when in the "no-motor zone."

8. We allow vessels propelled only by polling, paddling, floating, or electric motors in the posted "pole/troll zone" of the Wulfert Flats Management Area. All non-electric motors must be in a non-use position (out of the water) when in the "pole/troll zone."

* * * * *

13. We prohibit all public entry into the impoundments on the left side of Wildlife Drive.

* * * * *

21. We close to public entry all refuge islands (including rookery islands) except for designated trails.

* * * * *

St. Marks National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

* * * * *

3. We prohibit migratory game bird hunting in the Executive Closure Areas on the refuge.

* * * * *

B. Upland Game Hunting. * * *

1. We require refuge permits (signed brochure) for hunting upland game. Permits are available at no cost from the refuge office or can be downloaded and printed from the refuge Web site. Each hunter must possess and carry a signed refuge permit while participating in a hunt.

* * * * *

12. Portions of the refuge adjacent to Flint Rock Wildlife Management Area (as specified in the hunt brochure) will be open concurrent with Flint Rock Wildlife Management Area seasons and regulations except only feral hog, grey squirrel, rabbit, and raccoon may be harvested.

C. Big Game Hunting. * * *

* * * * *

4. There is a two deer limit per hunt as specified in condition C8 below, except in the youth hunt where the limit is as specified in C9 below. The limit for turkey is one per hunt. There is no limit on feral hog.

* * * * *

8. The bag limit for white-tailed deer is two deer per scheduled hunt period. We allow hunters to harvest two antlerless deer per scheduled hunt

period. We define antlerless deer per State regulations (i.e., un-antlered deer or antlered deer with both antlers less than 5 inches in length). Otherwise, hunters may harvest one antlerless deer and one antlered deer per hunt. Hunters must ensure that antlered deer must have at least 3 points, of 1 inch (2.5 centimeters) or more length.

9. There is one youth hunt, for youth ages 12 to 17, on the St. Marks Unit in an area we will specify in the refuge hunt brochure. Hunters may harvest two deer, either two un-antlered deer as defined in C8 or one un-antlered deer and one antlered deer. An adult age 21 or older acting as a mentor must accompany each youth hunter. One youth turkey hunt will be conducted in a similar manner. The limit will be one gobbler per hunter. Only the youth hunter may handle or discharge firearms. Contact the refuge office for specific dates.

* * * * *

12. Portions of the refuge adjacent to Flint Rock Wildlife Management Area (as specified in the hunt brochure) will be open concurrent with Flint Rock Wildlife Management Area seasons and regulations except only white-tailed deer, feral hog, and turkey may be harvested. We require a refuge permit (signed brochure).

* * * * *

■ 10. Amend § 32.29 Georgia by:

■ a. Revising paragraph A.3 under Savannah National Wildlife Refuge.

These revisions read as follows:

§ 32.29 Georgia.

* * * * *

Savannah National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

* * * * *

3. We prohibit hunting on or within 100 yards (90 meters) of U.S. Highway 17, GA Highway 25/SC Highway 170, refuge facilities, road, trails, and railroad rights-of-way, and within areas marked as closed.

* * * * *

■ 11. Amend § 32.31 Idaho by revising the introductory text in paragraph A and by revising paragraphs A.3, B, C, and D under Kootenai Flat National Wildlife Refuge to read as follows:

§ 32.31 Idaho.

* * * * *

Kootenai National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of goose, duck, and coot on designated areas (designated area changed due to increased size of safety zone) of the refuge in accordance with State and Federal regulations subject to the following conditions:

* * * * *

3. We prohibit the discharge of firearms in the posted retrieving/safety zone.

* * * * *

B. Upland Game Hunting. We allow hunting of forest grouse and wild turkey on that portion of the refuge that lies west of Lion's Den Road in accordance with State regulations subject to the following condition: You may possess only approved nontoxic shotshells (see § 32.2(k)) while in the field.

C. Big Game Hunting. We allow hunting of deer, elk, black bear, moose, and mountain lion on that portion of the refuge that lies west of Lion's Den Road and hunting of deer at an ADA-accessible blind near Aspen Slough in accordance with State regulations and subject to the following conditions:

1. We prohibit all use of dogs for hunting of big game.

2. You may only participate in deer hunting at the ADA-accessible blind with valid State licenses and tags.

3. You may only participate in deer hunting at the ADA-accessible blind with a refuge permit issued through a random drawing for up to four 7-day archery-only permits and up to six 7-day archery/special weapons-only permits.

4. We only allow deer hunting at the ADA-accessible blind using the following weapons: Muzzleloader, archery equipment, crossbow, shotgun using slugs, or handgun using straight-walled cartridges not originally established for rifles.

5. We prohibit use of toxic (lead) ammunition when deer hunting at the ADA-accessible blind.

D. Sport Fishing. We allow sport fishing on Myrtle Creek in accordance with State regulations subject to the following condition: We allow bank fishing only.

* * * * *

■ 12. Amend § 32.32 Illinois by:

■ a. Removing paragraphs A.1 and A.7; redesignating paragraphs A.2, A.3, A.4, A.5, and A.6 as paragraphs A.1, A.2, A.3, A.4, and A.5, respectively; revising newly designated paragraph A.1; revising paragraphs B.1, C.1, and D.1; and adding paragraphs B.3, C.2, and C.3 under Cypress Creek National Wildlife Refuge.

■ b. Revising introductory text in paragraph A; revising paragraphs A.2, B, C.1, C.2, and C.3; and adding paragraphs A.3, C.4, C.5, and C.6 under Middle Mississippi River National Wildlife Refuge.

■ c. Revising paragraph B and adding paragraph C.3 under Two Rivers National Wildlife Refuge.

These additions and revisions read as follows:

§ 32.32 Illinois.

* * * * *

Cypress Creek National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

1. You must remove all boats, decoys, blinds, blind materials, stands, and platforms (see §§ 27.93 and 27.94 of this chapter) brought onto the refuge at the end of each day's hunt.

* * * * *

B. Upland Game Hunting. * * *

1. Conditions A1, A2, A4, and A5 apply.

* * * * *

3. We allow the use of .22 and .17 caliber rimfire lead ammunition for the taking of small game and furbearers during open season.

C. Big Game Hunting. * * *

1. Conditions A1, A2, A4, and A5 apply.

2. We prohibit deer drives, by person or animal, and participating in deer drives on all refuge divisions.

3. You may only use or possess approved nontoxic shot shells while in the field, including shot shells used for hunting wild turkey (see § 32.2(k)).

D. Sport Fishing. * * *

1. Conditions A1 and A3 apply.

* * * * *

Middle Mississippi River National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of migratory game birds on the Meissner, Wilkinson, and Beaver Island Divisions in accordance with State regulations and subject to the following conditions:

* * * * *

2. You must remove boats, blinds, blind materials, stands, decoys, and other hunting equipment (see §§ 27.93 and 27.94 of this chapter) from the refuge at the end of each day.

3. We allow portable blinds on a daily basis on a first-come, first-served basis.

B. Upland Game Hunting. We allow hunting of upland game (squirrels, rabbits, and bobwhite quail only) on the refuge in accordance with State regulations and subject to the following conditions:

1. We allow hunting of furbearers only from legal sunrise to legal sunset.

2. You may only use or possess approved nontoxic shot shells while in the field (see § 32.2(k)).

C. Big Game Hunting. * * *

1. Conditions A1 and A2 apply.

2. In the Harlow, Crains, and Meissner Island Divisions you may use only archery equipment to harvest white-tailed deer.

3. You may only use or possess approved nontoxic shot shells while in the field, including shot shells used for hunting wild turkey (see § 32.2(k)).

4. We prohibit deer drives, by person or animal, and participating in deer drives on all refuge divisions.

5. We prohibit placing temporary tree stands in dead or dying trees.

6. You may not remove any tree or limbs greater than 1 inch in diameter.

* * * * *

Two Rivers National Wildlife Refuge

* * * * *

B. Upland Game Hunting. We allow upland game hunting only on the Apple Creek Division and the portion of the Calhoun Division east of the Illinois River Road in accordance with State regulations and subject to the following conditions:

1. We allow hunting from legal sunrise to legal sunset.

2. You may only use or possess approved nontoxic shot shells while in the field, including shot shells used for hunting wild turkey (see § 32.2(k)).

C. Big Game Hunting. * * *

* * * * *

3. Condition B2 applies.

* * * * *

■ 13. Amend § 32.33 Indiana by:

■ a. Revising paragraphs C.4, C.8, and C.9 and adding paragraphs C.10, C.11, and D.7 under Muscatatuck National Wildlife Refuge.

■ b. Revising A.2, C.2, C.3, D.2.iv, and D.3 and adding paragraphs A.7, A.8, and B.3 under Patoka River National Wildlife Refuge and Management Area.

These additions and revisions read as follows:

§ 32.33 Indiana.

* * * * *

Muscatatuck National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

* * * * *

4. You may take only two deer per day from the refuge, only one of which may be an antlered buck.

* * * * *

8. We permit archery deer hunting in designated areas after National Wildlife Refuge Week during the State season with the exceptions that archery deer hunting is closed during the youth deer hunt in November and during the State muzzleloader season.

9. Turkey hunting ends at 1 p.m. daily.

10. We prohibit the use or possession of game trail cameras on the refuge.

11. We require you to remove arrows from crossbows during transport in a vehicle.

D. Sport Fishing. * * *

* * * * *

7. We allow only children under 18 years of age to fish in the Office Pond.

* * * * *

Patoka River National Wildlife Refuge and Management Area

A. Migratory Game Bird Hunting. * * *

* * * * *

2. You must remove all boats, decoys, blinds, and blind materials after each day's hunt (see §§ 27.93 and 27.94 of this chapter).

* * * * *

7. We prohibit hunting and the discharge of a weapon within 150 yards of any dwelling or any building that may be occupied by people, pets, or livestock.

8. You may only use or possess approved nontoxic shot shells while in the field, including shot shells used for hunting wild turkey (see § 32.2(k)).

B. Upland Game Hunting. * * *

* * * * *

3. Conditions A7 and A8 apply.

C. Big Game Hunting. * * *

* * * * *

2. We prohibit marking trails with tape, ribbons, paper, paint, tacks, tree blazes, or other devices.

3. Conditions A6 through A8 apply.

D. Sport Fishing.

* * * * *

2. * * *

* * * * *

iv. You may not collect or harvest minnows, crayfish, or any reptiles and amphibians (see § 27.21 of this chapter).

3. You must remove boats at the end of each day's fishing activity (see § 27.93 of this chapter).

* * * * *

■ 14. Amend § 32.34 Iowa by:

■ a. Revising paragraphs A, B, C.1, and C.2 and removing paragraph C.3 under Neal Smith National Wildlife Refuge.

■ b. Redesignating paragraphs A.1, A.2, A.3, A.4, A.5, A.6, A.7, and A.8 as paragraphs A.2, A.3, A.4, A.5, A.6, A.7, A.8, and A.9, respectively; redesignating paragraphs B.1, B.2, B.3, and B.4 as paragraphs B.2, B.3, B.4, and B.5, respectively; redesignating paragraphs C.1, C.2, and C.3 as paragraphs C.2, C.3, and C.4, respectively; revising the introductory text in paragraphs A, B, and C; revising paragraphs B.5 and C.4; and adding paragraphs A.1, B.1, and C.1 under Northern Tallgrass Prairie National Wildlife Refuge.

■ c. Revising the entry for Port Louisa National Wildlife Refuge.

These additions and revisions read as follows:

§ 32.34 Iowa.

* * * * *

Neal Smith National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow the hunting of duck, goose, and coot on designated areas of the refuge in accordance with State and Federal regulations and subject to the following conditions:

1. We prohibit all hunting February 1 through August 31 due to conflict with existing appropriate and compatible uses.

2. You may only possess approved nontoxic shot (see § 32.2(k)) while hunting for any permitted bird, including waterfowl and wild turkey, or other upland or small game.

3. We allow entry into the refuge 1 hour before sunrise and require hunters to leave the refuge no later than 1 hour after sunset.

4. We prohibit shooting on or over any refuge road within 50 feet (15 meters) from the centerline.

5. You must possess and carry a refuge permit (free brochure available at the refuge visitor center).

6. We allow the use of dogs for waterfowl, pheasant, and quail hunting only.

B. Upland Game Hunting. We allow hunting of ring-necked pheasant, bobwhite quail, pigeon, mourning dove, crow, cottontail rabbit, gray and fox squirrel, and fall wild turkey (2 weeks within the season) on designated areas of the refuge in accordance with State regulations subject to the following condition: Conditions A1 to A6 apply.

C. Big Game Hunting. * * *

1. Conditions A1 and A3 to A5 apply.

2. We allow the use of portable stands and blinds for hunting, and hunters must remove them at the end of each day (see § 27.93 of this chapter).

* * * * *

Northern Tallgrass Prairie National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of duck, goose, merganser, coot, rail (Virginia and Sora only), woodcock, and snipe on designated areas in accordance with State regulations and subject to the following conditions:

1. For units adjacent to and managed by Neal Smith National Wildlife Refuge, you must follow the refuge-specific regulations provided in this section of

the regulations for Neal Smith National Wildlife Refuge.

* * * * *

B. Upland Game Hunting. We allow the hunting of ring-necked pheasant, bobwhite quail, gray partridge, rabbit (cottontail and jack), squirrel (fox and gray), groundhog, raccoon, opossum, fox (red and gray), coyote, badger, striped skunk, and crow on designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. For units adjacent to and managed by Neal Smith National Wildlife Refuge, you must follow the refuge-specific regulations provided in this section of the regulations for Neal Smith National Wildlife Refuge.

* * * * *

5. Conditions A8 and A9 apply.

* * * * *

C. Big Game Hunting. We allow the hunting of deer and turkey on designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. For units adjacent to and managed by Neal Smith National Wildlife Refuge, you must follow the refuge-specific regulations provided in this section of the regulations for Neal Smith National Wildlife Refuge.

* * * * *

4. Conditions A6, A8, and A9 apply.

* * * * *

Port Louisa National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of duck, goose, teal, brant, merganser, coot, sora and Virginia rail, dove, woodcock and snipe on Iowa River Corridor Project lands in accordance with State regulations and subject to the following conditions:

1. You may possess only approved nontoxic shot while hunting migratory birds (see § 32.2(k)).

2. You must remove boats, decoys, and portable blinds at the end of each day (see § 27.93 of this chapter).

B. Upland Game Hunting. We allow hunting of upland game in accordance with State regulations and subject to the following condition: You may only possess approved nontoxic shot while hunting upland game (see § 32.2(k)); you may use lead shot to hunt turkey.

C. Big Game Hunting. We allow hunting of big game in accordance with State regulations and subject to the following condition: We only allow the use of portable stands and you must remove them at the end of each day (see § 27.93 of this chapter).

D. Sport Fishing. We allow sport fishing on all areas of the refuge in accordance with State regulations and subject to the following condition: You must remove boats and all other fishing devices at the end of each day's fishing.

* * * * *

■ 15. Amend § 32.38 Maine by redesignating paragraphs A.5, A.6, and A.7 as paragraphs A.6, A.7, and A.8, respectively; adding a new paragraph A.5; revising the introductory text in paragraph B; and revising paragraphs A.1, A.4, B.1, B.2, B.3, and C under Rachel Carson National Wildlife Refuge to read as follows:

§ 32.38 Maine.

* * * * *

Rachel Carson National Wildlife Refuge

A. Migratory Game Bird Hunting.

* * *

1. Prior to entering designated refuge hunting areas, you must obtain a refuge hunting permit (FWS Form 3–2357), pay a recreation fee, and sign and carry the permit at all times.

* * * * *

4. We open Designated Youth Hunting Areas to hunters age 15 and under who possess and carry a refuge hunting permit. Youth hunters must be accompanied by an adult age 18 or older. The accompanying adult must possess and carry a refuge hunting permit and may also hunt.

5. You may only possess approved nontoxic shot for hunting (see § 32.2(k)) on the refuge.

* * * * *

B. Upland Game Hunting. We allow hunting of pheasant, quail, and grouse on designated areas of the Brave Boat Harbor, Lower Wells, Upper Wells, Mousam River, Goose Rocks, Goosefare Brook, and Spurwink River division of the refuge in accordance with State regulations and subject to the following conditions:

1. Conditions A1 and A7 apply.

2. You may take pheasant, quail, and grouse by falconry during State seasons.

3. You may only possess approved nontoxic shot for hunting (see § 32.2(k)) on the refuge.

* * * * *

C. Big Game Hunting. We allow hunting of white-tailed deer and turkey on designated areas of the Brave Boat Harbor, Lower Wells, Upper Wells, Mousam River, Goose Rocks, Little River, Goosefare Brook, and Spurwink River divisions of the refuge in accordance with State regulations and subject to the following conditions:

1. Conditions A1, A4, and A7 apply.

2. We allow hunting of deer and turkey with shotgun and archery only. We prohibit rifles and muzzleloading firearms for hunting.

3. We allow turkey hunting during the fall season only, as designated by the State. All State regulations governing the hunting of turkey will be followed.

4. We allow portable tree stands, ladders, and blinds only, and they must be removed daily (see § 27.93 of this chapter). The use of nails, wire, screws or bolts to attach a stand to a tree, or hunting from a tree into which a metal object has been driven to support a hunter is prohibited. You must keep vegetation disturbance (including tree limbs) to a minimum (see § 32.2(i)).

5. We close the Moody and Biddeford Pool divisions of the refuge to white-tailed deer and turkey hunting.

6. We allow archery on only those areas of the Little River division open to hunting.

7. We allow hunting of fox and coyote with archery or shotgun with a refuge big game permit, during State firearm deer season. You may only possess approved nontoxic shot for hunting (see § 32.2(k)) on the refuge.

* * * * *

■ 16. Amend § 32.39 Maryland by removing paragraphs A.9.vi and D.9; redesignating paragraphs D.10, D.11, D.12, D.13, D.14, D.15, and D.16 as paragraphs D.9, D.10, D.11, D.12, D.13, D.14, and D.15, respectively; revising paragraphs A.9.iv, A.9.v, A.13, B.8, C.3.ii, C.6, and C.12; and revising newly designated paragraphs D.14.i and D.15.i under Patuxent Research Refuge to read as follows:

§ 32.39 Maryland.

* * * * *

Patuxent Research Refuge

A. Migratory Game Bird Hunting.

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9. * * *

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iv. You may hunt from the roadside, except on the Wildlife Loop, at designated areas, if you possess a Maryland Department of Natural Resources issued ''Universal Disability Pass''.

v. You may hunt from the roadside for waterfowl at the five designated hunting blind sites at Lake Allen.

* * * * *

13. We require waterfowl hunters to use trained adult retrieving dogs while hunting duck and goose within 50 yards (45 meters) of the following impounded waters: Blue Heron Pond, Lake Allen, New Marsh, and Wood Duck Pond.

i. We require dogs to be under the immediate control of their owner at all times (see § 26.21(b) of this chapter).

* * * * *

B. Upland Game Hunting. * * *

* * * * *

8. We select turkey hunters by a computerized lottery for youth, disabled, and general public hunts. We require Maryland Department of Natural Resources required documentation to accommodate hunters with disabilities.

* * * * *

C. Big Game Hunting. * * *

* * * * *

3. * * *

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ii. We prohibit the discharging of any hunting weapons before or after legal shooting hours, including the unloading of muzzleloaders.

* * * * *

6. We require bow hunters to wear either a cap of solid-fluorescent-orange color at all times or a vest or jacket containing back and front panels of at least 250 square inches (1,625 square centimeters) of solid-fluorescent-orange color when moving to and from their vehicle to their deer stand or their hunting spot and while tracking or dragging out their deer. We do not require bow hunters to wear solid-fluorescent-orange when positioned to hunt except during the North Tract Youth Firearms Deer Hunts, the muzzleloader seasons, and the firearms seasons, when they must wear it at all times.

* * * * *

12. If you wish to track wounded deer beyond 2 hours after legal sunset, you must gain consent from a refuge law enforcement officer. We prohibit tracking 3 hours after legal sunset. You must make a reasonable effort to retrieve the wounded deer, which includes next-day tracking. There is no tracking on Sundays and Federal holidays except on a case-by-case basis. Hunters authorized to track on Sundays or Federal holidays must be accompanied afield by a refuge law enforcement officer.

* * * * *

D. Sport Fishing. * * *

* * * * *

14. * * *

i. Conditions D1 through D13 apply.

* * * * *

15. * * *

i. Conditions D1 through D12 apply.

* * * * *

■ 17. Amend § 32.40 Massachusetts by adding, in alphabetical order, an entry for Silvio O. Conte National Fish and Wildlife Refuge to read as follows:

§ 32.40 Massachusetts.

* * * * *

Silvio O. Conte National Fish and Wildlife Refuge

A. Migratory Game Bird Hunting. [RESERVED]

B. Upland Game Hunting. [RESERVED]

C. Big Game Hunting. [RESERVED]

D. Sport Fishing. [RESERVED]

* * * * *

■ 18. Amend § 32.41 Michigan by revising paragraph C.3 and adding paragraph C.8 under Detroit River International Wildlife Refuge to read as follows:

§ 32.41 Michigan.

* * * * *

Detroit River International Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

* * * * *

3. We allow only single-projectile shells for firearm deer hunting. We prohibit the use of buckshot for any hunting on the refuge.

* * * * *

8. The Fix Unit is closed to firearm deer hunting. We allow only archery deer hunting in the Fix Unit.

* * * * *

■ 19. Amend § 32.42 Minnesota by:

■ a. Revising the introductory text in paragraph A; revising paragraphs A.1, A.2, and A.5; adding paragraph A.9; revising paragraphs C.1 and C.2; removing paragraphs C.3, C.7, and C.10; redesignating paragraphs C.4, C.5, C.6, C.8, and C.9 as paragraphs C.3, C.4, C.5, C.6, and C.7, respectively; revising newly designated paragraph C.6; and adding paragraph C.8 under Agassiz National Wildlife Refuge.

■ b. Revising paragraph B under Big Stone Wetland Management District.

■ c. Revising paragraphs C.1, C.2, and C.8 and removing paragraph C.11 under Crane Meadows National Wildlife Refuge.

■ d. Revising paragraph B under Detroit Lakes Wetland Management District.

■ e. Revising paragraphs A.2 and B under Fergus Falls Wetland Management District.

■ f. Revising paragraph B under Litchfield Wetland Management District.

■ g. Revising paragraphs A.2, B, and C.2 under Morris Wetland Management District.

■ h. Adding paragraph C.3 under Northern Tallgrass Prairie National Wildlife Refuge.

■ i. Revising paragraphs A.2, A.3, A.5, B.3, C.1, C.7, and D under Sherburne National Wildlife Refuge.

■ j. Revising paragraph B under Windom Wetland Management District.

These additions and revisions read as follows:

§ 32.42 Minnesota.

* * * * *

Agassiz National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of waterfowl on designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. We allow a youth hunt only in designated areas in accordance with State regulations.

2. The refuge is closed from 7:00 p.m. to 5:30 a.m.

* * * * *

5. You must remove all personal property, which includes stands, boats, decoys, and blinds brought onto the refuge, each day of hunting (see §§ 27.93 and 27.94 of this chapter).

* * * * *

9. We allow the public onto the refuge the day prior to the opening of the season for scouting purposes.

* * * * *

C. Big Game Hunting. * * *

1. We are currently closed to moose hunting.

2. Conditions A2 through A5, A7, A8 and A9 apply.

* * * * *

6. We prohibit hunters from occupying illegally set up or constructed ground and tree stands (see conditions A5 and C5).

* * * * *

8. Shooting on, from, over, across, or within 30 feet of a road edge open to public vehicle transportation at a big game animal or a decoy of a big game animal is prohibited.

* * * * *

Big Stone Wetland Management District

* * * * *

B. Upland Game Hunting. We allow upland game hunting throughout the district in accordance with State regulations and subject to the following conditions:

1. Conditions A3 through A5 apply.

2. You may only use or possess approved nontoxic shot shells while in the field, including shot shells used for hunting wild turkey (see § 32.2(k)).

* * * * *

Crane Meadows National Wildlife Refuge

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C. Big Game Hunting. * * *

1. We only allow an archery deer hunt for youth hunters and a firearm deer hunt for persons with disabilities by special use permit (FWS Form 3–1383–G).

2. We only allow a turkey hunt for youth hunters and persons with disabilities by special use permit (FWS Form 3–1383–G).

* * * * *

8. We prohibit entry to hunting areas earlier than 2 hours before legal shooting hours.

* * * * *

Detroit Lakes Wetland Management District

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B. Upland Game Hunting. We allow upland game hunting in accordance with State regulations throughout the district (except that we allow no hunting on the refuge headquarters Waterfowl Production Area [WPA] in Becker County, the Hitterdal WPA in Clay County, and the McIntosh WPA in Polk County) and subject to the following conditions:

1. Conditions A3 through A5 apply.

2. You may only use or possess approved nontoxic shot shells while in the field, including shot shells used for hunting wild turkey (see § 32.2(k)).

* * * * *

Fergus Falls Wetland Management District

A. Migratory Game Bird Hunting. * * *

* * * * *

2. You must remove boats, decoys, blinds, and blind materials (see § 27.93 of this chapter) brought onto the WPAs at the end of each day's hunt.

* * * * *

B. Upland Game Hunting. We allow upland game hunting throughout the district (except that we prohibit hunting on the Townsend, Mavis, Gilmore, and designated portions of Knollwood Waterfowl Production Areas (WPAs) in Otter Tail County, and Larson WPA in Douglas County) in accordance with State regulations and subject to the following conditions:

1. Conditions A2, A3, and A6 apply.

2. You may only use or possess approved nontoxic shot shells while in the field, including shot shells used for hunting wild turkey (see § 32.2(k)).

* * * * *

Litchfield Wetland Management District

* * * * *

B. Upland Game Hunting. We allow upland game hunting throughout the district (except we prohibit hunting on that part of the Phare Lake Waterfowl Production Area in Renville County) in accordance with State regulations and subject to the following conditions:

1. Conditions A1, A4, and A5 apply.

2. You may only use or possess approved nontoxic shot shells while in the field, including shot shells used for hunting wild turkey (see § 32.2(k)).

* * * * *

Morris Wetland Management District

A. Migratory Game Bird Hunting. * * *

* * * * *

2. You must remove boats, decoys, blinds, and blind materials (see § 27.93 of this chapter) at the end of hunting hours.

* * * * *

B. Upland Game Hunting. We allow hunting of upland game, except that we prohibit hunting on the designated portions of the Edward-Long Lake Waterfowl Production Area in Stevens County, in accordance with State regulations and subject to the following conditions:

1. Conditions A2 through A4 apply.

2. You may only use or possess approved nontoxic shot shells while in the field, including shot shells used for hunting wild turkey (see § 32.2(k)).

C. Big Game Hunting. * * *

* * * * *

2. You must remove all portable hunting stands and blinds each day at the close of hunting hours (see § 27.93 of this chapter).

* * * * *

Northern Tallgrass Prairie National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

* * * * *

3. You may only use or possess approved nontoxic shot shells while in the field, including shot shells used for hunting wild turkey (see § 32.2(k)).

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Sherburne National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

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2. We allow non-motorized boats in areas open to waterfowl hunting during the waterfowl hunting season, and they must be launched at designated access sites.

3. You must remove boats, decoys, and blinds from the refuge following each day's hunt.

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5. We prohibit hunting from March 1 through August 31.

* * * * *

B. Upland Game Hunting. * * *

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3. Conditions A5 through A7 apply.

* * * * *

C. Big Game Hunting. * * *

1. The refuge is closed to turkey hunting, except we allow a turkey hunt for youth hunters and persons with disabilities by special use permit (FWS Form 3–1383–G).

* * * * *

7. Turkey hunters may possess only approved nontoxic shot while in the field (see § 32.2(k)).

* * * * *

D. Sport Fishing. Fishing is permitted on the St. Francis River and Battle Brook during daylight hours in accordance with State regulations and subject to the following conditions:

1. From March 1 through August 31 (the refuge Wildlife Sanctuary period), fishing is only permitted from non-motorized boats on the designated canoe route and on banks within 100 yards (both upstream and downstream) of designated access points.

2. We prohibit the taking of any mussel (clam), crayfish, frog, leech, and turtle species by any method on the refuge (see § 27.21 of this chapter).

3. We prohibit the use of dip nets, traps, or seines for collecting bait.

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Windom Wetland Management District

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B. Upland Game Hunting. We allow hunting of upland game throughout the district, except that you may not hunt on the Worthington Waterfowl Production Area (WPA) in Nobles County, Headquarters WPA in Jackson County, or designated portions of the Wolf Lake WPA in Cottonwood County, in accordance with State regulations and subject to the following conditions:

1. Conditions A3 through A5 apply.

2. You may only use or possess approved nontoxic shot shells while in the field, including shot shells used for hunting wild turkey (see § 32.2(k)).

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■ 20. Amend § 32.44 Missouri by:

■ a. Revising the entry for Middle Mississippi River National Wildlife Refuge.

■ b. Revising the introductory text in paragraphs A and B; revising paragraphs A.3, A.6, B.1, B.2, B.5, B.6, B.7, and C; redesignating paragraphs A.7 and A.8 as A.8, and A.9; and adding paragraphs A.7, and B.8 under Mingo National Wildlife Refuge.

These additions and revisions read as follows:

§ 32.44 Missouri.

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Middle Mississippi River National Wildlife Refuge

Refer to § 32.32 (Illinois) for Missouri regulations.

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Mingo National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow waterfowl hunting in Pool 7 and Pool 8 in accordance with State and Federal regulations and subject to the following conditions:

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3. We prohibit the use of paint, non-biodegradable flagging, reflectors, tacks, or other manmade materials to mark trails or hunting locations (see § 27.61 of this chapter).

* * * * *

6. We require hunters to go through the Missouri Department of Conservation daily draw process at Duck Creek Conservation Area to hunt in Pool 7 and Pool 8.

7. We will only open Pool 7 for waterfowl hunting 3 days a week, when conditions allow.

* * * * *

B. Upland Game Hunting. We allow hunting of squirrel, raccoon, and bobcat in designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. Conditions A3, A8, and A9 apply.

2. We allow hunter access from 1½ hours before legal shooting time until 1½ hours after legal shooting time.

* * * * *

5. We allow squirrel hunting from the State opening day until the day before the State opening of archery deer season.

6. You may only use or possess approved nontoxic shot shells while in the field (see § 32.2(k)) and rifles chambered for rimfire cartridges.

7. Archery hunters may take squirrels, raccoons, and bobcats while archery deer hunting.

8. We allow raccoon hunting by special use permit during the Statewide raccoon season.

C. Big Game Hunting. We allow big game hunting in designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A3, A5, A8, A9, and B2 apply.

2. We require that all hunters register at the hunter sign-in stations and complete the Big Game Harvest Report (FWS Form 3–2359) located at the exit kiosks prior to exiting the refuge.

3. We allow archery hunting for deer and turkey during the fall season.

4. We allow spring turkey hunting. You may only use or possess approved nontoxic shot shells while in the field, including shot shells used for hunting wild turkey (see § 32.2(k)).

5. You must remove all boats brought onto the refuge at the end of each day (see § 27.93 of this chapter).

6. We allow archery hunting in the Expanded General Hunt Area through October 31.

7. We allow portable tree stands only from 2 weeks before to 2 weeks after the State archery deer season with the following exception: In the Expanded General Hunt Area, you must remove all personal property.

8. We allow only one tree stand per deer hunter.

9. We only allow non-motorized boats in the Mingo Wilderness Area.

10. We require archery deer hunters to wear a hunter-orange (*i.e.,* blaze or international orange) hat and a hunter-orange shirt, vest, or coat. These hunter-orange clothes need to be plainly visible from all sides while scouting or hunting during the overlapping portion of the squirrel, archery deer, and turkey seasons. Camouflage orange does not satisfy this requirement.

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■ 21. Amend § 32.45 Montana by:

■ a. Removing paragraph A.7; redesignating paragraphs A.3, A.4, A.5, and A.6 as paragraphs A.4, A.5, A.6, and A.7, respectively; revising paragraph B.1; and adding paragraphs A.3 and B.4 under Benton Lake National Wildlife Refuge.

■ b. Revising the introductory text in paragraphs A, B, and C under Benton Lake Wetland Management District.

■ c. Revising paragraphs A.1, A.3, A.5, A.7, A.13, C.1, C.3, and C.4 and adding paragraphs A.19, C.10, and C.11 under Lee Metcalf National Wildlife Refuge.

■ d. Revising paragraphs B.1, B.3, B.5, B.6, B.7, B.9, C.1, C.2, and C.3 and removing paragraphs C.4, C.5, C.6, C.7, C.8, C.9, C.10, and C.11 under Lost Trail National Wildlife Refuge.

■ e. Revising paragraphs A.1, A.2, B.1, B.2, C.1, and D; redesignating paragraph A.3 as paragraph A.6; and adding paragraphs A.3, A.4, A.5, A.7, C.2, and C.3 under Northwest Montana Wetland Management District.

■ f. Revising paragraphs A.5 and C.10 under Red Rock Lakes National Wildlife Refuge.

■ g. Revising paragraph A under Swan River National Wildlife Refuge.

These additions and revisions read as follows:

§ 32.45 Montana.

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Benton Lake National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

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3. We allow hunting during youth waterfowl hunts in accordance with State regulations.

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B. Upland Game Hunting. * * *

1. Conditions A2 and A7 apply.

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4. We allow hunting during youth pheasant hunts in accordance with State regulations.

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Benton Lake Wetland Management District

A. Migratory Game Bird Management. We allow migratory game bird hunting on Waterfowl Production Areas (WPA) throughout the District, excluding Sands WPA in Hill County and H2–0 WPA in Powell County, in accordance with State regulations and subject to the following conditions:

* * * * *

B. Upland Game Hunting. We allow the hunting of coyotes, skunks, red fox, raccoons, hares, rabbits, and tree squirrels on Waterfowl Production Areas (WPAs) throughout the District, excluding Sands WPA in Hill County and H2–0 WPA in Powell County, in accordance with State regulations and subject to the following conditions:

* * * * *

C. Big Game Hunting. We allow big game hunting on WPAs throughout the District, excluding Sands WPA in Hill County and H2–0 WPA in Powell County, in accordance with State regulations and subject to the following condition: Condition B2 applies.

* * * * *

Lee Metcalf National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

1. Hunting Access: Hunters must enter and exit the Waterfowl Hunt Area (see map in refuge Hunting and Fishing brochure) through the Waterfowl Hunt Area parking lot. All hunters, except those with a Montana disability license, must park in the Waterfowl Hunt Area parking lot to access the Waterfowl Hunt Area. For those hunters with Montana disability licenses, contact the Refuge Manager by phone or email for disability guidelines. Hunters must walk to the blind selected along mowed trails designated in the refuge Hunting and Fishing brochure. Legal entry time into the hunting area is no earlier than 2 hours before legal shooting hours. Wildlife observation, scouting, and

loitering during waterfowl hunting season are prohibited at the Waterfowl Hunting Area parking lot and on the refuge road leading to the Waterfowl Hunt Area parking lot.

* * * * *

3. Registration (Kiosk Sign-In/Sign-Out box): Each hunter must complete the Migratory Bird Hunt Report (FWS Form 3–2361), must set the appropriate blind selector (metal flip tag) before and after hunting, and must record hunting data (hours hunted and birds harvested) on FWS Form 3–2361 before departing the hunting area.

* * * * *

5. We prohibit attempting to ''reserve'' a blind for use later in the day by depositing a vehicle or other equipment on the refuge. A hunter must be physically present in the hunting area in order to use a blind. The exceptions are blinds 2 and 7, which may be reserved for hunters with disabilities.

* * * * *

7. Hunters with a documented mobility disability (you must have a current year Resident with a Disability Conservation License issued by Montana Fish, Wildlife and Parks) may reserve an accessible blind in advance by contacting a refuge law enforcement officer.

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13. We prohibit boats, fishing, and fires (see § 27.95 of this chapter).

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19. Any mechanical decoy powered by battery or solar usage is prohibited.

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C. Big Game Hunting. * * *

1. Hunting Access: Hunters must enter and exit the hunt areas (see map in refuge Hunting and Fishing brochure) through the designated Hunter Access Parking sites. We open access points to hunters intending to immediately hunt on the refuge. We prohibit wildlife observation, scouting, and loitering at access points and parking areas. Hunters may only enter the hunt area 2 hours prior to legal hunting hours and must exit no later than 2 hours after legal hunting hours.

* * * * *

3. Registration (Sign-In/Sign-Out box): Each hunter must complete the Big Game Harvest Report (FWS Form 3–2359) before departing the hunting area.

4. Tree Stands and Ground Blinds: We allow each hunter the use of portable tree stands or ground blinds. All tree stands and ground blinds must be identified with a tag that has the owner's name and Montana archery license (ALS) number on it. We prohibit hunters leaving each stand/blind unattended for more than 72 hours.

* * * * *

10. Rallying game to another hunter and/or deer drives is prohibited.

11. We prohibit the installation or use of remote cameras on the refuge.

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Lost Trail National Wildlife Refuge

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B. Upland Game Hunting. * * *

1. We do not allow hunting in areas posted as ''Closed to Hunting'' and identified in the public use leaflet.

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3. We allow use of riding or pack stock on designated access routes through the refuge to access off-refuge lands as identified in the public use leaflet.

* * * * *

5. Hunters may possess only approved nontoxic shot while in the field (see § 32.2(k)).

6. We prohibit overnight camping and open fires (see § 27.95(a) of this chapter).

7. We prohibit retrieval of game in areas closed to hunting without a refuge retrieval permit.

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9. We allow parking in designated areas only as identified in the public use leaflet.

C. Big Game Hunting. * * *

1. Conditions B1 through B9 apply.

2. The first week of the archery elk and deer hunting season and the first week of general elk and deer hunting season are open to youth-only (ages 12–15 only) hunting. A non-hunting adult at least 18 years of age must accompany the youth hunter in the field.

3. Persons assisting disabled hunters must not be afield with a hunting firearm, bow, or other hunting device.

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Northwest Montana Wetland Management District

A. Migratory Game Bird Hunting. * * *

1. Hunters must remove all boats, decoys, portable blinds (including those made of native materials), boat blinds, and all other personal property at the end of each day (see §§ 27.93 and 27.94 of this chapter).

2. We prohibit motorboats except on the Flathead and Smith Lake Waterfowl Production Areas (WPAs) in Flathead County. Motorboats must be operated at no wake speeds.

3. We prohibit the construction or use of permanent blinds, stands, or scaffolds.

4. We allow the use of hunting dogs, provided the dog is under the immediate control of the hunter at all times during the State-approved hunting season. Commercial dog trials are not allowed. Pets must be on a leash at all other times.

5. Shotgun hunters may possess only approved nontoxic shot while in the field (see § 32.2(k)).

* * * * *

7. We prohibit overnight camping and open fires (see § 27.95(a) of this chapter).

B. Upland Game Hunting. * * *

1. We prohibit hunting with a shotgun capable of holding more than three shells.

2. Conditions A1 through A7 apply.

* * * * *

C. Big Game Hunting. * * *

1. We allow portable tree stands and/or portable ground blinds; however, hunters must remove them and all other personal property at the end of each day (see § 27.93 of this chapter). We prohibit construction and/or use of tree stands or portable ground blinds from dimensional lumber. We prohibit the use of nails, wire, screws, or bolts to attach a stand to a tree or hunting from a tree into which a metal object has been driven (see § 32.2(i)).

2. Conditions A2, A3, A6, A7 and B1 apply.

3. Flathead, Blasdel, and Batavia WPAs are restricted to hunting with archery equipment, shotgun, traditional handgun, muzzleloader, or crossbow only.

D. Sport Fishing. We allow sport fishing on all Waterfowl Production Areas (WPAs) throughout the wetland district in accordance with State law (Flathead County WPAs) and per Joint State and confederated Salish and Kootenai Tribal regulations (Lake County WPAs) and subject to the following conditions:

1. We prohibit leaving or dumping any dead animal, fish or fish entrails, garbage, or litter on the refuge (see § 27.94 of this chapter).

2. We prohibit all public access on WPAs from March 1 to July 15 (Flathead County WPAs) each year to protect nesting birds.

3. Conditions A2 and A7 apply.

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Red Rock Lakes National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

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5. We prohibit camping along roadsides. We allow camping only in two established campgrounds. We restrict camping to 16 consecutive days within any 30-day period. We prohibit

horses in the campgrounds. From March 1 to December 1, all bear attractants including, but not limited to, food, garbage, and carcasses or parts thereof, must be acceptably stored at night (unless in immediate use) and during the day if unattended. Acceptably stored means any of the following:

i. Suspended at least 10 feet high and 4 feet from any vertical support 100 yards from any camp or hiking trail;

ii. Secured in a certified bear safe container; or

iii. Secured in a hard-sided vehicle, including an enclosed camper or horse trailer.

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C. Big Game Hunting. * * *

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10. We prohibit hunting and/or shooting from or onto refuge lands from within 50 yards (45 meters) of the centerline of any public road open to motorized vehicles.

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Swan River National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of geese, ducks, and coots on designated areas of the refuge subject to the following condition: Hunters may possess only approved nontoxic shot while in the field (see § 32.2(k)).

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■ 22. Amend § 32.46 Nebraska by:

■ a. Revising paragraphs C.1, C.2, C.4, and C.5; redesignating paragraphs C.6, C.7, and C.8 as paragraphs C.7, C.8, and C.9, respectively; revising newly designated paragraph C.9; and adding paragraphs C.6, C.10, C.11, C.12, C.13, D.3, and D.4 under Fort Niobrara National Wildlife Refuge.

■ b. Revising the entry for Valentine National Wildlife Refuge.

These additions and revisions read as follows:

§ 32.46 Nebraska.

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Fort Niobrara National Wildlife Refuge

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C. Big Game Hunting. * * *

1. We require the submission of a Big/Upland Game Hunt Application (FWS Form 3–2356). We require hunters to carry a signed refuge hunting access permit (hunt application signed by the refuge officer) while hunting. We require hunters to complete a Big Game Harvest Report (FWS Form 3–2359) and return it to the refuge at the conclusion of the hunting season.

2. We allow deer hunting with muzzleloader and archery equipment. We prohibit deer hunting with firearms capable of firing cartridge ammunition.

* * * * *

4. We allow deer hunting in the area defined as, ''Those refuge lands situated north and west of the Niobrara River.'' We allow access to this area only from designated refuge parking areas and the Niobrara River.

5. We prohibit hunting within 200 yards (180 meters) of any public use facility.

6. We allow hunter access from 2 hours before legal sunrise until 2 hours after legal sunset.

* * * * *

9. We require tree stands, elevated platforms, and ground blinds to be removed daily. We require hunters to clearly label unattended tree stands, elevated platforms, and ground blinds with the hunter's name and address or hunting license number legible from the ground. Tree stands, elevated platforms, and/or ground blinds may be put up no earlier than the opening day of deer season and must be removed by the last day of deer season.

10. We prohibit hunting during the Nebraska November Firearm Deer Season.

11. We prohibit the use of game carts or any other wheeled device to retrieve game on the Wilderness Area portion of the refuge that is opened for hunting.

12. We prohibit the marking of any tree or other refuge feature with reflectors, flagging, paint, or other substances.

13. We prohibit the use of electronic or photographic trail monitoring devices.

D. Sport Fishing. * * *

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3. We prohibit the take of baitfish, reptiles, and amphibians.

4. We prohibit use or possession of alcoholic beverages while fishing on refuge lands and waters.

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Valentine National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of waterfowl and coots on designated areas of the refuge in accordance with State regulations and subject to the following refuge-specific regulations:

1. We close the refuge to the general public from legal sunset to legal sunrise; however we allow hunter access from 2 hours before legal sunrise to 2 hours after legal sunset.

2. We only allow you to unleash dogs used to locate, point, and retrieve upland and small game and migratory birds on the refuge while hunting (see § 26.21(b) of this chapter).

B. Upland Game Hunting. We allow hunting of sharp-tailed grouse, prairie chicken, ring-necked pheasant, dove, and coyote on designated areas of the refuge in accordance with State regulations and subject to the following refuge-specific regulations:

1. Conditions A1 and A2 apply.

2. Coyote hunting is allowed from the Saturday closest to November 13 through March 15. Shooting hours are ½ hour before sunrise to ½ hour after sunset. The use of dogs or bait to hunt coyotes is prohibited.

C. Big Game Hunting. We allow hunting of white-tailed and mule deer on designated areas of the refuge in accordance with State regulations and subject to the following refuge-specific condition: Condition A1 applies.

D. Sport Fishing. We allow fishing on designated areas of the refuge in accordance with State regulations and subject to the following refuge-specific regulations:

1. We close the refuge to the general public from legal sunset to legal sunrise; however anglers may enter the refuge 1 hour before legal sunrise and remain 1.5 hours after legal sunset.

2. We prohibit the take of reptiles, amphibians, and minnows, with the exception that bullfrogs may be taken on refuge lakes open to fishing.

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■ 23. Amend § 32.50 New Mexico by:

■ a. Revising paragraphs A.2.i, A.2.ii, A.2.iii, A.2.iv, A.5, A.8, B.2.iii, and C.2 and adding paragraph B.2.iv under Bitter Lake National Wildlife Refuge.

■ b. Revising the entry for Bosque del Apache National Wildlife Refuge.

■ c. Revising paragraph C under San Andres National Wildlife Refuge.

■ d. Revising paragraph A under Sevilleta National Wildlife Refuge.

These revisions and additions read as follows:

§ 32.50 New Mexico.

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Bitter Lake National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

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2. * * *

i. In the designated public hunting area, this is located in the southern portion of the Tract;

ii. To no closer than 100 yards (90 meters) to the public auto tour route;

iii. To Tuesdays, Thursdays, and Saturdays during the period when the State seasons for the Middle Tract area are open simultaneously for hunting all of the species allowed; and

iv. All hunting must cease at 1 p.m. (local time) on each permitted hunt day.

* * * * *

5. We prohibit pit or permanent blinds and require removal of all

waterfowl decoys and all temporary blinds/stands daily after each hunt (see § 27.93 of this chapter).

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8. We do not require refuge or other special hunt permits other than those required by the State.

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B. Upland Game Hunting. * * *

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2. * * *

iii. On Tuesdays, Thursdays, and Saturdays during the appropriate State season for that area; and

iv. All hunting must cease at 1 p.m. (local time) on each permitted hunt day.

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C. Big Game Hunting. * * *

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2. Conditions A8 and A9 apply.

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Bosque del Apache National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of mourning and white-winged dove and light goose on designated areas of the refuge in accordance with State and Federal regulations and any special posting or publications and subject to the following conditions:

1. We allow hunting of light goose on dates to be determined by refuge staff. The permit is available through a lottery drawing (Waterfowl Lottery Application, FWS Form 3–2355) and hunters must pay a fee. Contact the refuge for more information.

2. Legal hunting hours will run from ½ hour before legal sunrise and will not extend past 1:00 p.m. (local time) on each hunt day.

3. Refer to the refuge hunt leaflet for designated hunting areas.

4. You may use only approved nontoxic shot while hunting (see § 32.2(k)).

5. We prohibit pit or permanent blinds and require daily removal of all waterfowl decoys, spent shells, all temporary blinds/stands, and all other personal equipment (see §§ 27.93 and 27.94 of this chapter).

6. We allow unleashed hunting and/or retrieving dogs on the refuge when hunters are legally present in areas where we allow hunters, only if the dogs are under the immediate control of hunters at all time (see § 26.21(b) of this chapter), and only to pursue species legally in season at that time.

7. We prohibit hunters and dogs from entering closed areas for retrieval of game.

8. We prohibit falconry on the refuge.

9. We prohibit canoeing, boating, or floating through the refuge on the Rio Grande.

10. We prohibit hunting any species on the Rio Grande within the refuge.

11. We prohibit overnight camping without a permit.

12. All State and Federal hunting and fishing regulations regarding methods of take, dates, bag limits, and other factors apply to all hunting and fishing on the refuge, in addition to these refuge-specific regulations.

13. Visit the refuge visitor center or Web site, and/or refer to additional on-site brochures, leaflets, or postings for additional information.

B. Upland Game Hunting. We allow hunting of quail and cottontail rabbit on designated areas of the refuge in accordance with State regulations and any special posting or publications subject to the following conditions:

1. We allow only shotguns and archery equipment for hunting of upland game. We prohibit the use of archery equipment on the refuge except when hunting for upland and big game.

2. Conditions A2 through A13 apply.

C. Big Game Hunting. We allow hunting of mule deer, oryx, and bearded Rio Grande turkey on designated areas of the refuge in accordance with State regulations and any special posting or publications subject to the following conditions:

1. Conditions A5 through A13 apply.

2. Refer to the refuge hunt leaflet for designated hunting areas.

3. Hunting on the east side of the Rio Grande is only by foot, horseback, or bicycle. Bicycles must stay on designated roads.

4. We may allow oryx hunting from the east bank of the Rio Grande to the east boundary of the refuge for population management purposes for hunters possessing a valid State permit. We may also establish special hunts of the oryx on dates established by refuge staff. Contact the refuge for more information.

5. Legal hunting hours will run from 1 hour before legal sunrise and will not extend past 1 hour after legal sunset.

6. We allow hunting of bearded Rio Grande turkey for youth hunters only on dates determined by refuge staff. All hunters must fill out (FWS Form 3–2356) (Big/Upland Game Hunt Application) and pay a fee. The permit is available through a lottery drawing. If selected you must carry your refuge special use permit (FWS Form 3–1383–G) at all times during the hunt. All hunters are required to fill out a harvest report (FWS Form 3–2359, Big Game Harvest Report) and return it to the refuge within 72 hours. Contact the refuge for more information.

7. Youth hunters age 17 and under must successfully complete a State-approved hunter education course prior to the refuge hunt. While hunting, each youth must possess and carry a card or certificate of completion.

8. Each youth hunter must remain with an adult companion age 18 or older. Each adult companion must possess and carry an adult companion permit (signed refuge youth turkey hunt brochure) and can supervise no more than one youth hunter. Adult companions may observe and call, but they cannot shoot.

9. We allow the use of temporary ground blinds only for youth turkey hunts, and hunters must remove them from the refuge daily (see § 27.93 of this chapter). It is unlawful to damage, cut, or mark any tree or other refuge structure with paint, flagging tape, ribbon, cat-eyes, or any similar marking device.

D. Sport Fishing. We allow fishing on designated areas of the refuge in accordance with State regulations and any special posting or publications subject to the following conditions:

1. Condition A9 applies.

2. We allow fishing from April 1 through September 30.

3. We allow fishing from ½ hour before legal sunrise until ½ hour after legal sunset.

4. We allow fishing on all canals within the refuge boundaries (Interior Drain, Riverside, Canal, and Low Flow Conveyance Channel), and unit 25AS either from the boardwalk or from shore.

5. We prohibit trotlines, bows and arrows, boats or other floatation devices, seining, dip netting, traps, using bait taken from the refuge, taking of turtle, littering, and all other activities not expressly allowed (see § 27.21 of this chapter).

6. Access to the canals is via the tour loop. We prohibit fishing in closed areas of the refuge, with the exception of the Low Flow Conveyance Channel.

7. We allow frogging for bullfrog on the refuge in areas that are open to fishing.

8. All State and Federal fishing regulations regarding methods of take, dates, creel limits, and other factors apply to all fishing on the refuge, in addition to these refuge-specific regulations.

9. We prohibit fishing for any species on the Rio Grande within the refuge.

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San Andres National Wildlife Refuge

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C. Big Game Hunting. Hunting of oryx or gemsbok (*Oryx gazella*) and desert bighorn sheep (*Ovis canadensis mexicana*) is allowed on designated areas of the refuge in accordance with

New Mexico Department of Game and Fish (NMDGF) and White Sands Missile Range (WSMR) regulations and subject to the following conditions:

1. Hunters are required to check in and out of the hunt area.

2. Hunters are required to complete an unexploded ordnance (UXO) training prior to entering hunt area.

3. The hunter may be accompanied by no more than three guests including their guide(s).

4. Only approved WSMR outfitters can be used.

5. All hunters must enter and exit through the Small Missile Range gate on Range Road 7.

6. All members of the hunting party are required to wear solid or camouflage style florescent orange (hunter's orange) clothing while away from the vehicle and in the field hunting. A minimum of 144 square inches must appear on both the chest and back (a typical blaze orange hunting vest).

7. Hunters may be escorted, but not guided, by WSMR, NMDGF, or refuge personnel or their agent(s). Check stations may be used in lieu of hunt escorts.

8. Hunters must follow photo and video policy as described by WSMR regulations.

9. Youth hunters, 16 years of age and younger, must be under the direct supervision of an adult, 18 years of age or older.

10. Persons possessing, transporting, or carrying firearms on National Wildlife Refuges must comply with all provisions of State and local law. Persons may only use (discharge) firearms in accordance with refuge regulations (see § 27.42 of this chapter and specific refuge regulations in this part 32).

11. Hunters and their guests must abide by all rules established by the refuge, WSMR, and NMDGF regulations.

12. Bighorn Sheep: Hunting desert bighorn sheep is allowed on designated areas of the refuge in accordance with NMDGF and WSMR regulations and subject to the following conditions specifically for bighorn sheep:

i. If camping is permitted on WSMR lands, then camping is allowed at Little San Nicholas Camp on the refuge.

ii. Four-wheeled all-terrain vehicle (ATV) use by hunters or members of their hunting party is prohibited on the refuge, although ATVs may be used to retrieve game on WSMR.

iii. Hunters using livestock (i.e., horses or mules) must provide only weed-free feed to their animals while on the refuge.

iv. Hunters or other members of the hunting party are not permitted to hunt small game or other species during desert bighorn ram hunts. Only bighorn sheep may be hunted by individuals with ram tags.

13. Oryx. Hunting oryx is allowed on designated areas of the refuge in accordance with NMDGF and WSMR regulations and subject to the following condition specifically for oryx: Four-wheeled all-terrain vehicle (ATV) use by hunters or members of their hunting party is allowed on the refuge and WSMR only to retrieve game.

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Sevilleta National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of mourning and white-winged doves, geese, ducks, and coots on designated areas of the refuge in accordance with State regulations and any special posting or publications and subject to the following conditions:

1. Legal hunting hours will run from ½ hour before legal sunrise and will not extend past 1:00 p.m. (local time) on each hunt day.

2. The refuge may designate special youth and/or persons with disabilities hunting days during the regular game bird season. This will apply to areas and species that are currently part of the refuge's hunting program. Contact the refuge for more information.

3. Refer to the refuge hunt leaflet for designated hunting areas.

4. You may use only approved nontoxic shot while hunting (see § 32.2(k)) in the field, in quantities of 25 or fewer.

5. We prohibit pit or permanent blinds and require daily removal of all waterfowl decoys, spent shells, all temporary blinds/stands, and all other personal equipment (see §§ 27.93 and 27.94 of this chapter).

6. We allow unleashed hunting and/or retrieving dogs on the refuge when hunters are legally present in areas where we allow hunters, only if the dogs are under the immediate control of hunters at all time (see § 26.21(b) of this chapter), and only to pursue species legally in season at that time.

7. We prohibit hunters and dogs from entering closed areas for retrieval of game.

8. We prohibit falconry on the refuge.

9. All State and Federal hunting regulations regarding methods of take, dates, bag limits, and other factors, apply to all hunting on the refuge, in addition to these refuge-specific regulations.

10. Visit the refuge visitor center or Web site, and/or refer to additional on-site brochures, leaflets, or postings for additional information.

* * * * *

■ 24. Amend § 32.51 New York by adding, in alphabetical order, an entry for Shawangunk Grasslands National Wildlife Refuge to read as follows:

§ 32.51 New York.

* * * * *

Shawangunk Grasslands National Wildlife Refuge

A. Migratory Game Bird Hunting. [RESERVED]

B. Upland Game Hunting. [RESERVED]

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State of New York regulations and subject to the following conditions:

1. You must submit a Big/Upland Game Hunt Application (FWS Form 3–2356) to hunt on the refuge. We require hunters to possess a signed refuge hunt permit (name and address only) at all times while scouting and hunting on the refuge. We charge a fee for all hunters except youth age 16 and younger.

2. We provide hunters with hunt maps and parking permits (name only), which they must clearly display in their vehicle. Hunters who park on the refuge must park in identified hunt parking areas.

3. We prohibit the use of all-terrain vehicles (ATVs) on the refuge.

4. We prohibit baiting on refuge lands (see § 32.2(h)).

5. We require hunters to wear (in a conspicuous manner) a minimum of 400 square inches (2,600 square centimeters) of solid-color, hunter-orange clothing or material on the head, chest, and back.

6. We prohibit hunters using or erecting permanent blinds.

7. We allow pre-hunt scouting beginning two weeks prior to the bow opener and continuing through the end of the deer season.

8. The refuge only allows archery equipment (crossbows permitted) to harvest deer.

D. Sport Fishing. [RESERVED]

* * * * *

■ 25. Amend § 32.53 North Dakota by:

■ a. Adding paragraph B.4 under Audubon National Wildlife Refuge.

■ b. Revising paragraphs B and C under Des Lacs National Wildlife Refuge.

■ c. Revising the introductory text in paragraphs B and D; revising paragraphs A.2, B.2, B.3, B.4, B.5, C.2, C.3, C.4, C.5, D.2, D.3, D.4, D.5, and D.6; and adding paragraphs B.6, B.7, B.8, B.9, C.6, C.7, C.8, C.9, D.7, and D.8 under J. Clark Salyer National Wildlife Refuge.

■ d. Revising the introductory text in paragraph B and revising paragraphs C.2 and D under Tewaukon National Wildlife Refuge.

■ These revisions and additions read as follows:

§ 32.53 North Dakota.

* * * * *

Audubon National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

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4. You may possess only approved nontoxic shot while in the field (see § 32.2(k)).

* * * * *

Des Lacs National Wildlife Refuge

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B. Upland Game Hunting. Hunters may hunt sharp-tailed grouse, Hungarian partridge, turkey, ring-necked pheasant, cottontail rabbit, jackrabbit, snowshoe hare, and fox on designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. We open the refuge daily from 5 a.m. to 10 p.m.

2. You may possess only approved nontoxic shot while in the field, (see § 32.2(k)).

3. Upland game bird and rabbit season opens on the day following the close of the regular firearm deer season through the end of the State season.

4. Hunting dogs used for retrieval of upland game is permitted. Dogs must be under direct control.

5. Turkey hunting is subject to all State regulations, license requirements, units, and dates.

6. Fox hunting is permitted on the day following the regular firearm deer season and closes on March 31.

7. We prohibit hunting the area around refuge headquarters, buildings, shops, and residences. We post these areas with ''Closed to Hunting'' signs.

8. We prohibit the use of snowmobiles, all-terrain vehicles (ATVs), off-highway vehicles (OHVs), utility-terrain vehicles (UTVs), bicycles, or similar vehicles on the refuge.

9. We prohibit the use of horses, mules, or similar livestock on the refuge during all hunting seasons.

10. We prohibit accessing refuge lands from refuge waters.

C. Big Game Hunting. We allow deer hunting on designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. We open the refuge daily from 5 a.m. to 10 p.m.

2. We only allow the use of portable tree stands and ground blinds. We prohibit leaving stands and blinds overnight (see § 27.93 of this chapter) on the refuge. Tree stands cannot injure trees. Screw-in steps, bolts, nails, wire, or other objects that penetrate the bark of the tree cannot be used (see § 32.2(i)).

3. We prohibit entry to the refuge before 12 p.m. (noon) on the first day of the respective bow, gun, or muzzleloader deer hunting seasons.

4. We prohibit the use of flagging, trail markers, paint, reflective tacks, or other types of markers (see § 27.93 of this chapter).

5. We prohibit the use of trail cameras and other electronic equipment.

6. Conditions B7 through B10 apply.

* * * * *

J. Clark Salyer National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

* * * * *

2. We allow the use of dogs for hunting and retrieving game birds. Dogs must be under direct control of the hunter (see § 26.21(b) of this chapter).

* * * * *

B. Upland Game Hunting. We allow hunting of ruffed and sharp-tailed grouse, Hungarian partridge, turkey, ring-necked pheasant, and fox on designated areas of the refuge in accordance with State regulations and subject to the following conditions:

* * * * *

2. We allow hunting for sharp-tailed grouse, Hungarian partridge, and ring-necked pheasant on nine designated Public Hunting Areas as delineated on the refuge hunting brochure map available at the refuge headquarters or posted on refuge information boards and/or kiosks.

3. We allow hunting for sharp-tailed grouse, ruffed grouse, Hungarian partridge and turkey south of the Upham-Willow City Road in accordance with State seasons.

4. We open to hunting-for sharp-tailed grouse, Hungarian partridge, and ring-necked pheasant north of the Willow-Upham road on the day following the close of the regular firearm deer season.

5. We prohibit hunting the area around the refuge headquarters, buildings, shops, and residences. We post these areas with ''Closed to Hunting'' signs.

6. We open the refuge to fox hunting on the day following the close of the regular firearm deer season. Fox hunting on the refuge closes March 31.

7. Hunters may possess only approved nontoxic shot for all upland game hunting, including turkey, as identified in § 20.21(j) of this chapter.

8. We prohibit the use of snowmobiles, all-terrain vehicles (ATVs), off highway vehicles (OHVs), utility terrain vehicles (UTVs), bicycles, or similar vehicles on the refuge.

9. We prohibit the use of horses, mules, or similar livestock on the refuge during all hunting seasons.

C. Big Game Hunting. * * *

* * * * *

2. We prohibit hunting the area around the refuge headquarters, buildings, shops, and residences. We post these areas with ''Closed to Hunting'' signs.

3. We open nine designated Public Hunting Areas (as delineated on the refuge hunting brochure map available at the refuge headquarters or posted on refuge information boards and/or kiosks) on the refuge for deer hunting during the regular firearms issued from the State.

4. You must possess and carry a refuge permit to hunt antlered deer on the refuge outside the nine Public Hunting Areas during the regular firearms season.

5. We only allow the use of portable tree stands and ground blinds. We prohibit leaving stands and blinds overnight (see § 27.93 of this chapter) on the refuge.

6. We prohibit the use of flagging, trail markers, paint, reflective tacks, or other types of markers (see § 27.93 of this chapter).

7. We prohibit the use of trail cameras and other electronic surveillance equipment.

8. We prohibit entry to the refuge before 12 p.m. (noon) on the first day of the respective bow, gun, or muzzleloader deer hunting seasons. Refuge roads open to the public may be accessed before 12 p.m. (noon).

9. Conditions B8 and B9 apply.

D. Sport Fishing. We allow sport fishing on the refuge in accordance with State regulations and subject to the following conditions:

* * * * *

2. We allow boat and bank fishing only on specifically designated portions of the refuge as delineated on maps, leaflets and/or signs, available at the refuge headquarters or posted on refuge information boards.

3. We only allow non-motorized boats or boats with electric motors.

4. Boat fishing is allowed from May 1 through September 30.

5. We prohibit entry to or fishing from any water control structure.

6. We open all refuge waters to ice fishing. Ice fishing access is limited to foot traffic only.

7. We allow the use of portable fish houses for ice fishing. Portable fish houses may not be left out overnight.

8. Conditions B8 and B9 apply.

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Tewaukon National Wildlife Refuge

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B. Upland Game Hunting. We allow ring-necked pheasant hunting on designated areas of the refuge (see refuge brochure/maps for designated area) in accordance with State regulations and subject to the following conditions:

* * * * *

C. Big Game Hunting. * * *

* * * * *

2. We allow deer gun hunting on designated areas of the refuge (see refuge brochure/maps for designated areas) in accordance with State regulations.

* * * * *

D. Sport Fishing. We allow sport fishing on designated waters (Tewaukon and Sprague Lakes only) in accordance with State regulations and subject to the following conditions:

1. We allow boats from May 1 through September 30.

2. We allow ice fishing on designated portions of Tewaukon and Sprague Lakes (see refuge brochure/maps for designated areas) in accordance with State regulations.

* * * * *

■ 26. Amend § 32.54 Ohio by revising paragraph C.2; removing paragraph C.3; and redesignating paragraphs C.4, C.5, C.6, C.7, C.8, and C.9 as paragraphs C.3, C.4, C.5, C.6, C.7, and C.8, respectively, under Ottawa National Wildlife Refuge to read as follows:

§ 32.54 Ohio.

* * * * *

Ottawa National Wildlife Refuge

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C. Big Game Hunting. * * *

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2. We require that hunters check out at the refuge check station with a State-issued Big Game Harvest Report no later than 1 hour after the conclusion of their controlled hunt.

* * * * *

■ 27. Amend § 32.56 Oregon by:

■ a. Revising paragraph A under Bandon Marsh National Wildlife Refuge.

■ b. Adding, in alphabetical order, an entry for Baskett Slough National Wildlife Refuge.

■ c. Revising the introductory text in paragraph A, revising paragraphs A.2 and A.3, and adding paragraph A.4 under Julia Butler Hansen Refuge for the Columbian White-Tailed Deer.

■ d. Adding paragraphs A.4 and A.5 under Lewis and Clark National Wildlife Refuge.

■ e. Redesignating paragraph A.2 as A.4; revising paragraphs A.1, B, C, D.1, and D.2; and adding paragraphs A.2, A.3, A.5, A.6, A.7, A.8, D.3, D.4, and D.5 under Malheur National Wildlife Refuge.

■ f. Adding, in alphabetical order, an entry for Nestucca Bay National Wildlife Refuge.

■ g. Adding, in alphabetical order, an entry for Siletz Bay National Wildlife Refuge.

These revisions and additions read as follows:

§ 32.56 Oregon.

* * * * *

Bandon Marsh National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of goose, duck, coot, and snipe on that portion of the refuge west of U.S. Highway 101 and outside the Bandon city limits 7 days per week, and hunting of goose, duck, and coot on the Ni-les'tun Unit of the refuge 3 days per week, in accordance with State regulations and subject to the following conditions:

1. The established days for waterfowl hunting on the Ni-les'tun Unit will be Wednesday, Saturday, and Sunday.

2. Only portable blinds or blinds constructed of on-site dead vegetation or driftwood may be used (see § 27.51 of this chapter).

3. All blinds, decoys, shotshell hulls, and other personal equipment and refuse must be removed from the refuge at the end of each day (see §§ 27.93 and 27.94 of this chapter).

4. Only federally approved nontoxic shot may be used or be in hunters' possession while hunting on the refuge (see § 32.2(k)).

5. Hunters accessing the Ni-les'tun Unit via boat must secure or anchor boats and use established boat launch areas. Hunters may park boats within the marsh while they hunt, but boats landing on the bank of the Coquille River within the Ni-les'tun Unit will be required to park within a designated location.

6. Access to the refuge will be prohibited from 1 hour after sunset to 1 hour before sunrise.

7. Hunters may use dogs as an aid to retrieving waterfowl during the hunting season; however, dogs must remain under control of the handler at all times. Dogs must be in a vehicle or on a leash until they are in the marsh as a part of the hunt.

8. Hunters may enter closed areas of the refuge only to retrieve downed birds.

* * * * *

Baskett Slough National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of duck and goose on designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. Only hunters 15 years of age and younger are allowed to participate in the Youth Waterfowl Hunt. Youths must be accompanied by an adult 21 years of age or older.

2. Blinds, decoys, and other personal property must be removed at the end of each day's hunt (see § 27.93 of this chapter).

3. Vehicles are restricted to designated public use roads and designated parking areas.

4. We prohibit dogs on the refuge, except for hunting dogs engaged in authorized hunting activities, and under the immediate control of a licensed hunter (see § 26.21(b) of this chapter).

5. You may possess only approved nontoxic shells for hunting during the early September Goose Hunt and the Youth Duck Hunt.

6. Open fires are not allowed.

7. Waterfowl and goose permit (name only) hunters must check back to the refuge check station prior to leaving the refuge and submit a Migratory Bird Hunt Report (FWS Form 3–2361).

8. Goose hunters are required to space themselves no less than 200 yards apart from each other during the early September Goose Hunt.

9. No overnight camping or after-hours parking is permitted on the refuge.

10. No hunting is permitted from refuge structures, observation blinds, boardwalks, or similar structures.

11. Persons may only use (discharge) firearms in accordance with refuge regulations (see § 27.42 of this chapter and refuge-specific regulations in this part 32).

B. Upland Game Hunting. [RESERVED]

C. Big Game Hunting. [RESERVED]

D. Sport Fishing. [RESERVED]

* * * * *

Julia Butler Hansen Refuge for the Columbian White-Tailed Deer

A. Migratory Game Bird Hunting. We allow hunting of goose, duck, coot, and common snipe on the refuge-owned shorelines of Crims and Wallace Islands in accordance with State regulations and subject to the following conditions:

* * * * *

2. We prohibit permanent blinds. You must remove all personal property, including decoys and boats, by 1 hour after legal sunset (see §§ 27.93 and 27.94 of this chapter).

3. We open the refuge for day-use access from 1½ hours before legal sunrise until 1½ hours after legal sunset.

4. We prohibit dogs on the refuge, except for hunting dogs engaged in authorized hunting activities, and under the immediate control of a licensed hunter (see § 26.21(b) of this chapter).

* * * * *

Lewis and Clark National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

* * * * *

4. We open the refuge for hunting access from 1½ hours before legal sunrise until 1½ hours after legal sunset.

5. We prohibit dogs on the refuge, except for hunting dogs engaged in authorized hunting activities, and under the immediate control of a licensed hunter (see § 26.21(b) of this chapter).

* * * * *

Malheur National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

1. We allow nonmotorized boats or boats equipped with only electric motors on the North and South Malheur Lake Hunt Units. All boats are prohibited on the Buena Vista Hunt Unit.

2. We allow only portable and temporary hunting blinds. We prohibit permanent structures.

3. You must remove boats, decoys, blinds, materials and all personal property at the end of each day (see § 27.93 of this chapter).

* * * * *

5. We may close any refuge access easement road, refuge road, or hunting access point for public safety, or when travel may be detrimental to the area.

6. The North Malheur Lake Hunt Unit is open during all established State of Oregon migratory bird hunting seasons.

7. The South Malheur Lake and Buena Vista Hunt Units open for migratory bird hunting on the fourth Saturday of October and close at the end of the State waterfowl season.

8. The South Malheur Lake Hunt Unit may be accessed from the Boat Launch Road, or from the North Malheur Lake Hunt Unit, but no earlier than the fourth Saturday of October.

B. Upland Game Hunting. We allow hunting of pheasant, quail, partridge, chukar, and rabbit on designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. You may possess only approved nontoxic shot while in the field (see § 32.2(k))

2. We allow hunting of upland game species on designated areas of the Blitzen Valley east of Highway 205 from the fourth Saturday in October through the end of the State pheasant season.

3. We allow hunting of upland game species on the North Malheur Lake Hunt Unit concurrent with the State pheasant season.

4. We allow hunting of all upland game species on designated areas of the refuge west of Highway 205 and south of Foster Flat Road, and on designated areas of Krumbo Creek east of the Krumbo Reservoir in accordance with State regulations.

5. We may close any refuge access easement road, refuge road, or hunting access point for public safety, or when travel may be detrimental to the area.

C. Big Game Hunting. We allow hunting of deer and pronghorn on designated areas of the refuge west of Highway 205 and south of Foster Flat Road, and on designated areas of Krumbo Creek east of the Krumbo Reservoir, in accordance with State regulations.

D. Sport Fishing. * * *

1. We prohibit ice fishing on and all public access to any ice formations.

2. We allow fishing year-round on Krumbo Reservoir and in the Blitzen River, East Canal, and Mud Creek upstream from and including Bridge Creek.

3. Fishing is allowed on the north bank of the Blitzen River from Sodhouse Lane downstream to the bridge on the Boat Landing Road between August 1 and September 15.

4. We prohibit boats on public fishing areas, except that nonmotorized boats and boats equipped with only electric motors may be used on Krumbo Reservoir.

5. We may close any refuge access easement road, refuge road, or fishing access point for public safety, or when travel may be detrimental to the area.

* * * * *

Nestucca Bay National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of ducks and coot on refuge lands at Brooten Marsh and the mouth of the Little Nestucca River 7 days per week in accordance with State regulations and subject to the following conditions:

1. Only federally approved nontoxic shot may be used or be in hunters' possession while hunting on the refuge (see § 32.2(k)).

2. Only portable blinds or blinds constructed of on-site dead vegetation or driftwood may be used (see § 27.51 of this chapter).

3. All blinds, decoys, shotshell hulls, and other personal equipment and refuse must be removed from the refuge at the end of each day (see §§ 27.93 and 27.94 of this chapter).

4. Access to the refuge will be prohibited from 1 hour after sunset to 1 hour before sunrise.

5. Hunters may use dogs as an aid to retrieving waterfowl during the hunting season; however, dogs must remain under control of the handler at all times (see § 26.21(b) of this chapter). Dogs must be in a vehicle or on a leash until they are in the marsh as a part of the hunt.

6. Hunters may enter closed areas of the refuge only to retrieve downed birds.

B. Upland Game Hunting. [RESERVED]

C. Big Game Hunting. [RESERVED]

D. Sport Fishing. [RESERVED]

* * * * *

Siletz Bay National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of goose, duck, and coot on refuge lands west of U.S. Highway 101 7 days per week and on the Millport Slough South Unit of the refuge 3 days per week, in accordance with State regulations and subject to the following conditions:

1. The established days for waterfowl hunting on the Millport Slough South Unit will be Wednesday, Saturday, and Sunday.

2. Only federally approved nontoxic shot may be used or be in hunters' possession while hunting on the refuge (see § 32.2(k)).

3. Only portable blinds or blinds constructed of on-site dead vegetation or driftwood may be used (see § 27.51 of this chapter).

4. All blinds, decoys, shotshell hulls, and other personal equipment and refuse must be removed from the refuge at the end of each day (see §§ 27.93 and 27.94 of this chapter).

5. Access to the refuge will be prohibited from 1 hour after sunset to 1 hour before sunrise.

6. The use or possession of alcoholic beverages while hunting is prohibited.

7. Hunters may use dogs as an aid to retrieving waterfowl during the hunting season; however, dogs must remain under control of the handler at all time (see § 26.21(b) of this chapter). Dogs must be in a vehicle or on a leash until they are in the marsh as a part of the hunt.

B. Upland Game Hunting. [RESERVED]

C. Big Game Hunting. [RESERVED]

D. Sport Fishing. [RESERVED]

* * * * *

■ 28. Amend § 32.57 Pennsylvania by adding, in alphabetical order, an entry for Cherry Valley National Wildlife Refuge to read as follows:

§ 32.57 Pennsylvania.

* * * * *

Cherry Valley National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of migratory birds, including waterfowl (i.e., ducks, mergansers, coots, and geese), doves, woodcock, snipe, rails, moorhens, and gallinules, on designated areas of the refuge in accordance with State of Pennsylvania regulations and subject to the following conditions:

1. You must submit a Migratory Bird Hunt Application (FWS Form 3–2357) to hunt on the refuge. We require hunters to possess a signed refuge hunt permit (name and address only) at all times while scouting and hunting on the refuge. We charge a fee for all hunters except youth age 16 and younger.

2. We issue one companion permit (no personal information) at no charge to each hunter. We allow companions to observe and/or call, but not to shoot a firearm or bow. Companion and hunters must set up in the same location. We provide hunters with hunt maps and parking permits (name only), which they must clearly display in their vehicle. Hunters who park on the refuge must park in identified hunt parking areas.

3. We prohibit the use of all-terrain vehicles (ATVs) on the refuge.

4. We require hunters to wear (in a conspicuous manner) solid-color, hunter-orange clothing or material, consistent with Pennsylvania Game Commission regulations.

5. We prohibit hunters using or erecting permanent or pit blinds.

6. We require hunters to remove all hunting blind material, boats, and decoys from the refuge at the end of each hunting season (see § 27.93 of this chapter).

7. We allow pre-hunt scouting concurrent with big game scouting continuing through the end of the migratory bird season; however, we prohibit the use of dogs during scouting.

8. Dogs may only be used for waterfowl hunting. We limit the number of dogs per waterfowl hunting party to no more than two dogs.

9. We allow hunters to enter the refuge 2 hours before shooting time (as prescribed by Pennsylvania Game Commission regulations), and they must leave no later than 2 hours after the end of shooting time.

B. Upland Game Hunting. We allow hunting of squirrels, grouse, rabbit, pheasant, quail, woodchuck, crow, fox, raccoon, opossum, skunk, weasel, coyote, and bobcat on designated areas of the refuge in accordance with State of Pennsylvania regulations and subject to the following conditions:

1. We require hunters to submit a Big/Upland Game Hunt Application/Permit (FWS Form 3–2356) to hunt on the refuge. We require hunters to possess a signed refuge hunt permit (name and address only) at all times while scouting and hunting on the refuge. We charge a fee for all hunters except youth age 16 and younger.

2. Conditions A3, A4, A5, and A9 apply.

3. We prohibit scouting.

4. No dogs allowed.

5. We prohibit baiting on refuge lands (see § 32.2(h)).

6. We only allow hunting from 1 half hour before legal sunrise to legal sunset. We prohibit night hunting.

C. Big Game Hunting. We allow hunting of white-tailed deer, bear, and wild turkey on designated areas of the refuge in accordance with State of Pennsylvania regulations and subject to the following conditions:

1. Conditions A3, A4, A5, A9, B1, and B5 apply.

2. We allow pre-hunt scouting beginning two weeks prior to the bow opener and continuing through the end of the deer season.

3. We require hunters to remove all portable hunting blind materials from the refuge at the end of each hunting season (see § 27.93 of this chapter).

D. Sport Fishing. [RESERVED]

* * * * *

■ 29. Amend § 32.61 South Dakota by:

■ a. Removing paragraph A.1; redesignating paragraphs A.2 and A.3 as paragraphs A.1 and A.2, respectively; revising paragraphs B.1 and C.5; and adding paragraphs B.3 and C.10 under Sand Lake National Wildlife Refuge.

■ b. Revising paragraphs A, C.4, and D under Sand Lake Wetland Management District.

These revisions and additions read as follows:

§ 32.61 South Dakota.

* * * * *

Sand Lake National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

1. The game bird season begins the Monday following closure of the refuge firearms deer season and continues through the first Sunday in January.

* * * * *

3. Hunters are not allowed to enter the refuge each day until 10:00 a.m.

C. Big Game Hunting. * * *

* * * * *

5. Hunters may place their tree stands, elevated platforms, and portable ground blinds on the refuge only during their designated licensed season. These stands must be removed by the end of their designated licensed season (see § 27.93 of this chapter).

* * * * *

10. Trail monitor cameras are not allowed on the refuge.

* * * * *

Sand Lake Wetland Management District

A. Migratory Game Bird Hunting. We allow migratory game bird hunting on Waterfowl Production Areas throughout the District in accordance with State regulations and subject to the following conditions:

1. You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction by the end of each day (see §§ 27.93 and 27.94 of this chapter).

2. We prohibit bringing any type of live or dead vegetation onto the refuge for any purpose at any time.

3. We allow the use of motorized boats.

* * * * *

C. Big Game Hunting. * * *

* * * * *

4. You must remove portable ground blinds, trail cameras, and other personal property by the end of each day (see §§ 27.93 and 27.94 of this chapter).

D. Sport Fishing. We allow sport fishing on Waterfowl Production Areas throughout the District in accordance with State regulations and subject to the following conditions:

1. You must remove boats, motor vehicles, fishing equipment, and other personal property (excluding ice houses) by the end of each day (see §§ 27.93 and 27.94 of this chapter).

2. We allow the use of motorized boats.

* * * * *

■ 30. Amend § 32.63 Texas by:

■ a. Revising paragraphs A, C.1, C.2, and C.3 and removing paragraphs C.4, C.5, C.6, C.7, C.8, C.9, C.10, C.11, C.12, C.13, C.14, C.15, C.16, C.17, C.18, C.19, and C.20 under Aransas National Wildlife Refuge.

■ b. Revising paragraphs A.2, A.3, A.4, A.5, A.6, A.7, A.9, A.11, B, and C under Balcones Canyonlands National Wildlife Refuge.

These additions and revisions read as follows:

§ 32.63 Texas.

* * * * *

Aransas National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of ducks, coots, and mergansers on designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. Each adult hunter 17 years of age or older must possess an Annual Public Hunting Permit (APH) administered by the State.

2. Hunters may enter the refuge hunt units no earlier than 4 a.m. Hunting starts at the designated legal shooting time and ends at 12 p.m. (noon). Hunters must leave refuge hunt units by 12:30 p.m.

3. Youth under 17 years of age are required to be under the immediate supervision of a duly permitted, authorized supervising adult, age 18 or older.

4. Shotguns with nontoxic shot are the legal means that may be used or possessed during these hunts (see § 32.2(k)).

5. We prohibit pits and permanent blinds. We allow portable blinds or temporary natural vegetation blinds. You must remove all blinds from the refuge daily (see § 27.93 of this chapter).

6. We only allow vehicular travel on designated roads and in parking areas.

7. All hunters are transported to and from their hunting location by Texas Parks and Wildlife Department (TPWD) personnel.

8. Hunter check-in begins at 5:00 a.m. and ends at 5:30 a.m. All hunters are required to check in and out at the hunter check station located on the north end of the Island.

9. Hunters will select hunt sites on a first-come, first-served basis.

10. Waterfowl hunts are morning only, begin at legal shooting time, and end at 12:00 p.m. (noon).

11. Dogs accompanying hunters must be under the immediate control of handlers at all times (see § 26.21(b) of this chapter).

12. Hunters must remove all decoys, boats, spent shells, marsh chairs, and other equipment from the refuge daily (see §§ 27.93 and 27.94 of this chapter). We prohibit the use of plastic flagging, reflectors, or reflective tape.

13. Hunting of geese is prohibited.

14. The entire refuge or any portion thereof may immediately close to hunting in the event of whooping cranes present within the hunt area.

* * * * *

C. Big Game Hunting. * * *

1. On the Blackjack Unit, we allow hunting subject to the following conditions:

i. We may immediately close the entire refuge or any portion thereof to hunting in the event of the appearance of whooping crane in the hunt area or in order to conduct habitat management practices as required during the available windows (e.g., prescribed burns, roller chopping, fire breaks).

ii. We prohibit the use of dogs to trail game.

iii. We prohibit target practice or any nonhunting discharge of firearms.

iv. We prohibit hunting with the aid of bait, salt, or any ingestible attractant (see § 32.2(h)). We allow sprays and other non-ingestible attractants.

v. Firearm hunters must wear a total of 400 square inches (2,600 square centimeters) hunter orange including 144 square inches (936 square centimeters) visible in front and 144 square inches visible in rear. Some hunter orange must appear on head gear.

vi. All hunters must fill out (FWS Form3–2359) Big Game Harvest Report upon leaving the hunt area.

vii. For the archery and rifle season, hunters must obtain a refuge permit (name only required) and pay a fee. The hunter must tape the smaller vehicle tag on the driver's side windshield. The hunter must sign the larger permit and possess it at all times while on the refuge.

viii. We define youth hunters as ages 9 to16. A Texas-licensed, adult hunter, age 17 or older who has successfully completed a Hunter Education Training Course, must accompany youth hunters. We exempt those persons born prior to September 2, 1971, from the Hunter Education Training course requirement. Each adult hunter may supervise two youth hunters.

ix. We will annually designate bag limits in the refuge hunt brochure.

x. We allow archery hunting within the deer season for the county on specified days listed in the refuge hunt brochure.

xi. We allow firearm hunting within the deer season for the county on specified days listed in the refuge hunt brochure.

xii. Hunters must clean all harvested game in the field.

xiii. We prohibit hunting on or across any part of the refuge road system, or hunting from a vehicle on any refuge road or road right-of-way. Hunters must remain at a minimum of 100 yards (90 meters) off any designated refuge road or structure.

xiv. We prohibit hunters using handguns during archery and rifle hunts. Hunters may use bows and arrows only in accordance with State law. We prohibit use of crossbows for hunting unless we issue a special use permit (FWS Form 3–1383–G) due to ''upper 2 limb'' disability. We allow the use of archery equipment and centerfire rifles for hunting in accordance with State law.

xv. We allow use of portable hunting stands, stalking of game, and still hunting. There is a limit of two portable stands per permitted hunter. A hunter may set up the portable stands during the scouting week, but must remove them when the hunter's permit expires (see § 27.93 of this chapter). We prohibit hunters from driving nails, spikes, or other objects into trees or hunting from stands secured with objects driven into trees (see § 32.2(i)). We prohibit the building of pits and permanent blinds.

xvi. We prohibit blocking of gates and roadways (see § 27.31(h) of this chapter). We prohibit vehicles operating off-road for any reason. Hunters must park vehicles in such a manner as to not obstruct normal vehicle traffic.

xvii. We allow the use of only biodegradable flagging tape to mark trails and hunt stand location during the archery and rifle hunts on the refuge. We color-code the flagging tape used each weekend during the rifle hunts. Hunters must use the designated flagging tape color specified for particular hunt dates. We provide this information on the refuge hunt permit and in refuge regulations sent to permittees. Hunters must remove flagging (see § 27.93 of this chapter) at the end of the hunt. The hunter must write his/her last name in black permanent marker on the first piece of flagging tape nearest the adjacent designated roadway.

xiii. We prohibit camping.

2. On the Matagorda Island Unit, we allow hunting subject to the following conditions:

i. Big Game Hunting Blackjack Unit conditions: C.1.i through C.1.vi apply.

ii. Special permits are issued by lottery drawing through the TPWD Public Hunting Program for big game hunts.

iii. TPWD staff will transport all hunters to and from the designated hunting stand.

iv. All hunters are required to stay in their designated stand unless they are retrieving their game. Stalking of game is prohibited.

v. For hunts administered by TPWD, youth hunters are not required to complete a Hunter Education Training Course. However, supervising adults born on or after September 2, 1971, must have passed a Hunter Education Training Course or possess a State-issued deferral.

vi. Each adult hunter may supervise up to two youth hunters.

vii. Hunters can clean all harvested game in the field or at the designated cleaning area at the headquarters.

viii. All deer harvested during the hunt will be tagged with a TPWD-issued Special Drawn Legal Deer Tag.

ix. Hunters are allowed to camp in the designated camping area.

3. On the Tatton Unit, we allow hunting subject to the following conditions:

i. Big Game Hunting Blackjack Unit conditions: C.1.i through C.1.v apply.

ii. We define youth hunters as ages 9 to 16. All hunters born after September 2, 1971 must have completed a State-certified hunter education course for refuge administered hunts. A Texas-licensed, adult hunter, age 17 or older who has successfully completed a Hunter Education Training Course, must accompany youth hunters. We exempt those persons born prior to September 2, 1971, from the Hunter Education Training course requirement.

iii. Hunters are transported to and from their hunting location via government vehicles.

* * * * *

Balcones Canyonlands National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

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2. Hunting allowed in designated area(s) from noon to sunset.

3. Refuge will set the bag limits.

4. You may possess only approved nontoxic shot for hunting while in the field (see § 32.2(k)).

5. Refuge permits (name only) are required with payment of a hunt fee.

6. Dogs are allowed to retrieve game birds during the hunt, but the dogs must be under control of the handler at all times and not allowed to roam free (see § 26.21(b) of this chapter).

7. Hunters must be at least 12 years of age. An adult 21 years of age or older must accompany hunters between the ages of 12 and 17 (inclusive) as per State regulations.

* * * * *

9. The entire refuge or any portion thereof may be closed to hunting for the protection of resources or public safety as determined by the Refuge Manager.

* * * * *

11. Hunter may bring up to two guests. Guests may not use a hunting firearm. Guests must be with the hunter at all times.

B. Upland Game Hunting. We allow hunting of wild turkey at designated times on designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. Hunting is permitted consistent with the State season.

2. Hunters are required to check in and out daily at designated check station(s).

3. Weapons will be consistent with State and Federal regulations.

4. The entire refuge or any portion thereof may be closed to hunting for the protection of resources or public safety as determined by the Refuge Manager.

5. Hunters must be at least 12 years of age. An adult 21 years of age or older must accompany hunters between the ages of 12 and 17 (inclusive) as per State regulations. This adult may supervise no more than two hunters.

6. The refuge will set the bag limits.

7. Hunters must visibly wear 400 square inches (2,600 square centimeters) of hunter orange on the outermost layer of the head, chest, and back, which must include a hunter-orange hat or cap.

8. Refuge permits and the payment of a hunt fee are required.

9. Dogs are not allowed for hunting.

10. Vehicles may only be operated on designated roads and parking areas.

11. Off road use of all-terrain vehicles (ATVs) is prohibited, except to retrieve bagged game.

12. Standby hunting permits are issued only if openings are available on the day of each hunt on a first-come, first-served basis. Contact Refuge Manager for details.

13. The use or possession of bait is prohibited during scouting or hunting (see § 32.2(h)). Bait is considered anything that may be eaten or ingested by wildlife. Scent attractants are allowed.

14. A hunter may bring one guest. Guest may not use a hunting firearm or other hunting weapon (archery). Guest may assist hunter in game retrieval or field dressing activities. Guest must be with the hunter at all times.

C. Big Game Hunting. We allow hunting of white-tailed deer and feral hog at designated times on designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. Conditions B1 through B14 apply.

* * * * *

■ 31. Amend § 32.64 Utah by revising paragraphs C.4, C.5, C.6, and C.7 under Ouray National Wildlife Refuge to read as follows.

§ 32.64 Utah.

* * * * *

Ouray National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

* * * * *

4. We allow any-legal-weapon elk hunting for youth, disabled, and depredation pool hunters during State seasons subject to refuge regulations.

5. We allow archery elk hunting during the general and the Uintah Basin extended archery elk hunts during State seasons subject to refuge regulations.

6. We are closed for the general any-legal-weapon (rifle) and muzzleloader bull elk hunts.

7. We allow any-legal-weapon elk hunting during limited late season antlerless elk hunts starting on December 1 during State seasons subject to refuge regulations.

* * * * *

■ 32. Amend § 32.65 Vermont by adding, in alphabetical order, an entry for Silvio O. Conte National Fish and Wildlife Refuge to read as follows:

§ 32.65 Vermont.

* * * * *

Silvio O. Conte National Fish and Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of ducks, geese, crows, and American woodcock at the Nulhegan Basin Division and Putney Mountain Unit in accordance with State of Vermont regulations, seasons, and bag limits subject to the following conditions:

1. Shooting across, over, or within 10 feet of the traveled portion of any gravel road is prohibited in the interest of public safety (see §§ 25.71 of this chapter).

2. You may only use portable blinds.

3. We allow the use of retrieving, flushing, pointing, and pursuit dogs; however dogs must be under control as is reasonable and customary for that activity, such as voice command or remote telemetry (see § 26.21(b) of this chapter).

4. We prohibit the use of all-terrain and off-highway vehicles (ATVs and OHVs).

5. You must remove all blinds, decoys, shell casings, and other personal equipment and refuse from the refuge at the end of each hunt day (see §§ 27.93 and 27.94 of this chapter).

B. Upland Game Hunting. We allow hunting of coyote, fox, raccoon, bobcat, woodchuck, red squirrel, eastern gray squirrel, porcupine, skunk, snowshoe hare, eastern cottontail, and ruffed grouse at the Nulhegan Basin Division and Putney Mountain Unit in accordance with State of Vermont regulations, seasons, and bag limits subject to the following conditions:

1. Conditions A1 through A4 apply.

2. To monitor and mitigate potential disturbances to wildlife and neighboring landowners, raccoon hunters hunting at night with dogs will require a special

use permit (FWS Form 1383–G) issued by the Refuge Manager.

C. Big Game Hunting. We allow hunting of white-tailed deer, moose, black bear, and wild turkey at the Nulhegan Basin Division and Putney Mountain Unit in accordance with State of Vermont regulations, seasons, and bag limits subject to the following conditions:

1. Conditions A1 through A4 apply.

2. We allow only temporary tree stands and you must remove them (see § 27.93 of this chapter) by the end of the final deer season. Your name and address must be clearly visible on the tree stand. We prohibit nails, screws, or screw-in climbing pegs to build or access a stand (see § 32.2(i)).

3. Moose may be retrieved at the Nulhegan Basin Division by a commercial moose hauler, subject to a special use permit (FWS Form 1383–C) issued by the Refuge Manager.

D. Sport Fishing. [RESERVED]

* * * * *

■ 33. Amend § 32.66 Virginia by revising paragraphs C.1, C.5, C.12, and C.13 under Back Bay National Wildlife Refuge to read as follows:

§ 32.66 Virginia.

* * * * *

Back Bay National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

1. Hunt regulations, hunting application procedures, seasons, methods of hunting, maps depicting areas open to hunting, and the terms and conditions under which we issue hunting permits are available on the refuge's Web site.

* * * * *

5. All selected and standby applicants must enter the refuge between 4 a.m. and 4:30 a.m. on each hunt day. We may issue standby hunters permits (name only) to fill vacant slots by lottery. Hunting hours will comply with State laws.

* * * * *

12. We allow scouting on designated days prior to the start of each refuge hunt period. Hunters may enter the hunt zones on foot, on bicycle, or through transportation provided by the refuge only. Scouts must wear 400 square inches (2,600 square centimeters) of visible blaze orange.

13. Hunters may go to Hunt Zone 1 (Long Island) only by hand-launched watercraft (canoe, punt, rowboat, and similar watercraft) from the canoe launch at refuge headquarters. Your boat must meet Coast Guard safety requirements. We prohibit use of trailers.

* * * * *

■ 34. Amend § 32.67 Washington by:

■ a. Removing paragraphs B.2 and C.2 and redesignating paragraphs B.3 and C.3 as paragraphs B.2 and C.2, respectively, under Columbia National Wildlife Refuge.

■ b. Revising paragraphs A, C.9, and D under Julia Butler Hansen Refuge for the Columbian White-Tailed Deer.

■ c. Revising paragraph A.6 under McNary National Wildlife Refuge.

■ d. Revising paragraphs A.3, A.5, A.11, A.13, and A.14 and adding paragraph A.17 under Ridgefield National Wildlife Refuge.

■ e. Revising paragraphs A, B, and C under Willapa National Wildlife Refuge.

These revisions and additions read as follows:

§ 32.67 Washington.

* * * * *

Julia Butler Hansen Refuge for the Columbian White-Tailed Deer

A. Migratory Game Bird Hunting. We allow hunting of goose, duck, coot, and common snipe on the refuge-owned shorelines of Hunting and Price Islands in accordance with State regulations and subject to the following conditions:

1. You may possess only approved nontoxic shot for hunting (see § 32.2(k)).

2. You may not shoot or discharge any hunting firearm from, across, or along a public highway, designated route of travel, road, road shoulder, road embankment, or designated parking area.

3. We prohibit permanent blinds. You must remove all personal property, including decoys and boats, by 1 hour after legal sunset (see §§ 27.93 and 27.94 of this chapter).

4. We prohibit hunting along refuge-owned shorelines of Hunting and Price Islands where it parallels Steamboat Slough.

5. We open the refuge for hunting access from 1½ hour before legal sunrise until 1½ hour after legal sunset.

6. We prohibit dogs on the refuge, except for hunting dogs engaged in authorized hunting activities, and under the immediate control of a licensed hunter (see § 26.21(b) of this chapter).

* * * * *

C. Big Game Hunting. * * *

* * * * *

9. We require hunters to sign in and out each day at the refuge headquarters. When signing out for the day, you must report hunting success, failure, and any hit-but-not retrieved animals on the Big Game Harvest Report (FWS Form 3–2359).

* * * * *

D. Sport Fishing. Bank fishing is allowed from the Mainland Unit shoreline adjoining the Elochoman and Columbia Rivers as well as Steamboat and Brooks Sloughs, in accordance with State fishing regulations. Bank fishing is allowed in the pond adjacent to the diking district pumping station by Brooks Slough. All other areas of the mainland unit are closed to fishing. Bank fishing is allowed along the shorelines of refuge islands in accordance with State regulations.

* * * * *

McNary National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

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6. On the Peninsula Unit, we allow hunting subject to the following conditions: On the east shoreline of the Peninsula Unit, we allow hunting only from established numbered blind sites, assigned on a first-come, first-served basis, and we require hunters to remain within 100 feet (30 meters) of marked posts unless retrieving birds or setting decoys.

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Ridgefield National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

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3. We limit hunting of dusky Canada goose in accordance with State regulations and quotas. The State defines dusky Canada goose as a dark breasted Canada goose, as determined by a Munsell color chart 10 YR, 5 or less, with a culmen (bill) length of 40 to 50 millimeters (1.6 to 2 inches). We will close the refuge goose season early if the dusky Canada goose harvest reaches the refuge quota assigned by the State.

* * * * *

5. Prior to entering the hunt area, you must pay a recreation user fee, obtain a blind assignment, and obtain a Migratory Bird Hunt Report (FWS Form 3–2361). You must carry the Migratory Bird Hunt Report while hunting as proof of blind assignment and user fee payment.

* * * * *

11. You may possess only approved nontoxic shotshells for hunting (see § 32.2(k)) in quantities of 25 or fewer per day.

* * * * *

13. Prior to switching blinds, you must first report to the refuge check station to obtain a new blind

assignment. You must submit an accurate Migratory Bird Hunt Report (FWS Form 3–2361) for the blind being vacated, and obtain a new Migratory Bird Hunt Report for the new blind.

14. Prior to leaving the hunt area, you must check out at the refuge check station, submit an accurate Migratory Bird Hunt Report (FWS Form 3–2361), and present all harvested birds for inspection by check station personnel.

* * * * *

17. Persons possessing, transporting, or carrying firearms on national wildlife refuges must comply with all provisions of State and local law. Persons may only use (discharge) firearms in accordance with refuge regulations (see § 27.42 of this chapter and specific refuge regulations in this part 32).

* * * * *

Willapa National Wildlife Refuge

A. Migratory Game Bird Hunting. Hunting of geese, ducks, coots, and snipe is permitted on designated areas of the refuge in accordance with State hunting regulations and subject to the following conditions:

1. Prior to entering the hunt area at the Riekkola and Tarlatt Units, all hunters are required to obtain and carry a Migratory Bird Hunt Application (FWS Form 3–2357), pay a recreation user fee, obtain a blind assignment, and report waterfowl taken per instructions on the Migratory Bird Hunt Report (FWS Form 3–2361).

2. At the Riekkola and Tarlatt Units, hunters may take ducks and coots only coincidental to hunting geese.

3. Goose hunting is permitted on Wednesday and Saturday in the Riekkola and Tarlatt Units only from established blinds.

4. At the Riekkola and Tarlatt Units, you may possess no more than 25 approved nontoxic shells per day while hunting.

5. You may possess only approved nontoxic shot for hunting (see § 32.2(k)).

6. You may not shoot or discharge any hunting firearm from, across, or along a public highway, designated route of travel, road, road shoulder, road embankment, or designated parking area.

7. We prohibit camping on the refuge except in designated campgrounds on Long Island for up to 14 days.

8. We open the refuge for hunting access from 1½ hour before legal sunrise until 1½ hour after legal sunset.

9. We require dogs to be kept on a leash, except for hunting dogs engaged in authorized hunting activities, and under the immediate control of a licensed hunter (see § 26.21(b) of this chapter). We prohibit dogs on Long Island and on beaches within the Leadbetter Point Unit.

10. Access to the hunt area is by foot or boat access only. We allow bicycles on designated roads and trails only. Mobility-impaired hunters should consult the Refuge Manager for allowed conveyances.

11. We prohibit permanent blinds. You must remove all personal property, including decoys and boats, by 1 hour after legal sunset (see §§ 27.93 and 27.94 of this chapter).

B. Upland Game Hunting. We allow hunting of forest grouse (sooty and ruffed) on Long Island, subject to the following conditions:

1. Hunters are required to obtain and carry a Big/Upland Game Hunt Application (FWS Form 3–2356) and report game taken, hours hunted, and name/address/date on the Upland/Small Game/Furbearer Report (FWS Form 3–2362).

2. Archery hunting only.

3. You may not shoot or discharge a firearm on Long Island.

4. Dogs are not permitted on Long Island.

5. Conditions A7 through A10 apply.

6. We prohibit fires on the refuge, except in designated campgrounds on Long Island (see § 27.95(a) of this chapter).

C. Big Game Hunting. We allow hunting of deer, elk, and bear on designated areas of the refuge, in accordance with State regulations subject to the following conditions:

1. At Long Island hunters must obtain and carry a Big/Upland Game Hunt Application (FWS Form 3–2356) and report game taken, hours hunted and name/address/date on the Big Game Harvest Report (FWS Form 3–2359).

2. At Long Island, only archery hunting is permitted and hunting firearms are prohibited.

3. Bear hunting is prohibited on any portion of the refuge except Long Island.

4. The use of centerfire or rimfire rifles is prohibited within the Lewis, Porter Point, and Riekkola Units.

5. Dogs are prohibited.

6. Conditions A7 through A10 and B6 apply.

7. We prohibit construction or use of permanent blinds, platforms, ladders, or screw-in foot pegs.

8. You must remove all personal property, including stands, from the refuge by 1½ hours after legal sunset (see §§ 27.93 and 27.94 of this chapter).

9. Tree stands may stay in place for 3 days and must be labeled with the hunter's name and phone number, and the date the stand was set-up. The stand may be set-up 1½ hours before legal sunrise. The stand must be removed before 1½ hours after legal sunset on the third day.

* * * * *

■ 35. Amend § 32.69 Wisconsin by revising paragraph B.5 and removing paragraph B.6 under Necedah National Wildlife Refuge to read as follows:

§ 32.69 Wisconsin.

* * * * *

Necedah National Wildlife Refuge

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B. Upland Game Hunting. * * *

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5. You may only hunt snowshoe hare during the season for cottontail rabbit.

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■ 36. Amend § 32.70 Wyoming by adding, in alphabetical order, an entry for Cokeville Meadows National Wildlife Refuge to read as follows:

§ 32.70 Wyoming.

* * * * *

Cokeville Meadows National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of ducks, dark geese, coots, mergansers, snipe, Virginia rail, Sora rail, sandhill crane, and mourning dove in accordance with State regulations and subject to the following conditions:

1. We prohibit hunting of migratory game birds in areas of the refuge indicated on the Cokeville Meadows National Wildlife Refuge Hunting Brochure and marked by signs as closed to all hunting or closed to migratory bird hunting.

2. You may only possess approved nontoxic shot while in the field (see § 32.2(k)).

3. We prohibit pits and permanent blinds.

4. You may use portable blinds or blinds constructed of natural dead vegetation (see § 27.51 of this chapter).

5. You must remove all decoys, shell casings, portable and temporary blinds, and other personal equipment (see §§ 27.93 and 27.94 of this chapter) from the refuge at the end of each day.

6. We prohibit possession or consumption of any alcoholic beverage while hunting (see § 32.2(j)).

7. Hunters may not enter closed areas to retrieve animals legally shot in an open area unless authorization has been given by a refuge employee or State Conservation Officer. Permission must be obtained from private landowners before attempting to retrieve game on private land.

8. Dogs must be leashed and/or under the direct control of a handler (see

§ 26.21(b) of this chapter). The use of dogs to find and retrieve legally harvested migratory game birds is allowed.

9. Hunters must park in a Designated Hunter Parking Area, as identified by signs.

10. Hunters are required to access and exit the hunting areas from a Designated Hunter Parking Area only. Drop off or pick up of hunters is prohibited except at Hunter Designated Parking Areas.

11. Hunters may only access the refuge 1 hour before legal sunrise until 1 hour after legal sunset.

B. Upland Game Hunting. We allow hunting of blue grouse, ruffed grouse, chuckar partridge, gray partridge, cottontail rabbits, snowshoe hares, squirrels (red, gray, and fox), red fox, raccoon, and striped skunk in accordance with State regulations and subject to the following conditions:

1. Conditions A2 through A7 and A9 through A11 apply.

2. We prohibit hunting of upland game species in areas of the refuge indicated on the Cokeville Meadows National Wildlife Refuge Hunting Brochure and marked by signs as closed to all hunting.

3. Dogs must be leashed and/or under the direct control of a handler. The use of dogs to find and retrieve legally harvested upland game birds, cottontail rabbits, and squirrels is allowed and encouraged. Dogs may not be used to chase red fox, raccoon, striped skunk, or any other species not specifically allowed in A8 or this paragraph.

4. Red fox, raccoon, and striped skunk may be taken on the refuge by licensed migratory bird, big game, or upland/small game hunters from September 1 until the end of the last open big game, upland bird, or small game season. Red fox, raccoon, or striped skunk that is harvested must be taken into possession and removed from the refuge.

5. We prohibit hunting of sage grouse.

C. Big Game Hunting. We allow hunting of elk, mule deer, white-tailed deer, pronghorn, and moose in accordance with State regulations and subject to the following conditions:

1. Conditions A3 through A7 and A9 through A11 apply.

2. We prohibit hunting of big game in areas of the refuge indicated on the Cokeville Meadows National Wildlife Refuge Hunting Brochure and marked by signs as closed to all hunting.

3. You may hunt with the aid of a temporary tree stand that does not require drilling or nailing into the tree. All personal property, including temporary tree stands, must be removed at the end of each day (see §§ 27.93 and 27.94 of this chapter).

D. Sport Fishing. [RESERVED]

* * * * *

Dated: August 27, 2013.

Rachel Jacobson,

Principal Deputy, Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–21804 Filed 9–23–13; 8:45 am]

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Part V

Department of Health and Human Service

Food and Drug Administration

21 CFR Parts 16, 801, 803, et al.
Unique Device Identification System; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 16, 801, 803, 806, 810, 814, 820, 821, 822, and 830

[Docket No. FDA–2011–N–0090]

RIN 0910–AG31

Unique Device Identification System

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule to establish a system to adequately identify devices through distribution and use. This rule requires the label of medical devices to include a unique device identifier (UDI), except where the rule provides for an exception or alternative placement. The labeler must submit product information concerning devices to FDA's Global Unique Device Identification Database (GUDID), unless subject to an exception or alternative. The system established by this rule requires the label and device package of each medical device to include a UDI and requires that each UDI be provided in a plain-text version and in a form that uses automatic identification and data capture (AIDC) technology. The UDI will be required to be directly marked on the device itself if the device is intended to be used more than once and intended to be reprocessed before each use.

DATES: This rule is effective December 23, 2013, except §§ 801.55, 830.10, 830.100, 830.110, 830.120, and 830.130 are effective October 24, 2013. The incorporation by reference of § 830.20 listed in the rule is approved by the Director of the Office of the Federal Register as of December 23, 2013. The incorporation by reference of §§ 830.10 and 830.100 listed in the rule is approved by the Director of the Office of the Federal Register as of October 24, 2013. Certain provisions have later compliance dates as discussed in section VII. B. ''Compliance Dates.''

FOR FURTHER INFORMATION CONTACT: Jay Crowley, UDI Regulatory Policy Support, Center for Devices and Radiological Health, Food and Drug Administration, Bldg. 66, Rm. 3303, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–5995, email: *udi@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of the Regulatory Action

This final rule will substantially reduce existing obstacles to the adequate identification of medical devices used in the United States. By making it possible to rapidly and definitively identify a device and key attributes that affect its safe and effective use, the rule will reduce medical errors that result from misidentification of a device or confusion concerning its appropriate use. The identification system established under this rule will lead to more accurate reporting of adverse events by making it easier to identify the device prior to submitting a report. It will allow FDA, health care providers, and industry to more rapidly extract useful information from adverse event reports, pinpoint the particular device at issue and thereby gain a better understanding of the underlying problems, and take appropriate, better-focused, corrective action. The rule will also require dates on medical device labels to conform to a standard format to ensure those dates are unambiguous and clearly understood by device users.

The rule fulfills a statutory requirement of section 519(f) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360i(f)) that directs FDA to issue regulations establishing a unique device identification system for medical devices. The rule also meets statutory requirements added by section 614 of the Food and Drug Administration Safety and Innovation Act (FDASIA), including a deadline for publication of this final rule and requirements concerning when the rule must apply to devices that are implantable, life-supporting, or life-sustaining.

Under the UDI system established by this rule, the health care community and the public will be able to identify a device through a UDI that will appear on the label and package of a device. The UDI will function as the key that can be used to obtain critical information from the GUDID about the medical product. The GUDID will include only information that is important to the identification of devices, and will not include any information that would identify a patient. UDIs will appear in both plain-text format and a format that can be read by a bar code scanner or some other AIDC technology. If a device is intended to be used more than once, and intended to be reprocessed before each use, it must also be directly marked with a UDI, allowing accurate identification even when the device is no longer accompanied by its label or package.

By establishing a system for the adequate identification of medical devices through distribution and use, the rule will serve several important public health objectives:

Reduce Medical Errors. The presence of a UDI that is linked to device information in the GUDID will facilitate rapid and accurate identification of a device, thereby removing a cause of confusion that can lead to inappropriate use of a device. Using a device's UDI, you will be able to use the GUDID to positively identify the device and obtain important descriptive information, preventing confusion with any similar device which might lead to misuse of the device. Health care providers will no longer have to access multiple, inconsistent, and potentially incomplete sources in an attempt to identify a device, its key attributes, and a designated source for additional information.

Simplify the Integration of Device Use Information Into Data Systems. UDIs, particularly when provided through AIDC technology, will allow rapid and accurate data acquisition, recording, and retrieval. For example, the use of UDIs in computerized physician order entry systems will help ensure that the intended device will be used in the treatment of a patient, rather than some similar device that may not fully meet the needs of the health care professional who ordered the use of the device.

Provide for More Rapid Identification of Medical Devices With Adverse Events. An essential prerequisite to resolving adverse events is the timely and precise identification of the particular device or devices that may have a connection with an adverse event. The inclusion of UDIs in adverse event reports would lead to greater accuracy in reporting by eliminating uncertainty concerning the identity of the device that is the subject of a report.

Provide for More Rapid Development of Solutions to Reported Problems. The rule requires the inclusion of UDIs in adverse event reports that are required under part 803 (21 CFR part 803). This will allow manufacturers and FDA to more rapidly review, aggregate, and analyze related reports regarding a particular device, leading to more rapid isolation and identification of the underlying problems, and development of an appropriate solution to a particular concern.

Provide for More Rapid, More Efficient Resolution of Device Recalls. Delays in identifying recalled devices can result in the continued use of those devices on patients and involves an

increased risk for patient harm. A device labeled with a UDI can be identified rapidly and with great precision. The more rapidly a recall is implemented and completed, the more rapidly the risks presented are reduced or eliminated.

Better Focused and More Effective FDA Safety Communication. By citing UDIs, FDA will be able to more precisely focus safety alerts, public health notifications, or other communications, eliminating confusion with similar devices and allowing more rapid responsive action. Users of similar devices that are not the subject of the safety alert would be relieved of the uncertainty concerning whether they have been exposed to, or are affected by, a problem or risk.

Additional Benefits. FDA expects the UDI system will provide additional benefits. For example, UDIs can be used in educational and informational materials to allow readers to quickly obtain additional information from the GUDID and other FDA databases; UDIs could play an important role in inventory management; and UDIs may be useful in the provision of high-quality medical services. UDIs and GUDID data, when linked with other FDA data, will help identify alternative devices in the event of a shortage and will contribute to better detection of counterfeit devices.

In addition, while not required, FDA anticipates that providers will include the UDIs of a wide variety of devices in patients' Electronic Health Records (EHRs) and Personal Health Records (PHRs). This information will strengthen the health care community's ability to identify the specific devices implanted into patients and will improve response to postmarket surveillance activities, including adverse event reporting and recalls. For example, this information will contribute to the rapid identification of risks and benefits associated with a device within specific subpopulations. By linking clinical detail and information regarding device use, more effective device safety surveillance and evaluation studies could be conducted, contributing to a more complete safety and effectiveness profile for devices and enabling more appropriate and timely remedies when potential safety concerns are identified.

Standard Format for Dates Provided on a Device Label. The rule will also better ensure dates on device labels are not confusing or misleading to users thereby ensuring the safe use of devices, by requiring that dates on medical device labels conform to a standard format consistent with international standards and international practice—year-month-day (e.g., 2013–09–30). This will ensure dates on medical device labels are unambiguous and clearly understood by device users.

Summary of the Major Provisions of the Regulatory Action in Question

This rule will require the label and device packages of medical devices to include a UDI, except where the rule provides for an exception or alternative placement. Each UDI must be provided in a plain-text version and in a form that uses AIDC technology. The UDI will also be required to be directly marked on a device that is intended for more than one use, and intended to be reprocessed before each use. The rule requires the submission of information concerning each device to the new GUDID. FDA plans to make most of the data reported under this rule available to the public. The GUDID will not include patient information. The rule will also require dates on device labels and packages to be presented in a standard format that is consistent with international standards and international practice.

The UDI system established by this rule builds on international regulatory cooperation activities and makes use of internationally recognized standards relating to unique identification and data exchange. The rule specifies the technical requirements of a UDI. Each UDI will consist of two portions:

- A *device identifier* that corresponds to the specific version or model of the device and the labeler of the device (the labeler is the person who causes a label to be applied to a device, or who causes the label to be modified, with the intent that the device will be introduced into interstate commerce without any subsequent replacement or modification of the label; in most instances, the labeler would be the device manufacturer, but the labeler may be a specification developer, a single-use device reprocessor, a convenience kit assembler, a repackager, or a relabeler), and
- A *production identifier* that more precisely identifies the specific device by providing variable information, such as the lot or batch, the serial number, expiration date, the date of manufacture, and, for human cells, tissues, or cellular and tissue-based products (HCT/Ps) regulated as devices, the distinct identification code required in § 1271.290(c) (21 CFR 1271.290(c)).

The rule explains when a UDI is required and when its use must be discontinued. The rule requires all UDIs to be issued under a system operated by an FDA-accredited issuing agency. The rule provides a process through which an applicant would seek FDA accreditation as an issuing agency, specifies the information that the applicant must provide to FDA, and the criteria FDA will apply in evaluating applications. The rule provides for the suspension and revocation of the accreditation of an issuing agency, and explains the circumstances under which FDA will, or may, act as an issuing agency.

Whenever a device must bear a UDI, the labeler of that device is required to submit information concerning the device to the GUDID, which will facilitate the rapid identification of the device and the labeler and provide links to other FDA data. FDA plans to make this information available to the public through a variety of channels.

The rule provides for certain exceptions and alternatives, ensuring that the costs and burdens are kept to a minimum.

As discussed in Section VII.B, ''Compliance Dates,'' FDA has established a set of compliance dates that will phase-in the requirements of this rule in stages, over a period of 7 years, to ensure a smooth implementation and to spread the costs and burdens of implementation over time, rather than having to be absorbed all at once.

Costs and Benefits

ECONOMIC DATA: COSTS AND BENEFITS ACCOUNTING STATEMENT

[2012 dollars]

Category	Primary estimate	Low estimate	High estimate	Units			
				Year dollars	Discount rate (percent)	Period covered	Notes
Benefits:							
Annualized					7		
Monetized $millions/year					3		
Annualized					7		
Quantified					3		
Qualitative	More accurate and prompt identification of device related adverse events should lead to more rapid action to reduce the incidence of the adverse events and to more effectively target and manage medical device recalls.						
Costs:							
Annualized	$85.7	$48.8	$122.5	2012	7	10 years	Costs to foreign labelers are not included.
Monetized $millions/year	84.1	47.9	120.2	2012	3	10 years	
Annualized					7		
Quantified					3		
Qualitative							
Transfers:							
Federal					7		
					3		
Annualized Monetized $millions/year.					3		
From/To	From			To			
Other					7		
Annualized Monetized $millions/year.					3		
From/To	From:			To:			
Effects: State, Local or Tribal Government: No effect Small Business: The final rule may have a significant economic impact on a substantial number of small entities that label medical devices. Wages: No effect Growth: No effect							

Table of Contents

I. Background
II. Comments on the Proposed Rule and FDA's Responses
A. Definitions—21 CFR 801.3, 803.3, 806.2, 810.2, 814.3, 820.3, 821.3, 822.3, and 830.3
B. Applicability of § 801.20
C. Compliance Dates of Unique Device Identifier Regulatory Requirements
D. Formatting of Dates Provided on Medical Device Labels—§ 801.18
E. General Exceptions from the Requirement for the Label of a Device to Bear a Unique Device Identifier—Broad Comments Concerning Proposed § 801.30
F. General Exceptions from the Requirement for the Label of a Device To Bear a Unique Device Identifier—Exception for a Device, Other Than a Prescription Device, That Is Made Available for Purchase at a Retail Establishment, Including Such a Device Delivered Directly to a Hospital, Ambulatory Surgical Center, Nursing Home, Outpatient Treatment Facility, or Other Health Care Facility. Proposed § 801.30(a)(1)
G. General Exceptions from the Requirement for the Label of a Device To Bear a Unique Device Identifier—Exception for Existing Inventories of Finished Devices That Have Been Labeled Prior to the Applicable Compliance Date—Final § 801.30(a)(1)
H. General Exceptions from the Requirement for the Label of a Device To Bear a Unique Device Identifier—Exception for Class I Devices That FDA Has Exempted from Good Manufacturing Practices—§ 801.30(a)(2)
I. General Exceptions from the Requirement for the Label of a Device To Bear a Unique Device Identifier—Exception for Individual Single-Use Devices, All of a Single Version or Model, That Are Distributed Together in a Single Device Package—§ 801.30(a)(3)
J. General Exceptions from the Requirement for the Label of a Device to Bear a Unique Device Identifier—Exception for a Custom Device Within the Meaning of § 812.3(b)—§ 801.30(a)(5)
K. General Exceptions from the Requirement for the Label of a Device To Bear a Unique Device Identifier—Exception for a Device Intended for Export from the United States—§ 801.30(a)(8)
L. General Exceptions from the Requirement for the Label of a Device To Bear a Unique Device Identifier—Exception for a Device Packaged Within the Immediate Container of a Combination Product or Convenience Kit—Similar Requirements Proposed at § 801.25; Revised Requirements at § 801.30(a)(11)
M. Medical Procedure Kits and Trays

N. General Exceptions from the Requirement for the Label of a Device To Bear a Unique Device Identifier—Exception for a Device Held by the Strategic National Stockpile and Granted an Exception or Alternative Under § 801.128(f)(2)—§ 801.30(a)(9)
O. General Exceptions from the Requirement for the Label of a Device To Bear a Unique Device Identifier. The Unique Device Identifier of a Class I Device Is Not Required to Include a Production Identifier—§ 801.30(c)
P. Requests for Additional General Exceptions from the Requirement for the Label of a Device To Bear a Unique Device Identifier
Q. Request for Modification of Unique Device Identifier Labeling Requirements for Devices That Have Small Labels
R. Voluntary Labeling of a Device With a Unique Device Identifier—Proposed § 801.40; Revised Requirements at § 801.35
S. Form of a Unique Device Identifier—Technical Requirements—Proposed § 801.45(a); § 801.40(a) of the Final Rule
T. Form of a Unique Device Identifier—Unique Device Identifier to Include Device Identifier and Production Identifier—Proposed § 801.45(b); Revised Requirements at § 801.40(b) of the Final Rule
U. Form of a Unique Device Identifier—Proposed Symbol to Indicate the Presence of Automatic Identification and Capture Technology—Proposed § 801.45(c); Revised Requirements at § 801.40(c) of the Final Rule
V. Form of a Unique Device Identifier—Effect of Labeling a Class I Device With a Universal Product Code—New § 801.40(d) of the Final Rule
W. Changes to Codified Text in Response to Comments on Requirements Proposed in § 801.50—Devices That Must Be Directly Marked With a Unique Device Identifier
X. Devices That Must Be Directly Marked With a Unique Device Identifier—Proposed Requirement for an Implantable Device To Bear a Permanent Marking Providing the Unique Device Identifier on the Device Itself—Proposed § 801.50(a)(1)
Y. Revision of Direct Marking Requirements—Proposed § 801.50; § 801.45 of the Final Rule
Z. Devices That Must Be Directly Marked With a Unique Device Identifier—Proposed Requirement for Submission of a Notice to FDA Upon Determining That an Exception Applies—Proposed § 801.50(g)
AA. Requirements for Stand-Alone Software—Final § 801.50
BB. Request for an Exception from or Alternative to a Unique Device Identifier Requirement—Proposed § 801.35; § 801.55 of the Final Rule
CC. Discontinuation of Legacy Identification Numbers Assigned to Devices (National Drug Code and National Health-Related Item Code Numbers)—§ 801.57
DD. Requests for Clarification Concerning Whether Compliance With Any Unique Device Identifier Requirement Will Require Submission of a 510(k) Premarket Notification or Premarket Approval Supplement
EE. Human Cells, Tissues, or Cellular or Tissue-Based Products That are Regulated as Devices—§§ 801.3 and 801.20(a)(1)
FF. Technical Standards Applicable to Part 830—§ 830.10
GG. Requirements for a Unique Device Identifier—§ 830.20
HH. Use and Discontinuation of a Device Identifier—§ 830.40
II. Changes That Require Use of a New Device Identifier—§ 830.50
JJ. FDA Accreditation of an Issuing Agency—§ 830.100
KK. Information Required for Unique Device Identification—§ 830.310
LL. Information Required for Unique Device Identification—Information Concerning Each Version or Model of a Device—§ 830.310(b)
MM. Enforcement Authority
NN. Questions and Comments Suggesting the Need for Additional Guidance
OO. Requests for Additional Opportunity for Comment Prior to Issuing a Final Rule
III. Legal Authority for the Final Rule
IV. Analysis of Impacts
A. Summary of Impacts
B. Summary of Regulatory Flexibility Analysis
C. Summary of Benefits
V. Information Collection Requirements
VI. Environmental Impact
VII. Effective Dates
A. Effective Dates
B. Compliance Dates
VIII. Federalism
IX. References

I. Background

On July 10, 2012, FDA published a proposed rule to establish a unique device identification system, as required by section 519(f) of the FD&C Act (see 77 FR 40736). On July 9, 2012, FDASIA was signed into law; section 614 of FDASIA amended section 519(f) of the FD&C Act, requiring modification of the timeframe for implementation of the proposed rule's requirements as they apply to devices that are implantable, life-saving, or life-sustaining. On November 19, 2012, FDA published a document amending our July 10, 2012, proposed rule to meet the requirements of amended section 519(f) of the FD&C Act (see 77 FR 69393).

The preamble to the July 2012 proposal describes the objectives of the rule (see 77 FR 40736 at 40740 through 40743), and we refer readers to that preamble if they wish to obtain details on the events, recommendation, meetings, and literature that shaped the development of the proposed rule. The preamble to the November 2012 amended proposal describes changes that were required by the enactment of FDASIA, including revision of the compliance dates proposed for implantable, life-supporting, and life-sustaining devices.

We received approximately 270 submissions of comments from approximately 225 sources (some submitted more than one set of comments)—individuals (health care professionals, academics, consumers, and others), organizations (consumer groups, hospitals, health care associations, military and government sources, and others), and private industry (device manufacturers, industry associations, distributors, and others). These comments provided approximately 1,700 pages of feedback and commentary concerning the proposed rule. Almost all comments supported the objectives of the rule in whole or in part. For example, one comment stated it ''strongly supports'' the implementation of a UDI system, and that ''UDI is the missing link to protect patient safety.'' Another comment stated, ''We support FDA's objective to substantially reduce existing obstacles to the adequate identification of medical devices used in the United States. We agree that a medical device identification system has the potential to rapidly and definitively identify a medical device and the key attributes that could affect its safe and effective use.'' The great majority also suggested changes to the proposed rule, stating, for example, that they were ''providing comments on this proposed rule, and we wish to voice our support of the efforts to implement the regulatory framework for a unique device identification system.'' Some of the suggested changes were very minor and others were very broad and sweeping. Comments suggesting changes to the proposed rule and FDA's responses are discussed later in this document.

After reviewing the comments, FDA made several changes to the rule. The principal changes between the amended proposed rule of November 19, 2012, and this final rule are as follows:

TABLE 1.—PRINCIPAL CHANGES BETWEEN THE AMENDED PROPOSED RULE OF NOVEMBER 19, 2012, AND THIS FINAL RULE

Proposed Rule (As Amended)	Final Rule
The proposed rule used the term ''effective date'' in an incorrect manner when denoting the dates by which a labeler would have to comply with certain provisions. A consequence of setting an effective date for a particular requirement is that the requirement will not be published in the *Code of Federal Regulations* (CFR) until the effective date has passed. This would have made it very difficult for labelers to understand and comply with the final rule, for example because the CFR would not have provided the full text of the regulatory requirements of a final rule for several years. The proposed rule should have used the term ''compliance date'' to indicate when a labeler would not be required to comply with certain provisions.	The final rule uses ''compliance date'' to explain when a labeler is required to comply with a regulatory requirement. The final rule has only two effective dates: The final rule is effective 90 days after publication (December 23, 2013), except §§ 801.55, 830.10, 830.100, 830.110, 830.120, and 830.130 are effective 30 days after publication (October 24, 2013). To clarify changes from the proposed rule to the final rule, we use the term ''compliance date'' throughout this document wherever the proposed rule incorrectly used ''effective date.'' Section VII.B., ''Compliance Dates,'' explains in detail the compliance dates FDA has established for the final rule. A device does not have to comply with the final rule if it is in commercial distribution, see § 807.3(b) (21 CFR 807.3(b)), prior to the applicable compliance date.
The proposed rule did not explain whether it would be possible to extend the 1-year compliance date applicable to a class III device or a device licensed under the Public Health Service Act in circumstances where rapid implementation of the rule could lead to device shortages or other significant problems.	The final rule explains that FDA may grant a 1-year extension of the compliance date applicable to a class III device or a device licensed under the Public Health Service Act when in the best interest of the public health. See the discussion in section VII.B, ''Compliance Dates.''
The proposed rule did not explain how it would apply to inventories of devices manufactured and labeled prior to the compliance date of the final rule.	The final rule provides an exception for a finished device that is manufactured and labeled prior to the compliance date that applies to that device, but the exception expires 3 years after the compliance date that applies to the particular device. See § 801.30(a)(1).
Dates provided on device labels would have been presented as Month Day, Year, using a three-letter abbreviation of the month (e.g., SEP 30, 2013). Proposed § 801.18.	Dates provided on device labels are to be presented as Year-Month-Day, with the year expressed as four digits, the month expressed as two digits, and the day expressed as two digits (e.g., 2013–09–30). This format is consistent with international standards and the requirements of the European Union and other nations. See § 801.18.
The date formatting requirements of § 801.18 would have gone into effect for all devices 1 year after publication of a final rule.	The date formatting requirements of § 801.18 will have the same compliance dates as UDI labeling requirements. If a device is not subject to UDI labeling requirements, the date formatting requirements of § 801.18 will apply 5 years after the publication of this final rule. See the discussion in section VII.B, ''Compliance Dates.''
The proposed rule would have provided an exception from UDI labeling requirements for a device, other than a prescription device that is made available for purchase at a retail establishment, including such a device delivered directly to a hospital, ambulatory surgical center, nursing home, outpatient treatment facility, or other health care facility. Proposed § 801.30(a)(1).	The final rule provides that a class I device labeled with a Universal Product Code (UPC) may use the UPC as its UDI; see § 801.40(d).
The proposed rule would have required certain combination products, and certain device constituent parts of every combination product, to bear a UDI on their label. Proposed § 801.25(a) and (b).	The final rule excepts the device constituent part packaged within a combination product from the requirement that its label bear a UDI, if the combination product bears a UDI. § 801.30(a)(11).
The proposed rule would have required the label and device package of each device packaged in a convenience kit to bear its own UDI, distinct from that of the convenience kit, unless intended for a single use. Proposed § 801.25(d).	The final rule does *not* require devices contained within a convenience kit to bear a UDI but does require the label and each device package of every convenience kit to bear a UDI. § 801.30(a)(11).
The proposed rule would have provided an exception for a class I device that FDA has by regulation exempted from the good manufacturing practice requirements of part 820. Proposed § 801.30(a)(2).	The final rule provides an exception for a class I device that FDA has by regulation been exempted (but for the continuing requirement for recordkeeping under §§ 820.180 and 820.198) from the good manufacturing practice requirements of part 820 of this chapter. See § 801.30(a)(2).
The proposed rule would have provided an exception for individual *class I* single-use devices (SUDs), all of a single version or model, that are distributed together in a single device package, and which are not intended for individual sale. Proposed § 801.30(a)(3).	The final rule extends this exception to *all* individual SUDs, regardless of class, *except* that this exception is not available for any implantable device. The device package containing these individual devices is not excepted, and must bear a UDI. See § 801.30(a)(3).
The proposed rule would have provided an exception for a device constituent part of a combination product, *if* the device constituent part is physically, chemically, or otherwise combined with other constituents of the combination product in such a way that it is not possible for it to be used except as part of the use of the combination product. Proposed § 801.30(a)(11).	The final rule provides that a device packaged within the immediate container of a combination product is excepted from the requirements of § 801.20 if the combination product bear a UDI.

TABLE 1.—PRINCIPAL CHANGES BETWEEN THE AMENDED PROPOSED RULE OF NOVEMBER 19, 2012, AND THIS FINAL RULE—Continued

Proposed Rule (as amended)	Final Rule
The proposed rule would have required a combination product *for which the primary mode of action is that of a medical device* to bear a UDI on its label. Proposed § 801.25(a).	The final rule also makes clear that the device constituent of a combination product whose components are physically, chemically, or otherwise combined or mixed and produced as a single entity as described by § 3.2(e)(1) (21 CFR 3.2(e)(1)) is not subject to the requirements of § 801.20 if the combination product properly bears a National Drug Code (NDC) number. See § 801.30(b)(2). The final rule provides that a combination product that properly bears a National Drug Code (NDC) number is not required to bear a UDI. See § 801.30(b)(1). However, the final rule also makes clear that each device constituent of a combination product, other than one described by § 3.2(e)(1), that properly bears an NDC on its label must also bear a UDI on its label unless the combination product bears a UDI on its label. See § 801.30(b)(3).
The proposed rule would have provided an exception for a device that is packaged in a convenience kit, *provided that* the device is intended for a single use. Proposed § 801.30(a)(12).	The final rule broadens and simplifies this exception, and extends it to the label of *any* device that is packaged in a convenience kit as long as the label of the convenience kit bears a UDI. See § 801.30(a)(11).
The proposed rule would have required use of a symbol to indicate the presence of AIDC technology, and provided a generic symbol that could have been used in lieu of any other symbol. Proposed § 801.45(c).	The final rule renumbers proposed § 801.45 as § 801.40. The final rule does not require use of a symbol to indicate the presence of AIDC technology, no longer provides for use of a generic symbol, and instead requires only that a label ''disclose'' the presence of AIDC technology. See § 801.40(c).
The proposed rule would have required an implantable device required to bear a UDI on its label to also bear a permanent marking providing the UDI. See proposed § 801.50(a)(1).	This provision has been removed; an implantable device will *not* be required to be directly marked with a UDI.
The proposed rule would have required a device required to bear a UDI on its label to also bear a permanent marking providing the UDI if the device is intended for more than one use and must be sterilized before each use. See proposed § 801.50(a)(1).	The final rule renumbers proposed § 801.50 as § 801.45. The final rule changes this provision to apply to devices that are ''reprocessed'' before each use; this broadens the scope of the provision. See § 801.45(a)(1).
The proposed rule did not fully explain how UDI labeling requirements would apply to stand-alone software regulated as a medical device. Proposed § 801.50, concerning direct marking, was the only provision that specifically addressed stand-alone software.	The final rule includes a new section that provides special labeling requirements for stand-alone software regulated as a medical device, including: • An explanation of how stand-alone software can meet UDI labeling requirements when it is not distributed in package form (e.g., when it is downloaded from a labeler's Web site); • a requirement for all stand-alone software to include means of displaying its UDI; and • an explanation that stand-alone software that is distributed in both packaged form and in a form that is not packaged (e.g., when downloaded from a Web site) may be identified with the same device identifier. See § 801.50.
The proposed rule was not clear regarding the process for requesting an exception or alternative to some UDI labeling requirements, and provided one process for requests that concern the use of UDIs on a device label and device package, proposed § 801.35, and an entirely different process concerning direct marking of medical devices, proposed § 801.50.	The final rule provides a single process for all types of requests, and provides a more comprehensive process. See § 801.55. The final rule adds these provisions: • FDA may grant a 1-year extension of the compliance date applicable to class III devices and devices licensed under the Public Health Service Act; see § 801.55(b), discussed previously; • FDA may initiate and grant an exception or alternative if we determine that the exception or alternative is in the best interest of the public health; see § 801.55(e); • FDA may rescind an exception or alternative; see § 801.55(e); • any labeler may make use of an exception or alternative that FDA has granted (FDA plans to make all decisions available to the public on FDA's Web site); see § 801.55(d).
The proposed rule was unclear whether the discontinuation of legacy FDA identifiers for devices (National Health-Related Item Code (NHRIC) and NDC numbers) would apply to devices that are exempted from UDI labeling requirements. Proposed § 801.57.	The final rule explains that *every* NHRIC and NDC number assigned to *any* device (even a device that is not required to bear a UDI) will be rescinded *no later than* September 24, 2018. See § 801.57.
The proposed rule did not explain how the discontinuation of legacy FDA identifiers would affect FDA-issued labeler codes that are already in use in the private sector and whose use might be permitted under an FDA-accredited system for the issuance of UDIs.	The final rule will permit continued use of an FDA-issued labeler code under an FDA-accredited system for the issuance of UDIs, provided that such use is permitted by the issuing agency that administers that system, and provided the labeler submits a request for continued use of a labeler code; FDA must receive the request *no later than* September 24, 2014. See § 801.57(c).
The proposed rule more prescriptively defined the types of changes that resulted in a new version or model, and which therefore required a new device identifier to be used to identify the changed device. See proposed § 830.50, which was then titled ''Changes that result in a new version or model.''.	The final rule gives labelers more flexibility to determine when a change to a device will require use of a new UDI. § 830.50 is now entitled ''Changes that require use of a new device identifier.''

TABLE 1.—PRINCIPAL CHANGES BETWEEN THE AMENDED PROPOSED RULE OF NOVEMBER 19, 2012, AND THIS FINAL RULE—Continued

Proposed Rule (as amended)	Final Rule
The proposed rule did not require information concerning magnetic resonance imaging (MRI) compatibility of a device to be submitted to the GUDID. See proposed § 830.310(b).	The final rule requires information to be submitted to the GUDID concerning whether a patient may be safely exposed to MRI or similar technologies while using the device or while the device is implanted in the patient. See § 830.310(b)(8).
The preamble to the proposed rule stated that the GUDID would not collect the Global Medical Device Nomenclature (GMDN) code for a device under proposed § 830.310(b) unless GMDN codes were made freely available.	The GMDN Agency has agreed to provide free access to GMDN nomenclature within the context of the GUDID data submission process. A labeler who reports data to the GUDID will be able to enter a GMDN code if the labeler knows it, or may use a module integrated in the GUDID reporting system to search for and select an appropriate GMDN term. See § 830.310(b)(13).
The proposed rule did not explain the process for correcting misinformation submitted to the GUDID.	The final rule explains that FDA may inform the labeler that information submitted to the GUDID appears to be incorrect or potentially misleading, and request that the labeler correct the information or provide a satisfactory explanation of why it is correct. The labeler would have 10 days to correct the information or explain why it is correct. If FDA determines that information is incorrect or could be misleading, we may delete or replace the information. See § 830.350.

We describe and respond to the comments in section II of this document. We have grouped comments into several broad topics that reflect the primary concerns of similar comments, and have identified the section or sections of the final rule (or the proposed rule, when appropriate) that are most closely related to each topic. The order in which each topic or comment is discussed is purely for organizational purposes and does not signify a comment's value or importance.

II. Comments on the Proposed Rule and FDA's Responses

A. Definitions—21 CFR 801.3, 803.3, 806.2, 810.2, 814.3, 820.3, 821.3, 822.3, and 830.3

FDA received many comments (approximately 42) suggesting changes to, or clarification concerning, the definitions proposed for inclusion in the rule.

Convenience kit—A comment suggested we should restrict the scope of this definition by including additional language: ''A group of reusable devices bearing and identified by an ordering number, appearing only on shipping container(s) and/or invoices, does not constitute a convenience kit.''

FDA does not agree that this additional language would clarify the definition; rather, we believe this addition would be more likely to confuse labelers than help them understand how the rule applies to convenience kits. A convenience kit, or any other device subject to this rule, may be identified by a wide variety of numbers or other identifiers for a wide variety of purposes. The use of catalog numbers, inventory numbers, ordering numbers, or any other identification number is neither prohibited nor regulated by this rule, except that § 801.57 rescinds certain legacy FDA identification numbers and requires discontinuation of their use on a device label.

Comments suggested FDA should ''remove all references to convenience kits'' because kits (apart from their regulated device parts) are not themselves devices subject to UDI. Commenters also expressed concern that the requirement for a UDI on both components and kits is duplicative. The same comments went on to suggest that, if the final rule would apply to convenience kits, FDA should ''modify the definition . . . to clarify that the term refers to convenience kits that have been determined to be and are classified as a medical device.''

FDA does not agree that convenience kits should be excluded from the final rule. Convenience kits are in wide use and are medical devices in their own right, apart from their constituent devices; their exclusion would leave a significant gap in the coverage of the rule and would undermine the effectiveness of the UDI system because they are controlled in the supply chain by the kit rather than by constituent part. FDA removed proposed § 801.25 from the final rule but only because convenience kits are by definition devices and therefore are required to meet UDI requirements. However, we do include an exception for the label of devices contained within the immediate container of a convenience kit at § 810.30(a)(11).

The final rule adopts the definition of *convenience kit* provided by the proposed rule, without change. The final rule does, however, include important changes that we believe address the underlying concerns of these comments. Section 801.30(a)(11) now provides that the label of *devices packaged within* the immediate container of a convenience kit do not have to bear a UDI as long as the label of the convenience kit bears a UDI. This change will make clear that labelers do not have to change the way they label convenience kits, including in vitro diagnostic kits, except for including a UDI on the kit label.

Device package—We received several comments concerning this definition and the application of the rule to device packages other than the ''immediate container'' of the device. For example, one comment suggested the definition is ''too broad and requires clarification to ensure that is does not apply to a group of devices that are shipped together only as logistics or shipping units such as orthopedic trays.'' Another comment suggested that a UDI should be required on ''regulated packaging'' and noted that manufacturers commonly change quantities at higher levels of packaging for storage, logistics, and transportation purposes. Another comment did not specifically object to providing a UDI on varying device packages, but did not see a need for different UDIs on device packages that contain different quantities.

FDA disagrees that the UDI rule should not apply to device packages other than the immediate container, and that different device packages should not be identified by different UDIs. UDIs on all device packages are essential for rapid and efficient identification of devices that are the subject of a recall, a key objective of the UDI rule. The use of separate UDIs for higher level

packaging reflects prevailing industry practices (Refs. 3, 14, and 15). Similarly, different UDIs are useful for each different device package because a device recall might target a specific device package while excluding other device packages; in addition, the requirement for different UDIs on different device packages recognizes current industry practices, which generally use different identifiers for each level of packaging and for packages with different quantities of devices. Accordingly, we have not modified the definition of *device package* in response to comments. Because packages that contain a convenience kit, an in vitro diagnostic product, an HCT/P regulated as a device, or a combination product with a device constituent part all contain a particular version or model of a device, such packages also meet the definition of ''device package'' and are required to bear a UDI by § 801.20.

Six comments argued that a UDI should be required to appear only on the label of a device, and not on higher levels of packaging based on the premise that section 519(f) of the FD&C Act narrowly requires a UDI only on the device label.

FDA disagrees with this comment. As explained in the preamble to the amended proposed rule, the presence of a UDI on the higher-level packaging of a device will enable FDA to more efficiently and effectively respond to a reported device problem by using its regulatory tools, such as notification or mandatory recall under section 518 of the FD&C Act (21 U.S.C. 360h), tracking under section 519(e), ensuring the adequacy of a voluntary recall with the assistance of reports of corrections and removals as required by section 519(g), or seizing a device that is adulterated under section 501 (21 U.S.C. 351) and/or misbranded under section 502 (21 U.S.C. 352). Thus, the provisions of the final rule requiring a UDI on higher-level packaging are issued in aid of FDA's authority under all of these sections of the FD&C Act, as well as under the Agency's broad authority to issue enforcement regulations under section 701(a) (21 U.S.C. 371(a)) and its specific authority to implement UDI requirements to identify devices ''through distribution and use'' of the device under section 519(f). (See 77 FR 69393 at 69395.) Requiring a UDI on device packages enables the UDI to serve its purposes of assisting with tracking, recalls, and enforcement with respect to devices that have not yet been removed from their package, for example for devices located at distributors or in hospital inventory, while avoiding any need to open or tamper with the device packaging.

Finished device—We did not receive any comments concerning this definition. This term is used in the definition of *lot or batch,* and is included to clarify the meaning of that term. This term is also useful when determining the ''date of manufacture'' that should be used as a production identifier; see the discussion of *Unique device identifier (UDI)*—Production identifier, in this document.

HCT/P regulated as a device—We have added this definition, and made other changes that are discussed later in this document, to explain how the final rule applies to HCT/Ps that are regulated as devices.

Implantable device—Comments suggested FDA should remove the 30-day threshold that restricts the direct marking requirement to devices intended to remain implanted continuously for a period of 30 days or more.

Such a change would result in unwarranted inconsistency with longstanding regulatory practice. For example, the definitions of *implant* used in 21 CFR parts 812 (investigational device exemptions) and 860 (medical device classification procedures) use the same 30-day criterion. The final rule adopts the definition provided by the proposed rule, without change. We note further that because FDA has removed the requirement of direct marking for implants, the definition of *implantable device* under the final rule is no longer relevant to the scope of the direct marking requirement.

Labeler—A comment suggested that the definition's use of language referring to ''the intent that the device will be introduced into interstate commerce'' is not appropriate. Another comment suggested that the final rule should make clear that a health care system assembling ''convenience kits'' for distribution within its own system should not be a ''labeler'' and that such distribution is not interstate commerce. A somewhat similar comment suggested that ''Hospitals, health care systems, and other entities that repackage devices, assemble kits, or reprocess single-use devices for internal use only . . . should not be subject to UDI-related requirements. . . .''

We believe that all of these concerns can be resolved by modifying the definition to refer to ''commercial distribution,'' a term that has been in use for many years and which is used extensively in FDA's medical device regulations. The term ''commercial distribution'' is defined by § 807.3(b) and we intend for that definition to apply here. ''Commercial distribution'' means any distribution of a device intended for human use which is held or offered for sale, but does not include internal transfer of a device between establishments within the same parent, subsidiary, or affiliate company.

Comments suggested FDA should modify the definition to include a ''relabeler'' or should define ''relabeler.''

FDA agrees a relabeler is a labeler under this rule. We expected that our use of ''modified'' in paragraph (2) of the definition would have been understood to include ''replaced.'' FDA does not believe that introducing the term ''relabeler'' would provide greater clarity. Instead FDA believes we can better clarify our intended meaning by amending paragraph (2) of the definition to begin, ''Any person who causes the label of a device to be *replaced or* modified. . . .'' The final rule adopts this change.

Another comment suggested that the final rule ''must more specifically describe when a repackager, device reprocessor, or other non-manufacturer would be . . . considered a 'labeler' for UDI purposes.''

FDA disagrees. This rule is not changing the meanings of repackager or reprocessor; those terms will have the same meanings as they now have within other regulatory contexts, such as registration and listing and premarket review, and thus would be considered labelers.

Lot or batch—A comment requested clarification regarding how this term should be applied to HCT/Ps, ''where the donor identification is of singular importance.'' Other comments mirrored this concern, stating that devices ''derived from human tissue cannot be labeled by lot or batch, unless the lot or batch identification is associated with a single donor, as [21 CFR] 1271.220(b) disallows the pooling of human cells or tissue from two or more donors during manufacturing.''

FDA agrees that these are valid concerns, but we believe that the phrases ''manufactured under essentially the same conditions'' and ''intended to have uniform characteristics and quality within specified limits'' in the definition of *lot or batch* are flexible enough to include the distinct identification code required by § 1271.290(c). FDA has, however, addressed the concerns of these comments in another way. To clearly accommodate HCT/Ps regulated as devices, the final rule includes additional language in the definition of *production identifier* (part of the definition of *unique device identifier*);

this change is discussed in this document.

Shipping container—We did not receive any comments suggesting changes to this definition, but we have included minor edits in the definition provided in the final rule. Deletion of the words ''package'' and ''pallet,'' is meant to help to simplify the definition and avoid any confusion involving the defined term *device package.* These edits are not intended to change the meaning of the term.

Specification—A comment suggested that it would be better to define this term to mean a requirement with which a device must conform as documented in the Device Master Record consistent with § 820.30, Design controls.

FDA disagrees. The definition we proposed is built on language drawn from the Quality Systems Regulation, is consistent with existing practice, and is clear. The final rule adopts the definition provided by the proposed rule, without change.

Unique device identifier (UDI)—A comment suggested, ''If HCT/Ps regulated as medical devices are subject to the rule, we believe the donation identification number must also be considered a production identifier.'' The concern underlying this comment is similar to that of a comment cited previously, concerning *lot or batch.*

FDA agrees that this definition needs to be modified to address existing practices concerning the labeling and tracking of HCT/Ps regulated as devices. Accordingly, the final rule adds language to the definition of *production identifier,* which is part of the definition of *unique device identifier (UDI).* At the end of paragraph (2), we have added the following additional production identifier: ''(v) For an HCT/P regulated as a device, the distinct identification code required by § 1271.290(c).''

Unique device identifier (UDI)—Production identifier. Comments requested clarification concerning one type of production identifier, the ''date a specific device was manufactured.'' For example, one comment stated that ''it would be beneficial for FDA to clarify . . . which date FDA is referring to (i.e., date of assembly, product date, release date, etc.).''

FDA believes it is the responsibility of each labeler to determine the most appropriate date to use for each specific device, and to be consistent in application of that policy.

That said, FDA has provided a definition of *finished device* that we believe provides a sound benchmark when determining the date of manufacture.

A comment suggested that stand-alone software should be able to use its version number as its production identifier.

We agree that for stand-alone software, the version number falls within the meaning of *lot or batch,* which is one type of production identifier. Therefore, when the labeler of stand-alone software includes a version number on the label, it must be conveyed by the production identifier. Further, because it is important for the version number to be included in stand-alone software that is not distributed in packaged form, we are adding a requirement to § 801.50(a) that the version number must be conveyed as part of the production identifier for such software.

Universal product code (UPC)—We did not receive any comments concerning this definition, but we have included a minor edit in the definition used in the final rule. The revised definition refers only to identification of ''an item sold at retail in the United States.'' Reference to use of a UPC to identify the company associated with an item has been removed because this rule focuses on the adequate identification of devices, not companies.

Version or model—A comment stated: ''The definition says that version or model means a package. This is not easy to follow because version or model normally refers to a device.''

FDA agrees. The final rule adopts a definition that we believe is clearer and better reflects the common understanding of this term. The final rule removes the reference to a ''device package.'' The final rule defines *version or model* to mean ''all devices that have specifications, performance, size, and composition, within limits set by the labeler.''

Undefined terms—A few comments suggested that additional terms should be defined to clarify the scope and intent of the rule. For example, a few comments stated that FDA has not clearly defined the term ''device.''

Although the proposed rule did not provide a definition of ''device,'' none is required. ''Device'' is defined by statute, (see section 201(h) of the FD&C Act (21 U.S.C. 321(h)), has been in common use for decades, and has been a core concept inherent in every medical device regulation ever issued. Its meaning should be clear to every person affected by this rule. This rule does not require any further definition or clarification of this term, and the final rule does not include a definition of ''device.''

Another comment suggested FDA should define ''device accessory.''

FDA disagrees. Section 201(h) of the FD&C Act makes clear that the term ''device'' includes an accessory. No other medical device regulation has defined ''accessory'' (the term is defined within the context of radiological health; see 21 CFR 1020.30(b)), and the final rule does not include any requirement that specifically applies only to an accessory to a device and does not distinguish between accessories and other devices in any way.

A comment pointed out that FDA has not defined ''direct mark.''

We believe the meaning of this phrase is made clear by the language of § 801.45 in the final rule, and we specifically direct readers to § 801.45(c), *Form of a UDI when provided as a direct marking.*

A comment that was primarily concerned with medical procedure kits (discussed later in this document) suggested FDA should provide definitions for ''set,'' ''kit,'' ''tray,'' and ''pack.''

The final rule provides definitions for *convenience kit* and *device package.* We do not believe the additional definitions are needed, and we believe section II. M., ''Medical Procedure Kits and Trays'' provides adequate information for a reader to understand how these items are regulated under the final rule.

Because FDA does not agree that any of the suggested additional terms need to be defined for an understanding of this rule, the final rule includes only one additional term that was not included in our July 10, 2012, proposed rule: ''HCT/P regulated as a device'', which is discussed previously.

B. Applicability of § 801.20

There were a number of comments regarding the applicability of the UDI requirements of § 801.20 to combination products with a device constituent part, convenience kits, in vitro diagnostic products, and HCT/Ps regulated as devices.

These products are devices, contain devices, or are regulated as devices, and are therefore subject to the requirements of this rule.

C. Compliance Dates of Unique Device Identifier Regulatory Requirements

FDA received many comments (approximately 100) suggesting changes to the compliance dates we proposed in our July 10, 2012, proposed rule and November 19, 2012, amended proposed rule (mistakenly referred to as ''effective dates'' in the proposed rule and amended proposed rule). Roughly one-third of the comments that expressed a specific view recommended a more

rapid implementation of the rule's requirements in order for the rule's benefits and goals to be more rapidly achieved; for example, these comments suggested the proposed phased implementation timeframe is ''far too long,'' that the rule's requirements should go into effect ''quickly—not years from now,'' and that ''UDI needs to be implemented as quickly as possible.'' Roughly two-thirds recommended FDA allow more time in order to better manage the tasks required to meet the rule's requirements and to spread the costs of implementation over a longer period of time; for example, these comments suggested that FDA should ''reconsider the schedule for implementation . . . as some of the defined time periods are not possible for companies that may have thousands of products containing various levels of packaging,'' and that ''the proposed effective dates [meaning compliance dates] do not allow adequate time to prepare to meet the rule's requirements.''

Several comments suggested that the compliance date of § 801.18 should be tied to the date the device must bear a UDI on its label; for example, a comment suggested that the compliance date of § 801.18 should be ''aligned with the date the label of the device must bear a UDI.''

FDA agrees with these comments, and we have established a set of compliance dates that are the same for § 801.18 and the rule's UDI labeling requirements. This avoids the need to change a device label more than once to implement the rule's requirements. We discuss the comments on § 801.18 and provide a full response in section II.D, ''Formatting of Dates Provided on Medical Device Labels—§ 801.18.''

Section VII.B, ''Compliance Dates,'' explains the compliance dates FDA has established for this and other provisions of the final rule. This section makes clear that the requirements of the rule apply to devices put in commercial distribution after the applicable compliance date, and not to devices put in commercial distribution prior to such date. As discussed in section II.A in the context of the definition of ''labeler,'' commercial distribution is defined at § 807.3(b) and the same meaning applies here.

Several comments suggested several changes to the timeframes proposed in our July 10, 2012, proposed rule and our November 19, 2012, amended proposed rule. The specific changes suggested varied considerably. For example, comments suggested several different ways to implement the requirements for UDI labeling and GUDID reporting. Comments suggested that all devices should be subject to these requirements within 2 years, or 3 years. Other comments suggested that class II devices should be subject to these requirements after 3 years, or 5 years, or 7 years; that class III devices should be subject to these requirements after 1 year, or 2 years, or 3 years, or 5 years; that class I devices should be subject to direct marking requirements after 5 years instead of 7 years. A comment suggested that the implementation timeframe be tied to each issuing agency's ''establishment and communication of processes to support the . . . Rule.'' We also received comments that simply recommended we implement the rule's requirements more quickly, or to allow more time for implementation, or to provide ''adequate'' time, but without suggesting specific timeframes. One comment suggested that if the compliance dates were not delayed ''for several years,'' the rule should be reproposed. Other comments agreed that the phased in implementation proposed by FDA would minimize the burdens. A comment stated that the proposed timeline for implementation of direct marking requirements is ''reasonable and necessary,'' and another comment agreed that it is reasonable to require submission of GUDID data on the date a device must bear a UDI on its label.

Some comments were particularly concerned about requirements that would apply 1 year after publication of a final rule—The date formatting requirements of § 801.18 and the requirements for UDI labeling and GUDID reporting for class III devices. The comments concerning § 801.18 are discussed previously. Several comments concerning the compliance dates for class III devices requested more time; for example, a comment stated that the compliance date for class III devices ''should be extended to 2 years from the date the rule is finalized'' because the proposed 1-year timeframe ''may not allow enough time for manufacturers to comply with the UDI requirements if their product portfolio contains a large number of those products.'' Other comments stated that revision of labeling ''will be extensive and time consuming,'' that labelers will need more time ''for the preparation and submission of device related data,'' and that the ''timeframe . . . for class III device manufacturers to submit . . . data to the GUDID is too short. We believe the deadline . . . should be extended an extra year.''

In summary, while many comments wanted some change to the implementation schedule proposed by FDA, there were many different views concerning the precise timeframe those changes should take effect. Some comments recommended that labelers should be allowed to comply with the date formatting requirements of § 801.18 and basic UDI labeling requirements (labeling requirements other than direct marking) on the same date. On this latter comment, FDA agrees, as discussed in more detail in this document.

However, FDA does not agree with any comment that seeks broad changes to the proposed timeframes for implementation of UDI labeling or GUDID reporting requirements. Overall, we believe the schedule laid out in the amended proposed rule not only meets the statutory requirements of FDASIA, but also strikes a realistic balance between desires to quickly see benefits from the UDI system and the challenges that must be met to design, deploy, and test the systems that will be required to meet the new regulatory requirements and for effective and efficient administration of UDI processes. FDA also continues to believe that the implementation timeframe should be tied to the risk of the device. Consequently, FDA is establishing compliance dates as proposed in our amended proposed rule, except, as discussed previously, we have changed the compliance date of § 801.18 to coincide with the date a device must bear a UDI on its label.

There were 24 comments specifically requesting FDA to extend the 1-year compliance date for Class III devices, mostly to 2 years and mostly because the 1-year timeframe is inadequate to locate, rework, and validate new labeling for disparate inventories of existing devices. Separately three comments warned of possible withdrawal or export of non-complying inventory devices and resulting domestic product shortages if UDI requirements were imposed on inventory devices. We have addressed the latter concern by excepting inventory devices for an additional 3 years, during which time these devices can remain on the market without having to comply with UDI requirements. See revised § 801.30(a)(1) of the final rule; section II.G (Exception for Existing Inventories of Finished Devices That Have Been Labeled Prior to the Applicable Compliance Date) of this document. Although FDA is not aware of anything to substantiate, specifically, that the 1-year implementation timeframe for class III devices could lead to shortages, FDA has included a new process in the final rule through which FDA may, on our own initiative or upon the written

request of the labeler of a class III device or a device licensed under the Public Health Service Act, grant a 1-year extension of the compliance dates for UDI labeling and GUDID reporting when FDA determines that the extension would be in the best interest of the public health. For example, if the sole labeler of a particular class III device provides information showing that it will not be able to comply with UDI labeling requirements within the 1-year timeframe, and showing that a medical device shortage will result if it is unable to continue to ship the device until such time as it can comply with UDI labeling requirements, FDA would consider an extension of the 1-year compliance date. The process for requesting this extension is explained in § 801.55(b) of the final rule. FDA believes the availability of this limited exception will allow appropriate flexibility in implementing the final rule, while making it clear that FDA expects most class III devices will remain subject to the 1-year compliance date established by FDA in this document.

Several comments requested clarification concerning whether or when the rule would apply to devices manufactured and labeled prior to the applicable compliance date, or suggested that the final rule should provide an exception for such devices; for example, one comment suggested the rule should provide ''an exception for all medical devices which have been manufactured prior to the issue of the final rule.''

FDA agrees that it is important to take into account these concerns, and we have done so by providing a limited exception in § 801.30(a)(1) of the final rule. We discuss comments on this topic and provide a full response in section II. G., ''General Exceptions From the Requirement for the Label of a Device To Bear a Unique Device Identifier—Exception for Existing Inventories of Finished Devices That Have Been Labeled Prior to the Applicable Compliance Date—Final § 801.30(a)(1).''

Comments suggested that the proposed rule was not clear when the conforming amendments to parts other than 801 and 830 take effect. Under the amended proposed rule, and this final rule, any provision that does not have a more specific effective date would go into effect 90 days after publication of a final rule. One comment also suggested that there is not an immediate need to implement the amendments to part 820, Quality System Regulation, and part 822, Postmarket Surveillance, as ''there will be few UDIs to track,'' and that changes to computer systems will need validation.

FDA does not agree that there is a need to provide a different compliance date for the conforming amendments to parts other than 801 and 830. The proposed rule pointed out that some provisions that go into effect 90 days after publication of the final rule ''will have no practical effect'' until other provisions must be complied with. That is the case here. For example, the amendments to parts 820 and 822 will have no practical effect until 1 year after publication of the final rule, when class III devices become subject to UDI labeling requirements. We believe that this provides adequate time to prepare to meet the requirements added to these parts.

We received comments on the implementation timeframe for direct marking of implantable devices under proposed § 801.50(a)(1).

Because we decided to withdraw this proposed requirement, there is no need to discuss comments on the proposed implementation timeframe. We discuss other comments on proposed § 801.50(a)(1) and provide a full response in section II.W., ''Changes to Codified Text in Response to Comments on Requirements Proposed in § 801.50—Devices That Must Be Directly Marked With a Unique Device Identifier.''

We received a few comments objecting to the compliance date FDA proposed in our November 19, 2012, amended proposed rule as applied to implantable, life-supporting, and life-sustaining devices. These comments disagreed with FDA's interpretation of section 614 of FDASIA to require compliance with the rule within 2 years of publication of a final rule for three categories of devices—devices that are implantable, devices that are life-sustaining, and devices that are life-saving (life-supporting). These comments interpret section 614 of FDASIA to require the final rule to apply to a *single* category of device that is at once implantable, life-sustaining, and life-saving.

FDA disagrees with these comments. Although the statute uses the conjunctive ''and'' and not the disjunctive ''or,'' the phrasing is ambiguous, and it is reasonable to interpret the requirement to apply conjunctively to all three categories of devices, as detailed in the preamble to the amended proposed rule. There is no legislative history indicating a Congressional intent inconsistent with this interpretation.

Further, regardless of whether these changes to section 519(f) of the FD&C Act made by section 614 of FDASIA apply to one or three categories of devices, FDA's implementation of this rule complies with the statute since the single category preferred by the comments is included within each of FDA's three categories, and it is within FDA's authority to change the compliance date for UDI requirements to apply to different categories of devices. This includes accelerating the compliance date for devices that are implantable, devices that are life-sustaining, and devices that are life-saving or life-supporting, all of which are of particular importance from a public health standpoint and thus have been singled out in several places in the FD&C Act for heightened oversight, as explained in the preamble to the proposed rule. Thus the final rule adopts the compliance dates proposed in our November 19, 2012 amended proposed rule for implantable, life-supporting, and life-sustaining devices (see table 6).

D. Formatting of Dates Provided on Medical Device Labels—§ 801.18

FDA proposed that all dates provided on a medical device label that are ''intended to be brought to the attention of the user of the device. . .shall be presented in the following format: Month Day, Year (e.g., JAN 1, 2012).'' We also proposed that labelers would have to comply with the requirements of proposed § 801.18 1 year after publication of a final rule. FDA received many comments (approximately 110) on the proposed date format and the proposed compliance date of the date format. Nearly all of these comments opposed the proposed date format, considered the time provided to implement this labeling change to be inadequate, or both. Although many comments recognized the benefits of standardized dates, most viewed FDA's proposal as too restrictive, too burdensome, inconsistent with the needs of international commerce, and inconsistent with existing industry practices. Comments noted that FDA's proposed date format would require different labels for a device when marketed in the United States and the same device when marketed in the European Union or other international markets. For example, comments noted that the date format required by the proposed rule ''is not consistent with global requirements'' and ''perpetuates an opportunity for confusion'' by not implementing ''standardized international dating systems.''

FDA agrees with these comments and has revised § 801.18 as discussed in this document.

One comment suggested that FDA should permit a manufacturer to use any date format it chooses, ''as long as the

manufacturer makes clear'' what format it is using, and a similar comment suggested FDA should ''should allow for multiple data formats'' but should give ''priority . . . to international standards.'' Several comments suggested that FDA should permit truncated dates, using only the year and month (YYYY–MM). This is one of the formats permitted under some international standards, such as International Organization for Standardization (ISO) 8601:2004, that were cited by comments.

FDA disagrees with all of these suggestions. Any approach that allows for multiple formats would require patients and health care professionals to spend time and effort to determine how a given labeler's dates should be interpreted. A date format that provides only the year and month could still leave users uncertain as to whether an expiration date refers to the first day of the month, or the last day of the month. This is little different from the current situation, where variation in the presentation of date confuses users and can lead to incorrect decisions, such as determining whether a device has reached an expiration date.

FDA agrees with a comment that suggested a ''single specified date format will reduce confusion'' concerning interpretation of dates on medical device labels, and with the many comments that suggested that FDA should abandon its proposed date format and should instead adopt a date format specified in an international standard, such as ISO 8601:2004, and consistent with international usage, including that of the European Union. If all dates were formatted in this way, ''one label can be used globally for all product identification.'' These comments were consistent with a comment that suggested, ''The manufacturing date, expiration date, and any other necessary date should be written as YYYY–MM–DD to harmonize with the ISO 8601 requirements.'' FDA agrees, and the final rule provides that all dates on medical device labels intended to be brought to the attention of the user must be presented as year-month-day (for example, 2013–09–30). FDA does not, however, agree with comments that suggested we should incorporate ISO 8601:2004 or any other international standard, because the standards we examined all permit multiple formats, for example, by permitting dates that use only the year and month (YYYY–MM), and truncated dates are not permitted by the final rule. In the event that a medical device expires in a particular month, but not a particular date, the labeler may choose the last day of the month for the date field.

Proposed § 801.18(f) provided that for a device that is an electronic product to which a standard is applicable under subchapter J of this chapter, Radiological Health, the date of manufacture shall be presented as required by § 1010.3(a)(2)(ii). One comment suggested the date format proposed in § 801.18 should also apply to those products.

FDA does not agree. Section 1010.3(a)(2)(ii) provides a consistent date format, specifies that the date is the date of manufacture, has been the standard practice for many years, and has proven to be adequate for electronic products regulated under subchapter J. At this time, no need for an alternative approach for electronic products has been shown. Section 801.18(b) of the final rule provides an exception for an electronic product to which a standard is applicable under subchapter J, and such devices will continue to be required to present the date of manufacture as provided by § 1010.3(a)(2)(ii).

A few comments suggested that the date format should not apply to data communicated by AIDC technologies (e.g., bar codes and radiofrequency identification (RFID)).

FDA agrees that we should not attempt to regulate how data is communicated by AIDC technologies, or the order in which specific information is communicated by AIDC.

In response to comments that suggested the proposed 1 year compliance date for § 801.18 ''does not provide adequate time'' to make label changes for all devices covered by the rule, FDA is establishing compliance dates for § 801.18 that will phase in the date format requirement at the same time as the UDI labeling goes into effect for a particular device. This will reduce the costs and burdens of the final rule by allowing both the date format and UDI labeling changes to be made in a single revision.

A comment, though generally very supportive of the UDI proposed rule, argued that the FD&C Act, and section 510(e) (21 U.S.C. 360(e)) in particular, does not provide authority for the uniform date format provision, noting that the legal authority section of the proposed rule did not specifically explain FDA's authority for this provision. The focus of this comment was disagreement with the date format chosen by FDA and the compliance date for this provision, both of which have been modified as detailed in this preamble.

FDA disagrees that the FD&C Act does not provide legal authority for § 801.18. Under section 502(a) of the FD&C Act, a device is misbranded if its labeling, which includes its label, is false or misleading. As discussed in this preamble and the preamble to the proposed rule, the variety of inconsistent date formats currently in use can be confusing and misleading to device users. Many comments agreed with FDA that requiring a uniform date format for all device labels that is consistent with international standards should, in time, eliminate any such confusion or misunderstanding, ensuring that the label is not misleading to users. To the extent dates are required to appear on the label, for example under a premarket approval (PMA) order, section 502(c) of the FD&C Act requires that they be in such terms as to render them likely to be understood by the ordinary individual under customary conditions of purchase and use. Requiring a uniform format will, in time, ensure that dates on labels intended to be brought to the attention of users will be likely to be correctly understood by them. In addition, section 701(a) of the FD&C Act provides authority for FDA to issue § 801.18.

E. General Exceptions from the Requirement for the Label of a Device To Bear a Unique Device Identifier—Broad Comments Concerning Proposed § 801.30

We received comments that expressed broad support for the exceptions provided by proposed § 801.30, and comments that expressed broad opposition to the exceptions provided by proposed § 801.30. Comments that expressed broad opposition included comments that recommended all exceptions from UDI requirements should be on a case-by-case basis, and comments that recommended that all of the exceptions provided by § 801.30 should be eliminated. Comments that expressed broad support included comments to the effect that the proposed exceptions are ''appropriate'' or ''not inappropriate,'' and a comment that FDA should not implement any UDI requirement that creates a burden that is not offset by corresponding value.

FDA disagrees with the comments that suggest we should not provide any categorical exceptions. We agree that the UDI rule should take into account both its benefits and its costs. Similarly, we do not agree that it would be best to rely entirely on case-by-case exceptions. A case-by-case approach alone would be far more burdensome than providing carefully crafted categorical exceptions,

and would be more likely to result in regulatory inconsistencies and confusion that would hamper the objectives of the UDI system. However, as described in this document, we made certain changes to the exceptions in response to comments.

F. General Exceptions From the Requirement for the Label of a Device To Bear a Unique Device Identifier—Exception for a Device, Other Than a Prescription Device, That Is Made Available for Purchase at a Retail Establishment, Including Such a Device Delivered Directly to a Hospital, Ambulatory Surgical Center, Nursing Home, Outpatient Treatment Facility, or Other Health Care Facility. Proposed § 801.30(a)(1)

FDA received many comments (approximately 35) on this proposed exception. Roughly half of these comments requested or suggested a clarification of some aspect of the exception. For example, comments requested clarification concerning the meaning of ''retail establishment,'' and whether the exception would apply to devices sold through any retail channel, including online, and ''not simply those sold in brick-and-mortar-type stores.'' Other comments suggested FDA needed to clarify whether the exception would be available for a device that is available for purchase at a retail establishment when that device is sold directly to a hospital or physician. Some comments supported the exception as proposed. For example, a comment stated, ''applying a UDI on each individual device [sold at retail and labeled with a UPC] would not improve identification of devices . . . and would amount to an unnecessary burden and cost.'' Another comment stated, ''Providing an exception for non-prescription devices sold at retail is both wise and appropriate.'' Other comments opposed the exception as proposed. For example, a comment stated that this exception would be ''ill-advised'' and recommended that these devices ''should be subject to UDI requirements, but . . . their UPC codes should be deemed to be the UDI. . . . In particular, we believe it is essential that labelers of the affected retail products be required to submit UPC data to the GUDID.'' Another comment recommended that the proposed exception should not be available for devices that ''may have a significant impact on patient health.''

FDA believes the comments criticizing the proposed exception are persuasive in that the availability of a device for purchase in retail establishments has little relationship to the potential for risk of the device. Indeed, devices available at retail include moderate and even high risk devices such as automatic external defibrillators. Further, devices sold through retail channels may have unusually broad distribution resulting in correspondingly broad impact when the device is defective and needs to be recalled. Accordingly, we are limiting the proposed exception to provide, in § 801.40(d), that a class I device that bears a UPC on its label and device packages is deemed to meet all UDI labeling requirements and that the UPC will serve as the UDI required by § 801.20. This excepts a class I device with a UPC on its label and packages from UDI labeling requirements regardless of to whom or through what channels it is sold. Such a device will be subject to GUDID reporting requirements. We note that the lowest risk devices available for sale at retail establishments will in any case be excepted from UDI requirements by virtue of § 801.30(a)(2).

G. General Exceptions From the Requirement for the Label of a Device To Bear a Unique Device Identifier—Exception for Existing Inventories of Finished Devices That Have Been Labeled Prior to the Applicable Compliance Date—Final § 801.30(a)(1)

We received several comments (approximately 22) requesting clarification concerning how the rule will apply to devices that were manufactured prior to the applicable compliance date of the rule, but which have not yet been sold to a hospital or other purchaser. For example, a comment recommended, ''the implementation effective date [meaning compliance date] should be tied to the date of manufacture rather than date of distribution.'' Another comment also recommended that the date of manufacture should be used ''to determine compliance with the UDI requirements'' and stated this was the approach FDA used in implementing FDA's final rule, ''Bar Code Label Requirements for Human Drug Products and Biological Products'' (69 FR 9120; February 26, 2004). These comments were concerned that applying UDI labeling requirements to finished devices that have already been labeled and ready for delivery to a purchaser would require costly relabeling, and would add to the burdens required to implement the rule's requirements.

FDA agrees with these comments and recognizes the precedent set by the earlier bar code label rule. Section 801.30(a)(1) of the final rule provides an exception for a ''finished device manufactured and labeled prior to the compliance date that applies'' to the device, but this exception ''expires with regard to a particular device 3 years after the compliance date that applies'' to the device. We believe that 3 years after the compliance date, which provides (depending on the compliance date that applies to a particular device) for a total lead time of 4 to 8 years from now, is sufficient time to exhaust existing inventories of finished devices that have been labeled prior to the applicable compliance date. This exception would be available for devices held in inventory by a labeler; it would also be available for devices consigned to a hospital or other potential purchaser and held in inventory by the potential purchaser, but which have not yet been sold to that potential purchaser. If a device has not yet been labeled, this exception will not be available. Similarly, if any actions remain to be completed before the device is considered a finished device, this exception will not be available.

FDA recognizes that there may be rare and unusual circumstances where the limited period provided by this exception might be problematic. For example, it may not be possible to relabel a particular cryopreserved HCT/P regulated as a device held in inventory longer than 3 years to add a UDI without damaging the HCT/P. In such rare and unusual circumstances, FDA may exercise enforcement discretion to permit continued distribution of a device, particularly if a device shortage would be likely if we rigorously enforced the UDI labeling requirements upon expiration of the exception period. Any manufacturers who are currently aware of the need for a longer period of time than is afforded by this rule to deplete existing inventory are encouraged to contact FDA.

H. General Exceptions From the Requirement for the Label of a Device To Bear a Unique Device Identifier—Exception for Class I Devices That FDA Has Exempted From Good Manufacturing Practices—§ 801.30(a)(2)

FDA received several comments (approximately 18) on this proposed exception. One comment recommended that FDA limit the number of devices that are exempt from UDI requirements. Nearly all of the remaining comments supported the proposed exception and most also recommended expansion of the proposed exception to all class I devices.

FDA does not agree that this exception should be extended to all class I devices. Class I devices, which constitute the majority of medical

devices, play important functions in the health care system and in the lives of patients and consumers. Class I devices are frequently subject to adverse events and recalls, and without UDI the resolution of these issues would be impeded. If all class I devices were excepted, the objectives of the UDI system would be seriously compromised. We have, however, amended this exception to clarify that it is available even when a good manufacturing practice (GMP) exemption includes a requirement for continued recordkeeping under §§ 820.180 and 820.198.

I. General Exceptions From the Requirement for the Label of a Device To Bear a Unique Device Identifier—Exception for Individual Single-Use Devices, All of a Single Version or Model, That Are Distributed Together in a Single Device Package—§ 801.30(a)(3)

FDA received several comments (approximately 22) on this proposed exception. FD&C Act section 201(*ll*)(1) (21 U.S.C. 321(*ll*)(1)) defines ''single-use device'' to mean any device that is intended for one use, or on a single patient during a single procedure. One comment recommended that all categorical exceptions, whether for single-use devices, class I devices, or otherwise, should be avoided, and that exceptions should be considered on a case-by-case basis. Seven comments supported the proposed exception (one of these comments conditioned its support on an assumption that MRI compatibility would not be a concern). Thirteen comments recommended expanding the exception—four comments suggested the exception be extended to all class I devices (one of these suggested that if there is a category of class I devices that warrants inclusion in the UDI system, then only that category should be subject to UDI requirements and all other class I devices should be exempted); seven comments suggested the exception be extended to class II single-use devices; and two comments suggested the exception should be extended to all single-use devices.

FDA agrees it is appropriate to extend the exception to all classes of devices, except implants, and the final rule does so.

One comment requested clarification concerning how this exception would apply to reprocessed single-use devices. With respect to a single-use device, the term ''reprocessed'' means that the device has been subjected to additional processing or manufacturing after use on a patient for the purpose of rendering the device fit for an additional use on a patient. See FD&C Act section 201(*ll*)(2) (21 U.S.C. 321(*ll*)(2).

FDA sees no reason why a reprocessed SUD that meets the other criteria for this exception should be excluded from the scope of the exception.

J. General Exceptions From the Requirement for the Label of a Device To Bear a Unique Device Identifier—Exception for a Custom Device Within the Meaning of § 812.3(b)–§ 801.30(a)(5)

FDA received approximately four comments on this proposed exception. One comment opposed this exception. Three comments recommended this exception be extended to specific devices: Cranial remolding orthoses, prescription eyewear, and contact lenses.

These are types of devices and do not categorically qualify as custom devices within the meaning of § 812.3(b). We note that single-use contact lenses, however, would be subject to the exemption from the need to be individually labeled with a UDI under § 801.30(a)(3). Concerning the other devices, FDA does not agree that they should generally be excepted from UDI. In particular, FDA intends the custom use exception of the final rule to be available only for devices within the meaning of § 812.3(b), and we have adopted proposed § 801.30(a)(5) without any change.

K. General Exceptions From the Requirement for the Label of a Device To Bear a Unique Device Identifier—Exception for a Device Intended for Export from the United States—§ 801.30(a)(8)

FDA received two comments on this proposed exception. One comment opposed the exception, viewing it as inconsistent with a ''truly harmonized global device identification system.'' The other comment recommended that class I single-use devices intended for export should bear a UDI.

FDA does not agree with either comment. There is no assurance that a UDI that meets U.S. regulatory requirements would meet the requirements of the nation to which a device is exported, and it is possible that U.S. UDI requirements conflict with the requirements of the nation to which a device is exported. For these reasons, FDA has not accepted the recommendation of either comment, and we have adopted proposed § 801.30(a)(8) without any change.

L. General Exceptions From the Requirement for the Label of a Device To Bear a Unique Device Identifier—Exception for a Device Packaged Within the Immediate Container of a Combination Product or Convenience Kit—Similar Requirements Proposed at § 801.25; Revised Requirements at § 801.30(a)(11)

Proposed § 801.25 was titled, ''Unique device identifiers for combination products, device constituent parts of a combination product, and devices packaged in a convenience kit.'' Section 801.25 would have required the label of every combination product with a device constituent and the label of each device constituent part of a combination product to bear a UDI (with one narrow exception), and would have required the label of every convenience kit and the label of every device included in a convenience kit to bear a UDI. FDA received many comments (approximately 70) concerning proposed § 801.25. These comments addressed a wide variety of concerns. For example, one comment stated that the law does not require UDIs for combination products, and that FDA therefore has ''full latitude'' in adapting UDI to combination products. Some comments suggested a single UDI would be sufficient for a combination product or a convenience kit, while other comments stated it was prudent to require a UDI for both a combination product and its device constituent parts. A comment suggested that FDA should require a UDI on any combination product with a device constituent part, regardless of its primary mode of action, while other comments stated it is ''. . . NOT . . . appropriate to require each device constituent part of [a] combination product to bear its own UDI when the primary mode of action is not that of a device'' or suggested combination products should be labeled with a UDI or an NDC according to the primary mode of action of the product. Some comments wanted to introduce additional nuances, such as requiring a UDI for the device constituents of combination products only if ''they are already labeled and packaged individually'' and another comment expressed the view that any device constituent that ''may be used more than once (whether or not intended for a single use)'' should be labeled with a UDI. One comment recommended that the final rule should ''remove all references to convenience kits. . . . [T]hey are very difficult to define,'' while another comment recommended, ''FDA should require all devices in a convenience kit to be labeled.''

These and other comments convinced FDA that we need to simplify our requirements regarding combination products and convenience kits. The final rule provides a much simpler approach by removing proposed § 801.25 and providing two new exceptions—

- Section 801.30(a)(11) provides that if a device is packaged within the immediate container of a combination product or convenience kit, the label of that device will not be required to bear a UDI, provided that the label of the combination product or convenience kit bears a UDI.
- Section 801.30(b) addresses situations where a combination product properly bears an NDC number. The NDC database is a system that, while different from the GUDID, permits tracking and identification. Crafting this exception for products with an NDC number avoids potentially redundant requirements. Section 801.30(b)(1) makes clear that a combination product that properly bears an NDC number on its label is not required to bear a UDI. As provided in § 801.30(b)(2), the device constituent of a combination product described by § 3.2(e)(1) (such a product is often informally referred to as a ''single-entity'' combination product) that properly bears an NDC number on its label is not subject to UDI labeling requirements. Section 801.30(b)(3) makes clear that the device constituent of a combination product described by § 3.2(e)(2) (such a product is often informally referred to as ''co-packaged'' combination product) that properly bears an NDC number on its label must also bear a UDI on its label, unless it is exempt under § 801.30(a)(11).

We believe this simplified approach is far more likely to be understood and correctly applied and minimizes the changes labelers need to make to current practices to be in compliance with the rule.

M. Medical Procedure Kits and Trays

We received comments that were concerned with how UDI requirements would apply to medical procedure kits and trays. A medical procedure kit typically consists of one or more medical devices, packaged together with one or more combination products, drugs, or biologics, to facilitate a single surgical or medical procedure. The medical procedure kit is typically packaged upon or within a medical procedure tray and is packaged so as to maintain sterility or to facilitate sterilization. The devices within a medical procedure kit are not necessarily individually packaged, so as to be ready to use immediately upon opening the medical procedure kit. A medical procedure tray is a tray or other container upon or within which the components of a medical procedure kit are arranged to facilitate a surgical or medical procedure. Orthopedic procedure kits are a well-known example of a medical procedure kit. These comments were primarily concerned that the rule would require changes in the way medical procedure kits are assembled and packaged, which could interfere with sterilization processes and the use of the medical procedure kit.

A medical procedure kit is either a convenience kit, if it contains only medical devices, or a combination product, if it contains both a device and a drug or biologic. The final rule excepts a device packaged within the immediate container of any convenience kit or within the immediate container of a combination product from bearing a UDI on its label provided, as long as the kit or combination product is labeled with a UDI in accordance with § 801.30(a)(11). Where a combination product properly bears an NDC and does not bear a UDI on its label, the device constituent part must bear a UDI on its label. We believe this approach addresses the concerns raised regarding medical procedure kits.

N. General Exceptions From the Requirement for the Label of a Device To Bear a Unique Device Identifier—Exception for a Device Held by the Strategic National Stockpile and Granted an Exception or Alternative Under § 801.128(f)(2)–§ 801.30(a)(9)

FDA received two comments that opposed this exception, which would provide the Strategic National Stockpile (SNS) the same latitude with regard to UDI labeling as is provided for other labeling requirements. The commenters believe that proper SNS management requires expiration dates on devices and the removal of recalled devices.

FDA declines to remove this exception, which runs parallel with other exceptions or alternatives granted under § 801.128(f). The UDI final rule does not require the use of expiration dates or the removal of recalled devices. By the same token, the § 801.30(a)(9) exception does not restrict the use of expiration dates for SNS devices or applicability of recalls. We believe it is highly unlikely that such an exception or alternative will ever need to be granted, but it is essential to provide flexibility to respond to any unforeseen set of circumstances involving operation of the Strategic National Stockpile.

O. General Exceptions From the Requirement for the Label of a Device To Bear a Unique Device Identifier. The Unique Device Identifier of a Class I Device Is Not Required to Include a Production Identifier—§ 801.30(c)

FDA received approximately seven comments on this exception. Three comments supported the exception or recommended expansion of the exception. For example, a comment suggested FDA should extend the exception to all devices sold at retail (this could include some class II and some class III devices). Four comments recommended that production identifiers be required for all class I devices, or at least for certain class I devices. For example, two comments recommended that the UDIs of electrically powered devices should include production identifiers, and another comment recommended that production identifiers be required for surgical instruments.

FDA does not agree that this exception should be modified. We agree that production identifiers are important, but we have provided this limited exception to avoid imposing significant burdens on lower risk devices, where the public health need for precise identification is less urgent than for moderate- and high-risk devices. The final rule adopts the proposed exception without any change.

P. Requests for Additional General Exceptions From the Requirement for the Label of a Device To Bear a Unique Device Identifier

Several comments suggested that the final rule should provide additional exceptions to § 801.30, excepting additional types of devices from UDI labeling and GUDID reporting requirements or providing for alternative placement of UDIs on some device labels; the following examples illustrate the scope of these suggestions:

- A comment recommended ''HCT/Ps . . . be exempted from the UDI Final Rule.''
- A comment suggested that analyte-specific reagents that can, by regulation, be sold only to certain entities and which ''are not directly used in any health care setting'' should be exempted from UDI requirements.
- A comment suggested that an orthopedic procedure tray should not be treated as a medical device, but as a type of shipping container, as the contents vary with every shipment ''due to patient needs.''
- A comment suggested that an exception should be provided for sterile convenience kits sold with a ''standard

configuration of devices'' and that UDIs should not be required for ''non-sterile trays, such as orthopedic trays.''

• A comment suggested there should be an exception for durable medical equipment.

• A comment requested an exception for medical and dental x-ray film, because the film business is converting to digital media and will be commercially obsolete in 5 years.

• A comment suggested that FDA should provide an exception for certain devices that involve the generation, measurement, and use of medical gases, calibration gases, and gases that might be regulated as medical devices because, the comment states, they are low risk, have limited space for labeling, would require multiple UDIs on assemblies, already have traceable numbers, and it would be costly to make them compliant.

• A comment requested an exception for class II medical device gases and container closure systems, because, the comment states, they are subject to Department of Transportation, ISO, and Compressed Gas Association standards, are already traceable, have relatively small batch size, and high cost to implement UDI relative to the improvement afforded by UDI.

• A comment requested an exception for ''flat pack'' cases in which rigid gas-permeable contact lenses are initially shipped by the manufacturer, ''because they are commonly discarded in favor of larger storage or disinfecting cases'' and consequently a ''requirement that the flat pack bear a UDI would be pointless.''

• A comment requested an exception from UDI labeling for diagnostic/trial contact lenses that are otherwise fully labeled, but which are not intended for commercial sale.

• A comment requested an exception for a nurse call system (characterized by the comment as a type of powered environmental control system under § 890.3725).

• A comment suggested that the implementation timeframe for class III contact lenses is ''unrealistic'' and that class II and class III contact lenses should be subject to the same implementation timeframe.

FDA is not providing a narrowly targeted exception for any of these devices in the final rule for two reasons. First, the final rule includes significant changes to § 801.30, which provides certain categorical exceptions from the requirement for the label of a device to bear a UDI, and to other provisions that may be relevant to the concerns expressed in the comments that request additional exceptions. Second, the information provided by these requests and comments varied considerably in scope and detail, and none provided sufficient information to justify an FDA decision to except a category of devices from any UDI requirement. FDA believes it is more appropriate for all requests involving an exception or alternative to UDI requirements that do not fit into the categorical exceptions of the final rule to be evaluated through the revised process provided by § 801.55 of the final rule. Section 801.55 of the final rule builds on proposed § 801.35, but has been revised and has expanded the circumstances under which an exception from or an alternative to a UDI requirement may be requested or granted. If after reviewing the changes made in the final rule a person who requested an exception or alternative in a comment on the proposed rule still believes that some type of exception or alternative is required, we invite that person to submit a request under § 801.55, and to ensure that the request provides the information required by § 801.55(a).

A comment suggested FDA should add an exception to make clear that UDI requirements do not apply to a device constituent being shipped for further processing as part of a combination product.

FDA disagrees. Such shipments are already generally governed by § 801.150 (Medical devices; processing labeling, or repacking), and should be evaluated under that framework.

Q. Request for Modification of Unique Device Identifier Labeling Requirements for Devices That Have Small Labels

Some comments suggested the rule should provide an exception from UDI labeling requirements ''where the label is too small'' to accommodate both human readable and AIDC information, ''provided that the UDI appears on the next higher level of packaging.'' A similar comment suggested that if a device with a small label is included in a convenience kit, a UDI should be required only on the label of the convenience kit.

FDA believes that some of the concerns underlying these requests have been resolved by the revisions made to § 801.30, which provides general exceptions from the requirement for the label of a device to bear a UDI. For example, under the final rule, except for implantable devices, we have extended to all classes the exception for individual single-use devices, all of a single version or model, that are distributed together in a single device package, and which are not intended for individual commercial distribution (see § 801.30(a)(3)), and a UDI is not required on the label of the device constituents of combination products and the contents of convenience kits as long as the label of the combination product or convenience kit bears a UDI (see § 801.30(a)(11)).

FDA does not agree that any additional exception should be provided in the final rule based only on the size of the device label. First, the comments we received did not provide sufficient information to allow FDA to establish objective criteria to guide labelers in deciding when a device label or package would be ''small enough'' to qualify for any exception we might provide. Second, none of the comments we received provided sufficient information to evaluate the reach of an exception based on size. For these reasons, we believe it is preferable that requests for an exception or alternative to UDI requirements based on label size be evaluated through the process provided by § 801.55 of the final rule; this provision is explained in the section II.BB ''Request for an Exception from or Alternative to a Unique Device Identifier Requirement—Proposed § 801–35; § 801.55 of the Final Rule.'' Accordingly, we are not making any special provision concerning the labeling of small devices, and we expect the labels of devices of all sizes to bear a UDI as required by the final rule.

R. Voluntary Labeling of a Device With a Unique Device Identifier—Proposed § 801.40; Revised Requirements at § 801.35

FDA received two comments on this provision.

One comment stated voluntary UDI labeling will cause confusion, as most exempt devices will already bear a UPC.

FDA does not agree with this comment. We do not believe that any confusion will result from such labeling, as the formats of a UPC and a UDI will differ. The final rule permits, but does not require, a device to bear both a UDI and a UPC.

The other comment stated that if there are no categorical UDI exceptions, there would be no reason to allow voluntary UDI labeling.

Because FDA has determined that the final rule will provide a number of categorical exceptions, as explained previously, we cannot agree with this comment. The final rule does, however, make a change to this provision. In paragraph (b), we have deleted language that would have limited the use of UPCs to instances where a device ''is sold at retail.'' We do not believe that restriction is necessary to the objectives of the final rule, and its removal makes

clear that a class I device that bears a UPC on its label will be deemed to meet of the requirements of § 801.20(a).

S. Form of a Unique Device Identifier—Technical Requirements—Proposed § 801.45(a); § 801.40(a) of the Final Rule

FDA received many comments (approximately 25) on these requirements. Several of these comments simply voiced agreement with the proposal, or agreed that the requirement for an easily readable plain-text form of the UDI is clear.

Several comments suggested the rule should be more prescriptive. Many of these comments suggested FDA should designate a single issuing agency to operate the UDI system; that we should require the UDI system to conform to standards in addition to those that are incorporated by reference in part 830; that we should require use of one particular form of AIDC, such as particular versions of 2D or 3D barcodes or particular technologies to read and record those barcodes; that we should require the system to be designed so as to be compatible with systems used by certain other governmental agencies. Other comments took an opposing view, and urged FDA to remain technologically neutral, and not to require use of a particular form of AIDC; to allow the heath care community to adapt to new technologies and process improvements; to recognize that labelers need the greatest amount of flexibility to handle changes in technology as they arise; and to allow flexibility in the use of AIDC technology to encourage innovation.

We believe that choosing a single issuing agency would limit the health care community's ability to develop and use appropriate device identification systems. Labelers currently use more than one system, each of which creates a globally unique identifier, and these systems can be used simultaneously to support different device types.

FDA does not agree that the UDI rule should be highly prescriptive with regards to AIDC technologies or standards. Requiring adherence to a particular AIDC technical standard would be detrimental to innovation concerning AIDC technologies, and would, we believe, do long-term harm by slowing the adoption of new technologies. There is nothing in section 519(f) of the FD&C Act that suggests FDA must, or should, impose a highly prescriptive UDI system. FDA agrees with comments that recommend that FDA not require the use of specific forms of AIDC or specific AIDC technologies.

A comment stated that permitting labelers to use a barcode or RFID as its AIDC would force purchasers to incur increased costs in order to read these differing forms of AIDC.

Though this rule does not impose any requirement on the purchaser or users of a device, we recognize the potential need for end users to acquire different technologies to read multiple forms of AIDC technologies. This potential concern, however, must be balanced against the concerns discussed in this document about prescribing a single AIDC technology, which FDA believes could also incur costs for certain purchasers as well as for labelers. As elsewhere in this rule, we have chosen the approach that retains flexibility for those subject to the regulation rather than prescribing a new requirement in the absence of a justification or uniform support.

The final rule makes no changes to the language of proposed § 801.45(a), now at § 801.40(a) of the final rule.

T. Form of a Unique Device Identifier—Unique Device Identifier To Include Device Identifier and Production Identifier—Proposed § 801.45(b); Revised Requirements at § 801.40(b) of the Final Rule

FDA received a few comments (approximately four) on these requirements.

Three comments suggested that if HCT/Ps regulated as devices are subject to the rule, the distinct identification code required in § 1271.290(c) should be added to the list of production identifiers that are used as part of an HCT/P's UDI.

FDA agrees with this view, and we have added ''the distinct identification code required by § 1271.290(c) to the list of production identifiers included in the definition of *unique device identifier (UDI)*. Labelers are required to report to the GUDID only the type of production identifiers that appear on the label of the device, and not individual production identifiers. For example, if a serial number is provided on a device label, the labeler would have to report that fact to the GUDID, but would not have to report each individual serial number to FDA. Production identifiers such as distinct identification code required by § 1271.290(c) to appear on device labels will not have to be submitted to FDA and will not be included in the GUDID.

One comment raised a concern about how production identifiers would apply to laboratory-developed tests (LDTs). Another comment claimed that LDTs are services, do not fall within the definition of ''device'' at section 201(h) of the FD&C Act, and that FDA therefore lacks statutory authority to impose UDI requirements on LDTs.

As this rule does not make changes to what qualifies as a ''device'' under section 201(h) of the FD&C Act, this comment is beyond the scope of this final rule.

U. Form of a Unique Device Identifier—Proposed Symbol To Indicate the Presence of Automatic Identification and Capture Technology—Proposed § 801.45(c); Revised Requirements at § 801.40(c) of the Final Rule

Proposed § 801.45(c) would have required a device label or device package to bear a symbol indicating the presence of AIDC technology whenever the AIDC ''is not evident upon visual examination of the label or device package.'' The proposed language identified the types of symbols that could be used. Among the types of symbols permitted was an FDA-proposed generic symbol.

We received many comments (approximately 40) on this proposal. None of these comments expressed support for the FDA-proposed generic symbol. Many suggested that only specific internationally recognized symbols should be permitted, and some suggested each issuing agency should specify the symbols that would be used. Some comments went further, and objected to the provision in its entirety; these comments were primarily concerned that an AIDC symbol would crowd label space and lead to confusion, particularly if the provision permitted different labelers to choose different symbols.

In response to these comments, FDA has simplified this provision, now at § 801.40(c), so that it requires that the label or device package disclose the presence of AIDC technology without specifying how. We deleted the authorized use of an FDA-proposed generic symbol. We believe this approach addresses the concerns of device users that the FDA symbol will crowd label space and be confusing or conflict with other expectations of the issuing agency, while providing labelers greater flexibility and reduced burdens.

V. Form of a Unique Device Identifier—Effect of Labeling a Class I Device With a Universal Product Code—New § 801.40(d) of the Final Rule

FDA has added this provision to explain that a class I device that bears a UPC on its label and device packages is deemed to meet all requirements of subpart B of this part; these devices will not have to bear a UDI on their label or device packages and will not be subject

to direct marking requirements. The UPC will serve as the UDI required by § 801.20. The labeler of such a device is still required to submit data concerning the device to the GUDID, unless the UPC device also qualifies for the exemption under § 801.30(a)(2) as a Class I GMP-exempt device. Such devices are wholly exempt from UDI requirements, including the requirement to submit data to the GUDID.

W. Changes to Codified Text in Response to Comments on Requirements Proposed in § 801.50—Devices That Must Be Directly Marked With a Unique Device Identifier

Requirements proposed in § 801.50, concerning devices that must be directly marked with a UDI, have been reorganized, modified, or withdrawn, as follows:

- §§ 801.50(a)(1) and (g)—Withdrawn.
- §§ 801.50(a)(2), and (b) through (f)—Now at § 801.45 of the final rule, which concerns devices that must be directly marked with a UDI.
- § 801.50(a)(3)—Now at § 801.50 of the final rule, which provides special requirements for stand-alone software.

Because of these changes, comments submitted concerning proposed § 801.50 are discussed under the following four topics.

X. Devices That Must Be Directly Marked With a Unique Device Identifier—Proposed Requirement for an Implantable Device To Bear a Permanent Marking Providing the Unique Device Identifier on the Device Itself—Proposed § 801.50(a)(1)

We received many comments (approximately 47) on this proposed requirement, which would have required an implantable device to bear a permanent marking providing its UDI on the device itself.

Nine comments expressed support for the proposal; eight of these comments expressed general support for the requirement; one other comment recommended a more rigorous requirement, suggesting all devices ''that will be implanted for 24 hours or more'' should be subject to direct marking (the definition of *implantable device* means a device intended to remain implanted for at least 30 days). The remaining comments opposed this requirement, identified obstacles that might undermine the proposal, requested an exception, or suggested an alternative that would have significantly limited the scope of the provision. For example, one comment stated, ''direct marking of implantable medical devices is a waste of both industry and FDA resources'' and should not be part of the UDI rule. Other comments stated, ''Direct labeling of implantable HCT/P devices . . . could impact the safety of the device''; that small implants cannot be directly marked without interfering with functionality; that direct marking of an implant would be useful only if the device was explanted; that the proposal is ''substantially redundant in effect'' with FDA's Medical Device Tracking Requirements, 21 CFR part 821; and that a patient's electronic health records will identify any implant. One comment summarized these objections by stating, FDA should ''eliminate the direct marking requirement for implantable devices,'' because there are no ''discernible benefits to direct marking implantable devices above and beyond those expected from the entire UDI system, while the costs would be substantial.''

FDA finds these comments opposing direct marking for implants to be persuasive, and we are withdrawing the proposal for direct marking of implantable devices. We believe that the UDI label and package requirements will provide for adequate identification of an implantable device up to the point where it is implanted. We also acknowledge the common practice of recording information about implanted devices both in the patient's health record, and on a card provided to the patient, and we expect health care providers will incorporate UDIs into both of these types of records. Further, we expect the use of EHRs and PHRs will facilitate the documentation of implantation. Direct marking would generally serve no purpose as long as the device remains implanted, as there would be no way to read the direct marking except in those instances where RFID technology could be built into the device. We believe that the move to electronic health records, as well as any records maintained under part 821 (device tracking), will provide adequate alternative sources of information concerning any implanted device, and any device that is explanted.

A comment that presented policy reasons for removing the direct marking requirement for implantable devices from the rule (which has been removed from the final rule as discussed elsewhere in this preamble) also argued that the FD&C Act does not provide FDA authority to require direct marking of devices.

FDA disagrees with this comment. As explained in the preamble to the amended proposed rule, the direct marking of devices will enable FDA to more efficiently and effectively respond to a reported device problem by using its regulatory tools, such as notification or mandatory recall under section 518 of the FD&C Act, tracking under section 519(e), ensuring the adequacy of a voluntary recall with the assistance of reports of corrections and removals as required by section 519(g), or seizing a device that is adulterated under section 501 and/or misbranded under section 502. Thus, the provisions of the final rule requiring direct marking certain reusable devices are issued in aid of FDA's authority under all of these sections of the FD&C Act, as well as under the Agency's broad authority to issue enforcement regulations under section 701(a) and its specific authority to implement UDI requirements to identify devices ''through distribution and use'' of the device under section 519(f) (77 FR 69393 at 69395). The only devices subject to direct marking in the final rule are devices intended for more than one use and intended to be reprocessed before each use. Though stand-alone software has been removed from the direct marking provision of the final rule, the requirement that packaged stand-alone software must bear a UDI on its label and device packages as well as on a start-up screen or through a menu command has been retained at § 801.50(b). As discussed elsewhere in this preamble, both of these categories of devices are intended to be used long after they typically become separated from their label, making it particularly important for the efficient enforcement of the provisions outlined previously that these devices are directly marked with a UDI.

Y. Revision of Direct Marking Requirements—Proposed § 801.50; § 801.45 of the Final Rule

The proposed rule would have required a device that is intended to be used more than once, and intended to be sterilized before each use, to bear a permanent marking providing its UDI on the device itself. (See proposed § 801.50(a)(2).) This provision and the provisions in proposed § 801.50(b) through (f) have been moved to § 801.45 of the final rule, with certain modifications. All comments that pertain to the requirements now included in § 801.45 and to direct marking requirements in general are discussed here.

We broadened the scope of proposed § 801.50(a)(2) to apply to devices intended to be used more than once and intended to undergo any form of reprocessing before each use; the proposed rule was limited to devices intended to be reused and sterilized before each use. We made this change because we see no reason for this

provision to be limited to sterilization; the same objectives served by the proposed provision are applicable and will be served with respect to all reprocessed devices. These devices are intended to be used for months or years, sometimes many years. Because such a device is intended to be reprocessed and reused, it will inevitably be separated from its original label and device package. Direct marking is the only way to ensure the adequate identification of such a device.

A comment recommended that direct markings need to be ''as permanent as the normal life expectancy'' of the device, and need to be ''capable of withstanding the normal usage and cleaning procedures'' specified for the device.

FDA agrees that this is a reasonable approach, but we do not believe it is appropriate to specify any particular approach in the rule, because it would be difficult to define ''normal'' usage or ''normal'' cleaning procedures for all devices, and technological advancements may change what constitutes normal usage and appropriate cleaning procedures.

A comment stated that direct marking is ''appropriate'' for single-use sterilized devices, as well as for all devices intended for more than one use.

FDA disagrees that reprocessed single-use devices should be directly marked because, by definition, the device is originally intended only for a single-use. Direct marking is necessary to be able to identify and locate devices subject to reprocessing in case of problems with the reprocessing.

A comment stated, ''to the extent practical, direct marking of reusable devices should occur'' but also noted, that there ''may be some products where size would prohibit direct marking with a UDI.'' Another comment suggested that direct marking may interfere with sterilization of small devices.

FDA has not been presented with any data that shows a correlation between the size of a device marked with a UDI or similar mark and ineffective sterilization or reprocessing. Accordingly, FDA is taking no action in response to this comment. If a labeler can show that any direct marking of a device would interfere with sterilization or disinfection of the device, then the exception provided by § 801.45(e)(1), ''Any type of direct marking would interfere with the safety or effectiveness of the device,'' would apply.

A comment suggested that direct marking be required for all devices tracked under part 821, without exception.

FDA disagrees. A device tracked under part 821 is subject to controls that are specifically designed to take into account the particular characteristics and uses of that device, and the tracking requirements that apply to that device will ensure adequate identification of the device throughout its distribution and use.

A comment suggested that a reprocessor of a single-use device should not be permitted to display any form of the original UDI.

FDA disagrees. Section 830.60 requires that a relabeled device have a new UDI; therefore it would not be permissible to display the original UDI on the label or device package of the reprocessed device. FDA does not believe it is appropriate to require physical modification of a device in order to remove or obscure a UDI directly marked on the device by the original manufacturer, as any such action could compromise the physical characteristics of the device and might leave imperfections that would make it more difficult to effectively sterilize or disinfect the device.

A comment suggested that the rule require direct marking with ''only one of the four production identifiers.''

FDA disagrees. The full UDI is necessary for precise identification of the device. For example, if a recall applies to only one lot or batch, it would not help if the direct marking omitted that information and instead provided only an expiration date that applies to several lots—it would not be possible to distinguish only devices subject to the recall from other devices that are not subject to the recall. Accordingly, a device required to be directly marked under § 801.45 must provide the full UDI, including all production identifiers that appear on the device label.

Z. Devices That Must Be Directly Marked With a Unique Device Identifier—Proposed Requirement for Submission of a Notice to FDA Upon Determining That an Exception Applies—Proposed § 801.50(g)

FDA received several comments (approximately 13) concerning this proposed requirement. These comments showed that the proposed requirement was unclear and unlikely to be useful. For example, a comment observed that FDA had not provided a way to inform the public concerning exceptions to direct marking documented under § 801.50(g). Some comments suggested FDA should acknowledge, and should approve or reject, each notice of the use of an exception, and that such notices should be called a ''request'' for exception, since an FDA response would be required. Most comments appeared to be in agreement with a comment that stated the requirement for submission of a notice to FDA would be ''burdensome and impractical.''

FDA agrees that this notice is not necessary. We do not require a notice to FDA in other contexts when a decision is made that no action is required; for example, FDA does not require a notice when a manufacturer decides that a change made to a device does not require submission of a 510(k) premarket notification. Accordingly, we have withdrawn proposed § 801.50(g), and a labeler will not have to provide a notice to FDA when it decides an exception provided by § 801.45(e) of the final rule applies. All such decisions must, however, be documented in the design history file; see § 801.45(f) of the final rule.

AA. Special Requirements for Stand-Alone Software—Final § 801.50

The proposed rule included stand-alone software among the types of devices that would have been subject to proposed § 801.50, requiring direct marking of certain devices; FDA moved the requirements for direct marking to § 801.45. Stand-alone software is not subject to direct marking requirements in the final rule, but is subject to requirements in new § 801.50 of the final rule, which provides special labeling requirements for stand-alone software.

A comment asked how the requirement for AIDC would apply to cloud software (software as a service), and the same question can be extended to any software that is not distributed in packaged form, for example, when downloaded from a Web site.

Under § 801.50(a) of the final rule, stand-alone software that is not distributed in packaged form (e.g., when downloaded from a Web site) is deemed to meet all UDI labeling requirements if the software provides its UDI in a manner specified by § 801.50(b), which requires a plain-text statement of the UDI to be displayed whenever the software is started, or a plain-text statement to be displayed through a menu command (e.g., an ''About . . .'' command). When these conditions are met, the use of AIDC is not required for stand-alone software that is not distributed in packaged form. When distributed in packaged form, § 801.50(a) will not apply, and the label and device package of stand-alone software must also include a UDI in plain-text and through AIDC; see § 801.40(a) of the final rule.

A related comment suggested FDA should clarify how direct marking, including production identifiers, applies to stand-alone software.

As with AIDC, this will depend on whether or not the stand-alone software is distributed in packaged form. If the stand-alone software is not distributed in packaged form (e.g., when downloaded from a Web site), it will be deemed to meet all UDI labeling requirements if the software provides its UDI in a manner specified by § 801.50(b). If distributed in packaged form, if the label provides a lot or batch number, a serial number, a manufacturing date, or an expiration date, the UDI must include a production identifier segment that conveys such information; see § 801.40(b) of the final rule.

Some commenters were concerned that because software updates occur frequently, labelers would be faced with significant burdens of having to provide new UDIs, and to change direct markings to reflect the new UDI, with each update.

FDA believes that this concern is resolved by § 830.50 of the final rule. Under § 830.50, if a labeler makes a change to a device, including a change to stand-alone software, a new UDI would be required only if the change results in a new version or model. Section 830.50 is discussed in more detail later in this document.

Some comments suggested that software that does not have a user interface should be exempt from direct marking, and a similar comment suggested that FDA should provide guidance concerning when software is stand-alone software, and when it is a component of a device.

FDA believes these comments concern software that is a component of a device, rather than stand-alone software. The final rule does not provide any special requirements for a device that contains software as a component of the device, but does provide special labeling requirements for stand-alone software (see § 801.50). FDA has long defined standalone medical software as medical software that is itself a medical device and is not a component, part, or accessory of a medical device.

A comment stated, ''We disagree with FDA regarding the proposed approach for UDI marking of stand-alone software. . . . FDA regulated software already requires software version information to be provided, which alone is sufficient of uniquely identifying software . . . [S]tand-alone software could be exempted . . . without imposing undue risk on public safety.'' This comment went on to recommend that ''if FDA insists upon including stand-alone software under the UDI rule,'' FDA should provide requirements that ''recognize the unique characteristics'' of software.

FDA does not agree that stand-alone software should be excepted from UDI labeling requirements. There are no FDA regulations that require similar identification of stand-alone software and we know of no ''special characteristics'' that would justify excepting stand-alone software, and for the reasons discussed in section II.BB, ''Requests for an Exception from or Alternative to a Unique Device Identifier Requirement—Proposed § 801.35; § 801.55 of the Final Rule,'' FDA does agree that the final rule should provide exceptions that ''recognize the unique characteristics'' of software.

We have revised § 801.50 to focus on ''Special labeling requirements for stand-alone software.'' Section 801.50 of the final rule provides:

- An explanation of how stand-alone software can meet UDI labeling requirements when it is not distributed in packaged form (e.g., when it is downloaded from a labeler's Web site); such software need comply only with § 801.50(b) and is excepted from all other UDI labeling requirements;
- A requirement for all stand-alone software to include a means of displaying its UDI; stand-alone software that is distributed in packaged form must display a UDI on its label, device package, and on screen either upon startup or through a menu command;
- An explanation that stand-alone software that is distributed in both packaged form and in a form that is not packaged (e.g., when downloaded from a Web site) may be identified with the same device identifier.

FDA believes that § 801.50 of the final rule provides appropriate and reasonable requirements concerning the labeling of stand-alone software, while taking into account the unique characteristics of such devices.

BB. Request for an Exception From or Alternative to a Unique Device Identifier Requirement—Proposed § 801.35; § 801.55 of the Final Rule

FDA received many comments (approximately 29) concerning this section. When proposed, this section was titled, ''Request for an exception from or alternative to the requirement for a device to bear a unique device identifier.''

Most of the comments on this section were concerned with various aspects of the process outlined in the proposed rule, and sought more clarity concerning the process, including timeframes, feedback, decisions, and appeals. A typical comment stated, ''The procedure should include: Upon receipt and approval of an exemption request, FDA should notify the requester of the result, grant an exemption for the entire PROCODE . . . where appropriate, and post all exemption requests and results on an FDA managed Web site for public review. Additionally, the burden of estimating the number of labelers and the number of devices that would be affected by the exemption/alternative should be deleted.'' Several comments suggested FDA provide categorical exceptions to avoid the need to request an exception or alternative.

FDA agrees that some categorical exceptions are useful, and the final rule provides several; see § 801.30 of the final rule and the discussion of that section earlier in this document.

A few comments suggested FDA should acknowledge the receipt of each request, and other comments suggested FDA decisions should be made public.

FDA agrees. We intend to make each FDA decision available to the public, along with the request or requests that prompted the decision.

One comment suggested a request should be ''deemed'' accepted if FDA does not provide a formal response within a specified timeframe.

FDA disagrees. There may be many valid reasons why FDA might not be able to respond to a particular request within the standard timeframe. The final rule does not include such a provision.

Two comments asked that a trade association be permitted to file a request for an exception or alternative.

FDA believes it is preferable for each request to be initiated by a labeler, but we have no objection if a trade association submits its views at the request of that labeler. The final rule has not been modified to permit a trade association to initiate a request.

FDA has made other important changes to this provision and the way FDA will implement the provision. Later in this document, we explain that FDA may, on its own initiative or upon the written request of the labeler of a class III device or a device licensed under the PHS Act, grant a 1-year extension of the compliance date applicable to § 801.20 when FDA determines that the extension would be in the best interest of the public health. Section 801.35(c) has been revised to require all requests for an exception or alternative to be submitted via email, and we have provided email addresses for requests concerning products

regulated by the Center for Biologics Evaluation and Research (CBER), and for all other products. Section 801.35(d) now makes clear that any labeler may make use of an exception or alternative granted under this section, provided that such use satisfies all safeguards or conditions that are part of the exception or alternative. Section 801.35(e) explains that FDA may initiate and grant an exception or alternative if we determine that the exception or alternative is in the best interest of the public health, and explains that any such exception or alternative will remain in effect only so long as there remains a public health need for the exception or alternative. Section 801.55(e) provides that the Center Director may also rescind an exception or alternative granted under this section if, after providing an opportunity for an informal hearing, the Center Director determines that the exception or alternative no longer satisfies the required criteria or that any safeguard or condition required concerning the device has not been met.

CC. Discontinuation of Legacy Identification Numbers Assigned to Devices (National Drug Code and National Health-Related Item Code Numbers)—§ 801.57

FDA received several comments (approximately 12).

Three comments recommended a transition period for depletion of devices with legacy identifier that exist in the current supply chain.

FDA believes these comments are adequately addressed by § 801.30(a)(1) of the final rule, which provides a limited exception period for existing inventories of finished devices; this is discussed earlier in this document.

Three comments urged FDA not to re-issue any NDC or NHRIC numbers that were previously assigned, because use of a reassigned code could result in confusion in patient records.

Five comments urged FDA to permit labelers to continue using FDA labeler codes that have been assigned to them. These comments explained that many device manufacturers use the FDA labeler code as their GS1 Company Prefix, ''the basis for all GS1 product identification numbers.'' (GS1 operates an existing, widely used system to identify medical devices and other products, and has expressed interest in applying to become an FDA-accrediting issuing agency.) These comments went on to explain that if labelers are forced to discontinue use of the FDA labeler code, they would have to assign new product identifiers to their devices, create new labels and labeling, and that ''unnecessary cost and confusion'' would result.

FDA agrees with these comments, and we have amended § 801.57 to include a new provision, paragraph (c), that will permit a labeler who has been assigned a legacy FDA labeler code to continue to use that labeler code under a system for the issuance of UDIs, provided that such use is consistent with the framework of the issuing agency that operates that system, and that the labeler submits, and obtains FDA approval of, a request for continued use of the assigned labeler code.

A few comments suggested FDA should permit continued use of legacy identifiers, or suggested an alternative implementation schedule.

FDA disagrees, as such changes would interfere with the objectives served by § 801.57. FDA has added 801.57(b) to clarify that ALL medical devices, whether subject to UDI or not, may no longer use legacy device identification systems after the applicable compliance date.

DD. Requests for Clarification Concerning Whether Compliance With Any Unique Device Identifier Requirement Will Require Submission of a 510(k) Premarket Notification or Premarket Approval Supplement

A comment suggested the final rule ''should address when [premarket] submissions to FDA will be required.'' This comment provided two examples of areas where uncertainty exists, concerning whether a submission will be required when direct marking of a device is required, and whether a submission will be required when a label is changed to include a UDI. Another comment stated that to provide MRI compatibility information to the GUDID would be inconsistent with existing FDA policies requiring the submission of a 510(k) premarket notification or PMA supplement before labeling can include such information, unless the GUDID provides an option to indicate that MRI compatibility has not been evaluated.

FDA agrees that these are important questions, and we are providing the following guidance:

- The addition of a UDI to a device label or device package is very unlikely to require the submission of a 510(k) premarket notification or a PMA supplement. The addition of a UDI to the label of a class III device should generally be reported in the next annual report concerning the PMA of that device.
- The GUDID will provide some means to indicate that MRI compatibility has not been evaluated. The final rule does not require MRI-compatibility testing; it requires submission only of information regarding MRI compatibility that the labeler already possesses.
- Although we believe it is possible that directly marking a device might require a supplemental application in certain instances, we cannot provide a definitive statement concerning whether a 510(k) premarket notification or PMA supplement is required prior to implementing direct marking of any particular device, because of the wide variety of materials, manufacturing processes, intended uses, types of required sterilization or other reprocessing, and many other factors that vary from one device to another, even among devices of the same general type. Therefore, we encourage labelers to contact the relevant Center for Devices and Radiological Health (CDRH) or CBER review division to determine whether direct marking could affect the safety and effectiveness of the device in a way that triggers premarket review requirements.

EE. Human Cells, Tissues, or Cellular or Tissue-Based Products That Are Regulated as Devices—§§ 801.3 and 801.20(a)(1)

Several comments suggested FDA did not clearly explain how the UDI rule would apply to HCT/Ps that are regulated as devices.

FDA agrees. In particular, the final rule provides a definition for *HCT/P regulated as a device,* and the definition *unique device identifier (UDI)* has been modified to take into account the special characteristics of HCT/Ps. (See §§ 801.3, 803.3, 806.2, 810.2, 814.3, 820.3, 821.3, 822.3, and 830.3.) A particularly important change is the inclusion of an additional production identifier that will capture, for HCT/Ps regulated as devices only, the distinct identification code required by § 1271.290(c). Requiring this code to be included in the production identifier when it appears on the label of a device will ensure that the UDI system is consistent with existing regulatory requirements, and existing identification and tracking systems for HCT/Ps.

FF. Technical Standards Applicable to Part 830—§ 830.10

FDA received four comments on this provision, which incorporates by reference the technical standards essential to the UDI system.

Two comments suggested FDA should require the UDI system to conform to additional technical standards. A comment recommended FDA reduce the

allowable technical standards and formats to as few as possible, and eliminate many options that were available under the proposed rule, such as the freedom to choose among different issuing agencies, AIDC technologies, options for production identifiers, and make other choices concerning how best to comply with the requirements of the UDI system.

These same (or very similar) comments and issues are discussed earlier in this document; see section II. S. ''Form of a Unique Device Identifier—Technical Requirements—Proposed § 801.45(a); § 801.40(a) of the Final Rule.'' As explained earlier, FDA is not accepting these suggestions.

A comment suggested FDA remove the publication dates of the standards listed in this section, so that a standard incorporated by reference would automatically update to the current standard whenever a change is made to that standard.

FDA declines to accept this suggestion as doing so would impermissibly allow the standards organizations to change regulatory requirements without going through notice-and-comment rulemaking.

GG. Requirements for a Unique Device Identifier—§ 830.20

FDA received six comments on this section.

Three comments recommended that FDA designate a single issuing agency, and require the UDI system to conform to additional standards.

These comments repeat comments discussed earlier in this document; see section II. S., ''Form of a Unique Device Identifier—Technical Requirements—Proposed § 801.45(a); § 801.40(a) of the Final Rule.'' FDA seeks to preserve existing flexibility concerning the choice of issuing agency and notes requiring use of a single issuing agency would disrupt current practices for many labelers that currently use UDIs.

As explained in section II. S., FDA does not agree with these suggestions.

One comment suggested that UDI ''codes'' should be standardized by device type, and not be ''randomly assigned.'' A similar comment stated, ''The database would be more useful if specific field lengths were reserved for specific fields. Specifically we mean, reserve (for example) the first 12 characters for the 'Device Identifier' and characters 13–24 (for example) for the [Production Identifier]. Consider also dividing that number out into space for batch, date, etc.''

FDA does not agree with either of these comments. Under the system provided by this rule, each FDA-accredited issuing agency will be permitted to design and operate its device identification system in any manner that conforms with the technical standards incorporated by reference in part 830. FDA believes that a high degree of freedom and flexibility is needed to ensure that the UDI system keeps pace with technological change; we also believe that the system as a whole will benefit from the options provided to labelers to choose among differing systems and technologies. For those reasons, the final rule adopts the language of the July 10, 2012, proposed rule without change.

HH. Use and Discontinuation of a Device Identifier—§ 830.40

FDA received six comments on this provision.

One comment stated that there should not be any consequences to the labeler of a device if the accreditation of the issuing agency is relinquished or revoked, and that the availability of GUDID data to patients and providers needs to be ensured.

FDA agrees. Section 830.40(d) addresses the concern regarding accreditation of the issuing agency; a labeler may continue to use a previously issued UDI on the label and packages of its device. FDA intends to make the data submitted to the GUDID generally available on our Web site indefinitely.

A comment inquired as to whether a labeler who applies UDIs from two issuing agencies to its device must report all data to the GUDID twice, once for each UDI.

FDA plans to design the GUDID data entry system so that such a labeler will have to report GUDID data only once, and will be able to add a UDI from an additional issuing agency to existing data concerning a version or model.

II. Changes That Require Use of a New Device Identifier—§ 830.50

When proposed, this section was titled, ''Changes that result in a new version or model.'' FDA received many comments (approximately 56) concerning these requirement.

Although a few comments expressed support for certain requirements, such as requiring a new UDI when adding a new device package, or when changing to or from a sterile package, most comments viewed the proposed requirements as ''too broad,'' or ''substantially and unnecessarily overbroad'' because they would require new device identifiers to be assigned ''when relatively minor changes are made to the manufacture or specifications of a device.'' Many comments suggested the need for clarification of various aspects of the proposed language or suggested guidance would be required to understand the proposed requirements. A comment recommended that the requirement for a new UDI not be tied to changes that result in a new version or model, because the device industry uses the terms version and model for many different purposes, and ''it often makes sense to retain [existing device] identifiers even after changes have been made. How these terms are used . . . will vary by company. There is no standard . . . and no consistency within the industry. . . .'' A similar comment stated, ''there are many situations in which a change to specifications, performance, or composition should not require a new device identifier . . . even if a supporting . . . 10(k) or PMA Amendment . . . were required,'' and other comments added that requiring a new UDI whenever any change is made to a device, even a change that would not be noticeable by a user, would be overly burdensome. Other comments suggested that in order to avoid confusion, the requirement for a new UDI should be tied to a labeler's decision to use a new version or model number.

FDA agrees that the proposed language was too broad. We also agree with the comments that suggested that in many instances the proposed requirement to consider a changed device a new version or model would conflict with common industry practice and that the rule should take into account those common practices. The final rule simplifies the requirement by assigning greater flexibility, and greater responsibility, to the labeler. If the labeler makes a change to a device that is required to bear a UDI on its label, and determines that the change results in a new version or model, the labeler must assign a new device identifier to that device and to all associated device packages. FDA believes this approach provides adequate flexibility and still ensures the adequate identification of devices through the UDI system. We have also retitled § 830.50 as, *Changes that require use of a new device identifier* to reflect the change in emphasis.

JJ. FDA Accreditation of an Issuing Agency—§ 830.100

FDA received many comments (approximately 41) on this provision.

Some comments supported FDA's decision to leave the door open for multiple issuing agencies to apply for accreditation, stating that multiple issuing agencies would foster competition. Several other comments

suggested FDA require conformance to additional standards, that FDA should designate only one issuing agency, or should limit the number of issuing agencies.

These comments are the same as, or similar to, comments discussed earlier in this document; see section II. S., ''Form of a Unique Device Identifier—Technical Requirements—Proposed § 801.45(a); § 801.40(a) of the Final Rule.'' FDA does not agree with these comments, for the reasons stated in the earlier discussion.

In the proposed rule, we would have required an issuing agency to be either a private nonprofit organization or a State agency, in order to minimize potential conflicts of interest. We requested comment on the question, ''Are there compelling reasons to permit a for-profit organization to be accredited as an issuing agency?'' 77 FR 40736 at 40767 (Specific Question #26). Eight comments favored the requirement in proposed § 830.100(a) that only a nonprofit organization can apply to become an issuing agency. Only two comments recommended that we permit for-profit organizations to apply for accreditation as an issuing agency, and another comment suggested we allow any interested party to ''bid'' for the privilege of becoming an issuing agency.

We do not agree with the recommendation of the last commenter. We believe an application process with transparent criteria is preferable to a ''bidding'' process. We do not find the comments to be persuasive on either side of the question of accrediting for-profit organizations as issuing agencies.

We note that the international standard addressing conflicts of interest for accreditation bodies does not draw distinctions based on profit or non-profit status. ISO/IEC 17011:2004, clause 4.3.4 (Ref. 16) requires accreditation bodies to ensure that personnel and committees that could influence the accreditation process act objectively and are free from any undue commercial pressures that could compromise impartiality. We believe the potential for conflicts, whether or not related to an applicant's for-profit status, are best addressed through FDA's oversight of the application process and accrediting body criteria such as required conformance to standards rather than establishing a blanket prohibition. In the proposed rule, we would have limited accreditation to organizations that are non-profit in part ''to minimize potential conflicts.'' In the final rule, we are allowing any private organization, for-profit or non-profit, to be accredited as an issuing agency, as long as there is protection against conflicts of interest. We have added protections against conflicts of interest to §§ 830.100(b) (Accreditation criteria), 830.110(a) (Application for initial accreditation), and 830.130 (Suspension or revocation of the accreditation of an issuing agency). See 78 FR 45782 (July 29, 2013) (Proposed rule for accreditation of foreign food safety auditors). We also specifically prohibit an issuing agency from engaging in anticompetitive activities in restraint of trade.

A few comments suggested that FDA serve as an issuing agency, or as the only issuing agency.

FDA does not agree and notes the suggested approach could require labelers that have voluntarily labeled their devices with UDIs to assign new UDIs to comply with the rule. We believe the UDI system will be best served if qualified private organizations that have relevant experience operate the day-to-day technical aspects of the UDI system. In addition, we have removed the provision that would have allowed a State agency to serve as an issuing agency. Although FDA may act as an issuing agency if it is necessary or appropriate for us to do so (see § 830.200 of the final rule), we believe that FDA's expertise and resources are best applied to other functions.

One comment suggested that FDA address the constitutionality of the requirement that companies contract with third-party non-government companies or agencies that may impose their own requirements on a manufacturer that may exceed FDA's regulatory authority, such as fees for service. This comment stated that, constitutionally, the government may not assign a government function to non-governmental entities. This comment appears to be directed at the requirement at § 830.20 that UDIs be issued under a system operated by FDA or an FDA-accredited issuing agency and conform to certain international standards regarding issuing agencies.

While FDA recognizes the constitutional limitations regarding the delegation of functions to private entities, FDA has not impermissibly delegated any governmental authority to issuing agencies or any other entities in this rule. Rather, the role that this rule creates for issuing agencies to serve in the unique device identification system is one that is ministerial and completely subordinate to FDA's ultimate authority over the compliance of unique device identifiers with the FD&C Act, these regulations, and the international standards incorporated by reference in the regulations. (See, e.g., *Sunshine Anthracite Coal Co.* v. *Adkins,* 310 U.S. 381, 399 (1940) (upholding Congressional delegation of function to private entity because ''members of the [private entity] functioned subordinately to the [public agency],'' which had ''authority and surveillance'' over the private entity); *Pittston Co.* v. *United States,* 368 F.3d 385, 395 (4th Cir. 2004) (''Congress may employ private entities for ministerial or advisory roles, but it may not give these entities governmental power over others.'' (citing *Sunshine Anthracite,* 310 U.S. at 399, *United States* v. *Frame,* 885 F.2d 1119, 1129 (3d Cir. 1989), *cert. denied,* 493 U.S. 1094 (1990))). Issuing agencies will be performing the ministerial function of issuing unique labeler codes for device identifiers and operating a system of identifier creation and maintenance focused on ensuring the uniqueness of alphanumeric codes, as the entities currently in existence already do. No UDI provides any advantage over any other UDI. FDA retains a high degree of control over the issuing agencies through the requirements providing that issuing agencies must be accredited by FDA, that FDA may suspend or revoke of an issuing agency's accreditation, and that FDA may act as issuing agency if necessary or appropriate. (See subparts C and D of part 830 of the final rule.)

One comment suggested that FDA adopt far more detailed criteria for the accreditation of issuing agencies (other comments stated the criteria are appropriate) and that FDA should assign the task of accrediting issuing agencies to the private sector by designating a ''board of providers . . . to run the selection process'' in a manner that would ensure the needs of providers are met.

FDA disagrees with these suggestions. We have specified the criteria we believe are appropriate for our review of applications for accreditation as an issuing agency, and we are not persuaded that the UDI system needs, or would benefit from, more detailed accreditation criteria. As discussed in the response to the previous comment, FDA oversight of issuing agencies through accreditation is important from a legal standpoint, and we will not consider transferring this responsibility to a nongovernmental body.

Having considered the comments submitted concerning § 830.100, the final rule adopts the language proposed in our July 10, 2012, proposed rule without any change.

KK. Information Required for Unique Device Identification—§ 830.310

FDA received many comments (approximately 125) concerning these requirements.

Several comments we received requested a greater level of detail than we believe appropriate for this rule; nonetheless, many of these comments we expect to address in guidance on various aspects of the UDI system. Several comments asked for information or guidance concerning how to submit data to, and how to locate data in, the GUDID, or inquired about various technical aspects of the GUDID, such as security processes or whether or how the GUDID will be linked to other data systems.

Our general approach has been to regard a comment that did not suggest the need for a change to the regulatory language of this section as being a request for guidance. We will consider all such comments as we develop guidance concerning the final rule and the GUDID, and we plan to provide information concerning functions of the GUDID.

A comment asked whether the GUDID will accommodate reporting data concerning a device that has been assigned device identifiers under more than one issuing agency's system to assign UDIs.

The GUDID is being designed to accept data from multiple systems when necessary.

A comment suggested that each labeler should be allowed the flexibility to determine ''what information will be reflected in the . . . GUDID.'' Some comments expressed concern that the publicly available GUDID may reveal proprietary information such as the number of devices manufactured.

FDA disagrees. Labelers are required to report only the type of production identifiers that appear on the label of the device to the GUDID, which would not reveal the number of devices manufactured. FDA does not believe any of the information required to be reported to the GUDID, most of which appears on the label of the device, would constitute trade secret or confidential commercial information.

A comment suggested the GUDID should not include company contact data, because it is typically a corporate officer whose contact information is not public. To serve as its point of contact with FDA on GUDID matters under § 830.32(a), the labeler of a device might designate a senior officer whose contact information is not otherwise publicly known. Unlike the other GUDID data that will help identify devices through distribution and use by having it included in the public GUDID, FDA intends to use the contact person data submitted under § 830.310(a)(2) solely for internal purposes in managing the GUDID. The public side of the GUDID database will not otherwise contain any individual contact information, except for optional customer-service information if the submitting company chooses to provide individual contact information for that purpose. FDA plans to address in guidance the privacy aspects of how contact-person information will be handled, as well as other issues associated with the public availability of GUDID information.

A comment suggested that the GUDID data requirement should be harmonized with what is collected for other device repositories globally.

Although FDA appreciates the goal of global harmonization and has structured this regulation to further those goals in many ways, FDA does not fully agree with this comment. We have designed the GUDID to meet the needs of the UDI system established by this rule, and we have carefully specified the data we believe are essential to the success of the system. The sponsors of other systems may have other objectives and may make different decisions.

LL. Information Required for Unique Device Identification—Information Concerning Each Version or Model of a Device—§ 830.310(b)

FDA received many comments concerning the specific information required under § 830.310(b). Two comments voiced support for inclusion of GMDN codes in the GUDID.

Most of the comments concerned the requirement to submit the GMDN code of a device to the GUDID, and the majority of those comments opposed collection of GMDN codes for the following reasons: At the time the proposed rule was published, the GMDN Agency required a license fee to be paid to obtain GMDN codes; comments expressed concern regarding whether the GMDN system has codes for HCT/Ps regulated as devices; and comments expressed a preference that additional nomenclature systems be utilized, such as the Universal Medical Device Nomenclature System (UMDNS) and the United Nations Standard Products and Services Code (UNSPSC). One comment suggested FDA allow GMDN codes to be voluntarily submitted as ancillary data under § 830.340.

FDA believes the bases for most objections to the requirement concerning GMDN codes have been eliminated. In the preamble to our July 10, 2012, proposed rule, FDA stated that the GMDN code would not be required unless GMDN codes were made freely available. The GMDN Agency has agreed to provide free access to GMDN nomenclature within the context of the GUDID data submission process. A labeler who reports data to the GUDID will be able to enter a GMDN code if the labeler knows it, or may use a module integrated in the GUDID reporting system to search for and select the correct GMDN term, including for HCT/Ps regulated as devices. Because of these actions and FDA's belief that the use of GMDN nomenclature will add precision and consistency to the identification of medical devices, FDA is including the requirement for submission of GMDN codes in the final rule.

One comment argued that requiring submission of GMDN information is ''anti-competitive'' and would allow the GMDN Agency to skirt the Sherman Antitrust Act.

FDA disagrees. Permitting the submission of device terms from more than one nomenclature system would undermine the purposes of this provision: Consistent terminology for the identification of devices. FDA does not believe reliance upon the GMDN classification system for this program will foreclose the use of alternative classification systems in other contexts. Accordingly, competition among classification systems should not be adversely affected. We also note that FDA as an agency of the Federal Government, FDA is immune from antitrust liability. See *United States Postal Service* v. *Flamingo Indus., Ltd.,* 540 U.S. 736, 748 (2004); *Name. Space, Inc.* v. *Network Solutions, Inc.,* 202 F.3d 573, 581 (2d Cir. 2000) (National Science Foundation has ''absolute immunity from the antitrust laws'').

A comment suggested that the requirement for submission of the proprietary, trade, or brand name of the device as it appears on the label of the device be expanded to permit the submission of ''other names, if applicable.''

FDA does not understand how ''other names'' would contribute towards improved identification of devices, and we have not added ''other names'' to the GUDID's requirements.

Approximately 16 comments recommended adding MRI compatibility information to the GUDID, while 2 comments specifically opposed inclusion of MRI compatibility information, and another 8 comments expressed general opposition to including any additional data element beyond those proposed in the July 19, 2012, proposed rule.

FDA agrees with the comments that suggest FDA should require submission of MRI compatibility information to the GUDID to the extent it is otherwise available. Because identification of devices that are MRI compatible and ones that are not can be critical to the safety of patients, we have included a requirement for MRI compatibility information at § 830.310(b)(8) of the final rule. See second bullet point of section II.DD of this document. This final rule does not alter the criteria for when MRI compatibility must be determined.

One comment opposed inclusion of information in the GUDID concerning latex and whether the device is labeled as sterile, because GUDID is an ''incomplete surrogate for appropriate and complete instructions for use'' and these elements might discourage providers from reading the full labeling.

FDA believes this concern is misplaced, as we do not intend, and do not expect, the GUDID to be used in lieu of instructions for use provided on a device label or patient package insert. We have retained the requirements.

Several comments recommended significant expansion of GUDID reporting requirements to include additional data, including an indication that a device is either a prescription device or an over-the-counter device; the Healthcare Common Procedural Coding System Level II code; indications that a device is mercury free, Di(2-ethylhexyl)phthalate free, and thimerosal free; information on recalls, storage and handling conditions, hazardous warnings, radioactive isotopes data, and whether there is a Material Safety Data Sheets notice; an indication that hazardous materials and radioactive isotopes are present; ''clinical attributes of the devices for meaningful post-market surveillance and research''; previously used NDC/NHRIC codes, the Systematized Nomenclature of Medicine Clinical Terms (SNOMED) CT identifier, and the Logical Observation Identifiers Names and Codes (LOINC) code for tests; all package-insert information submitted in structured product labeling (SPL) format or as a stable link; storage and handling conditions; and more. Most of these proposals appeared only in a single comment.

At this time, FDA is not convinced that adding any of these proposed requirements would contribute towards the objectives of the UDI system in a way that outweighs the costs of including them in the system, and therefore we have not included any of these proposals in the final rule.

MM. Enforcement Authority

One comment stated that the proposed rule does not articulate the enforcement actions for noncompliance and asked FDA to detail its enforcement authority as it relates to the UDI system.

As explained in the legal authority section of the proposed rule, failure or refusal to furnish any material or information required by or under section 519 of the FD&C Act causes a device to be misbranded under section 502(t)(2) and is a prohibited act under section 301(q)(1)(B) of the FD&C Act (21 U.S.C. 331(q)(1)(B)). Potential enforcement actions for violations of UDI requirements include seizure, injunction, and civil and criminal penalties.

NN. Questions and Comments Suggesting the Need for Additional Guidance

We received many comments that requested guidance or suggested a need for guidance on various aspects of the rule. We also received comments asking how the rule would apply to specific medical devices.

FDA will develop guidance to help labelers understand and apply the requirements of this final rule as necessary, and comments requesting guidance will be carefully considered to ensure our guidance will address their principal concerns. We plan to provide one or more draft guidance documents for comment in the next year.

OO. Requests for Additional Opportunity for Comment Prior To Issuing a Final Rule

A few comments requested FDA take extraordinary steps to provide additional opportunities for comment before issuing a final rule. One comment suggested FDA should hold a public workshop to get feedback specifically concerning convenience kits.

FDA does not agree that any additional opportunities for comments are necessary. The July 10, 2012, proposed rule provided a liberal comment period ending November 7, 2012, and the November 19, 2012, amended proposed rule provided an additional comment period ending December 19, 2012. Furthermore, section 519(f) of the FD&C Act, as amended by FDASIA, requires FDA to ''finalize the proposed regulations not later than 6 months after the close of the comment period . . . .'' and FDA has no authority to extend that deadline. For changes making the final rule less burdensome for convenience kits, see section II.L (Exception for a Device Packaged Within the Immediate Container of a Combination Product or Convenience Kit).

III. Legal Authority for the Final Rule

Section 226 of the Food and Drug Administration Amendments Act (Pub. L. 110–85) (2007), amended the FD&C Act by adding a new section 519(f). This section authorizes FDA to issue regulations establishing a unique device identification system for medical devices. In addition, section 510(e) of the FD&C Act authorizes FDA to issue regulations to ''prescribe a uniform system for identification of devices'' and to require persons to ''list such devices in accordance with such system.'' Therefore, FDA is issuing the provisions of this rule establishing a unique device identification system under sections 510(e), 519(f), and 701(a) of the FD&C Act (which provides FDA the authority to issue regulations for the efficient enforcement of the FD&C Act).

Devices for which there has been a failure or refusal to furnish any material or information required by or under section 519 of the FD&C Act respecting the device are misbranded under section 502(t)(2) of the FD&C Act. The failure or refusal to furnish any material or information required by or under section 519 of the FD&C Act is a prohibited act under section 301(q)(1)(B) of the FD&C Act.

Section 701(a) of the FD&C Act gives FDA the authority to issue regulations for the efficient enforcement of the FD&C Act. By requiring a UDI to appear on the label of devices, and by establishing the GUDID, the rule is designed to improve the accuracy and precision of adverse event reporting, as required by section 519(a) and (b) of the FD&C Act, which will enable FDA to more quickly and precisely identify device problems, such as safety and/or effectiveness concerns. Once a problem is identified, whether through improved reporting or otherwise, the presence of the UDI on the device label, packaging, in certain cases directly marked on the device itself, and in the GUDID will enable FDA to more efficiently and effectively respond, and protect the public health by addressing the problem using one or more of the regulatory tools that Congress has provided for this purpose, such as notification or mandatory recall under section 518 of the FD&C Act, tracking under section 519(e) of the FD&C Act, ensuring the adequacy of a voluntary recall with the assistance of reports of corrections and removals as required by section 519(g) of the FD&C Act, or seizing a device that is adulterated under section 501 of the FD&C Act and/or misbranded under section 502 of the FD&C Act. Thus,

these provisions of the rule are issued under the authority of these sections in addition to the broad authority of section 519(f) of the FD&C Act.

The information required to be submitted to the GUDID under § 830.310 is necessary for UDIs to adequately identify devices through distribution and use, as required by section 519(f) of the FD&C Act. Collection of this information is further authorized by section 510(j) of the FD&C Act, which requires listing information to be accompanied by, at minimum, the label, package insert, and a representative sampling of any other labeling for the device (see section 510(j)(1)(B)(ii)). Most of the information required to be submitted to the GUDID is information that appears on the device label or in the package insert, and is included in the information that is required to be submitted to FDA by section 510(j).

The provisions of the rule that would require UDIs to be included in various FDA records and reports to FDA, allow the use of UDIs to identify devices subject to reports of corrections and removals and records of corrections of removals that are not required to be reported to FDA, and require reporting of UDIs in periodic reports for class III devices, are issued under the authority of sections 519 and 701(a) of the FD&C Act.

The provisions of the rule that would amend the Quality System Regulation by requiring examination of the accuracy of the UDI as part of the scope of the labeling inspection, that the device history record include any UDI or UPC, that complaint records include any UDI or UPC, and that the service report include any UDI or UPC, are issued under sections 520(f) (21 U.S.C. 360j(f)) and 701(a) of the FD&C Act.

The provisions of the rule that would require the inclusion of UDIs on reports regarding tracked devices is authorized by sections 519(e) and 701(a) of the FD&C Act.

The provision of the rule that would require that postmarket surveillance plans submitted to FDA include the device identifier of the devices involved is issued under sections 522 (21 U.S.C. 360*l*), and 701(a) of the FD&C Act.

The changes in compliance dates for devices that are implantable, life-saving, and life sustaining, are under the changes to section 519(f) of the FD&C Act made by section 614 of FDASIA.

The provision in the rule requiring dates on device labels intended to be brought to the attention of the user to appear in a particular format is issued under the authority of sections 502(a), 502(c), and 701(a) of the FD&C Act. The requirement for a uniform date format will ensure dates on device labels intended to be brought to the attention of the user are not misleading, and to the extent these dates are required to appear on the label, ensure that they are likely to be understood by the ordinary individual under customary conditions of use.

IV. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct Agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Agency finds that this final rule is an economically significant regulatory action under Executive Order 12866.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. FDA has examined the impacts of this rule as required by the Regulatory Flexibility Act. FDA finds that the potential impact of the final rule on some small entities may be significant. This Regulatory Impact Analysis and other sections of the preamble to the final rule constitute FDA's regulatory flexibility analysis.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $141 million, using the most current (2012) Implicit Price Deflator for the Gross Domestic Product. The estimated costs of this final rule will result in a 1-year expenditure that exceeds this amount.

This final rule requires the label and packages of medical devices to bear a UDI and provides for alternative placement and exceptions for certain devices. In addition, this final rule requires certain devices to be directly marked with a UDI, with exceptions. Medical device records throughout the required device recordkeeping and reporting systems will need to be modified to include the UDI. Under this final rule, FDA will establish the GUDID, a public database containing information about devices labeled with a UDI. The final rule requires labelers of medical devices to submit information concerning each device to the GUDID. In addition, the final rule establishes accreditation requirements for agencies that may operate a system for the issuance of UDIs and establishes the conditions for when FDA might act as an issuing agency.

A. Summary of Impacts

1. Summary of Costs

The full discussion of the Final Regulatory Impact Analysis, Final Regulatory Flexibility Analysis, and Unfunded Mandates Reform Act Analysis (Ref. 17) is available in docket FDA–2011–N–0090 and at *http://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/ucm309815.htm*.

The detailed data for this cost analysis were developed by Eastern Research Group, Inc. (ERG) under contract to FDA and are presented in the full report ''Unique Device Identification (UDI) for Medical Devices: Economic Analysis of the Final Rule,'' 2013 (cited in Ref. 17). The final ERG report updates the 2012 ERG cost analysis used to support the FDA's Preliminary Regulatory Impact Analysis of the proposed rule. The Preliminary Regulatory Impact Analysis and the 2012 ERG report are available at *http://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/ucm309815.htm*.

Table 2 of this document presents for each affected sector a summary of the estimated present value and the annualized domestic costs of this final rule over 10 years using discount rates of 7 percent and 3 percent. Over 10 years, the estimated present value of the total domestic costs is $642.2 million using a 7 percent discount rate and $737.7 million using a 3 percent rate, and the annualized costs are $85.7 million using a 7 percent discount rate and $84.1 million using a 3 percent discount rate.

TABLE 2—SUMMARY OF THE ESTIMATED DOMESTIC REGULATORY COSTS OF THE FINAL RULE (2012 DOLLARS)

Affected sectors	Total present value of cost over 10 years ($ million)		Total annualized costs over 10 years ($ million)	
	3 Percent	7 Percent	3 Percent	7 Percent
Domestic Labelers [1]	$713.2	$620.4	$81.2	$82.6
Issuing Agencies	1.4	1.3	0.2	0.2
FDA	23.1	20.5	2.7	2.9
Total Domestic Cost of the Final Rule	737.7	642.2	84.1	85.7

[1] Present value and annualized costs calculated at the beginning of the period.

2. Costs to Domestic Labelers

The majority of the costs of this final rule will be incurred by labelers of medical devices. Labelers include manufacturers, reprocessors, specification developers, repackagers and relabelers that cause a label to be applied to a medical device. The estimated present value of the costs for domestic labelers over 10 years is $620.4 million at a 7 percent discount rate and $713.2 million at 3 percent. Over 10 years, the annualized costs for domestic labelers are $82.6 million at a 7 percent discount rate and $81.2 million at 3 percent. The largest components of one-time costs include planning and administration and the costs to integrate the UDI into existing information systems; to install, test, and validate barcode printing software; and to train employees. Other significant components of one-time costs include costs to redesign labels of devices to incorporate the barcode and date format, and to purchase and install equipment needed to print and verify the UDI on labels. In addition, labelers will incur one-time costs for recordkeeping and reporting requirements, and the direct marking of certain devices.

The largest annual cost components include labor, operating, and maintenance associated with equipment for printing operations, and labor related to software maintenance and training needed to maintain the UDI information system.

3. Costs To Issuing Agencies

Three existing organizations now perform functions similar to those of an issuing agency under the final rule; the estimated present value of costs over 10 years for these three to apply for FDA accreditation and comply with the final reporting requirements is $1.3 million at a 7 percent discount rate and $1.4 million at 3 percent. The annualized costs over 10 years are be $0.2 million at both 7 percent and 3 percent discount rates. There may be other organizations that might apply to FDA to become an issuing agency. In such cases, the estimated application preparation, legal, and reporting costs apply to other organizations.

4. Costs to FDA To Establish and Maintain the GUDID

The estimated present value over 10 years of the costs to FDA to establish and maintain the GUDID is $20.5 million at a 7 percent discount rate and $23.1 million at 3 percent. The annualized costs over 10 years are $2.9 million at 7 percent and $2.7 million at 3 percent.

5. Costs to Foreign Labelers

Although we excluded foreign costs from our initial regulatory analysis, in our final regulatory impact analysis we include an estimate of the costs to foreign labelers. From Agency device registration and listing data we find that foreign labelers exporting devices to the United States are located in about 90 countries. Because there can be substantial variability in the labor and capital costs labelers face in different countries, we divide foreign labelers into four groups, apply different assumptions to each group, and estimate costs for each group. Over 10 years, the annualized present value for all foreign labelers equals about $75 million with both a 7 and 3 percent discount rate. The present value of the total costs of the final rule for foreign labelers equals about $561 million with a 7 percent discount rate.

6. Uncertainty

We computed uncertainty ranges based on the percentage relationship between the lower and upper bounds surrounding the central estimate of the costs to domestic labelers. The lower bound is about 57 percent lower and the upper bound about 43 percent higher than the central estimate. Applying a similar range of uncertainty to the total costs of the final rule to domestic labelers, issuing agencies, and FDA, over 10 years the total annualized domestic costs range from $48.8 million to $122.5 million at 7 percent and $47.9 million to $120.2 million at 3 percent.

7. Alternatives

For the final rule, we compare two alternatives to the final rule. We estimate costs for a full coverage UDI requirement that does not allow reduced requirements for class I devices and for devices that FDA has by regulation exempted from the GMP requirements. The second alternative varies the content of the UDI and requires only the establishment and the device identifier to be included in the barcode across all device classes.

Over 10 years at 7 percent, the annualized present value of the highest cost alternative is about $108.0 million. This alternative applies the UDI requirements to class I, II, and III devices, as well as unclassified devices, unless excepted by § 801.30(a)(3) through (11). Under the lower cost alternative labelers do not incur costs in certain categories such as purchasing and installing printing equipment and software. The annualized present value of this alternative is about $20 million.

B. Summary of Regulatory Flexibility Analysis

FDA conducted a regulatory flexibility analysis of the impact of the final rule on small entities. About 96 percent of domestic labelers are small firms according to Small Business Administration size standards. The average annualized costs of compliance for domestic labelers as a percentage of annual receipts exceed 1 percent for about 32 firms with fewer than 19 employees that label multiple-use devices subject to the direct marking requirements. Without direct marking, the impact on small firms does not exceed 1 percent of average annual receipts.

C. Summary of Benefits

The public health benefits from the UDI are related to reductions in medical device-related patient injuries and deaths. The final rule is expected to

improve medical device event reporting by providing a standardized, reliable and unique identifier with which to report a problem device. With more reliable identification of devices associated with an adverse medical event, FDA would be able to improve postmarket surveillance of medical devices and detect problem devices more rapidly. FDA expects that more accurate and prompt identification of problems would lead to a reduced incidence of adverse events. Public health safety alerts, for example, could be more accurate and timely. Similarly, FDA expects that recall actions could more effectively target a problem device. We expect that the increased accuracy of adverse medical device reporting and improved recalls would reduce the total number of adverse medical device events, although we are unable to quantify that reduction.

In addition, a standardized UDI will contribute to future potential public health benefits from initiatives associated with the increased use of automated systems in healthcare. Most of these benefits, however, require complementary developments and innovations in the private and public sectors, and investments by the healthcare industry; such benefits are beyond the scope of this rule. The ROCIS (Regulatory Information Service Center and Office of Information and Regulatory Affairs Combined Information System) accounting information is shown in table 3 of this document.

TABLE 3—ECONOMIC DATA: COSTS AND BENEFITS ACCOUNTING STATEMENT

[2012 dollars]

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rate (percent)	Period covered (years)	
Benefits:							
Annualized					7		
Monetized $millions/year					3		
Annualized					7		
Quantified					3		
Qualitative	More accurate and prompt identification of device related adverse events should lead to more rapid action to reduce the incidence of the adverse events and to more effectively target and manage medical device recalls.						
Costs:							
Annualized	$85.7	$48.8	$122.5	2012	7	10 years	Costs to foreign labelers are not included.
Monetized $millions/year	84.1	47.9	120.2	2012	3	10 years	
Annualized					7		
Quantified					3		
Qualitative							
Transfers:							
Federal					7		
Annualized Monetized $millions/year.					3		
From/To	From			To			
Other					7		
Annualized Monetized $millions/year.					3		
From/To	From:			To:			
Effects: State, Local or Tribal Government: No effect Small Business: The final rule may have a significant economic impact on a substantial number of small entities that label medical devices. Wages: No effect Growth: No effect							

V. Information Collection Requirements

This final rule contains information collection requirements (OMB control 0910–0720) that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (the PRA). The title, description, and respondent description of the information collection provisions are shown in the following paragraphs with an estimate of the reporting, recordkeeping, and third-party disclosure burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information. It should be noted that the burden assumptions for some of these requirements reflect one possible manner of compliance, and have only

been identified for the purposes of estimating the PRA burden.

Title: Unique Device Identification System

Description: In accordance with the collection of information entitled ''Unique Device Identification System (UDI),'' medical device labelers, unless excepted, are required to design and use medical device labels and device packages that bear a UDI, present dates on labels in a particular format, and submit data concerning each version or model of a device to the GUDID no later than the date the label of the device must bear a UDI. Once a device becomes subject to UDI requirements, respondents will be required to update the information reported whenever the information changes. Respondents required to submit data to the Agency under certain other information collections are required to include the UDI for the device that is the subject of such information collection.

Section 801.18 requires that whenever a labeler of a medical device includes an expiration date, a date of manufacture, or any other date intended to be brought to the attention of the user of the device, the labeler must present the date on the label in a format that meets the requirements of this section. Section 801.20 requires every medical device label and package to bear a UDI. Under § 801.35, any labeler of a device that is not required to bear a UDI on its label may include a UDI on the label of that device and utilize the GUDID. Under § 801.45, any device that has to be labeled with a UDI also has to bear a permanent marking providing the UDI on the device itself if the device is intended for more than one use and intended to be reprocessed before each use. Section 801.50 requires stand-alone software to comply with specific labeling requirements that identify the software. Section 801.55 authorizes additional, case-by-case, labeling exceptions and alternatives to standard UDI labeling requirements. If a labeler relabels or modifies a label of a device that is required to bear a UDI, under § 830.60 it has to keep a record showing the relationship of the original device identifier to the new device identifier.

Section 830.110 requires an applicant seeking initial FDA accreditation as a UDI-issuing agency to furnish to FDA an application containing certain information, materials, and supporting documentation. Under § 830.120, an FDA-accredited issuing agency is required to disclose information concerning its system for the assignment of UDIs; maintain a list of labelers that use its system for the assignment of UDIs and provide FDA a copy of such list; and upon request, provide FDA with information concerning a labeler that is employing the issuing agency's system for assignment of UDIs. Sections 830.310 and 830.320 require the labeler to provide certain information to the GUDID concerning the labeler and each version or model of a device required to be labeled with a UDI, unless the labeler obtains a waiver. Section 830.360 requires each labeler to retain records showing all UDIs used to identify devices that must be labeled with a UDI and the particular version or model associated with each device identifier, until 3 years after it ceases to market a version or model of a device.

To require the use of UDIs to identify devices referenced in other information collections, the rule makes conforming amendments to part 803 (Medical Device Reporting), part 806 (Medical Devices; Reports of Corrections and Removals), part 814 (Premarket Approval of Medical Devices), part 820 (Quality System Regulation), part 821 (Medical Device Tracking Requirements), and part 822 (Postmarket Surveillance).

Description of Respondents: The recordkeeping, reporting, and third-party disclosure requirements referenced in this document are imposed on any person who causes a label to be applied to a device, or who causes the label to be modified, with the intent that the device will be commercially distributed without any subsequent replacement or modification of the label. In most instances, the labeler would be the device manufacturer, but other types of labelers include a specification developer, a single-use device reprocessor, a convenience kit assembler, a repackager, or a relabeler. Respondents may also include any private organization that applies for accreditation by FDA as an issuing agency.

Requirements Reflected in the Burden Estimates: FDA has identified the following requirements as having burdens that must be accounted for under the PRA; the burdens associated with these requirements are summarized in the tables that follow:

1. § 801.18 Format of dates provided on a medical device label.
2. § 801.20 Label to bear a unique device identifier.
3. § 801.35 Voluntary labeling of a device with a unique device identifier.
4. § 801.45 Devices that must be directly marked with a unique device identifier.
5. § 801.50 Labeling requirements for stand-alone software.
6. § 801.55 Request for an exception from or alternative to a unique device identifier.
7. § 830.60 Relabeling of a device that is required to bear a unique device identifier.
8. § 830.110 Application for accreditation as an issuing agency.
9. § 830.120 Responsibilities of an FDA-accredited issuing agency.
10. § 830.310 Information required for unique device identification.
11. § 830.320 Submission of unique device identification information.
12. § 830.360 Records to be maintained by the labeler.
13. Conforming amendments to Part 803—Medical Device Reporting
14. Conforming amendments to Part 806—Medical Devices; Reports of Corrections and Removals.
15. Conforming amendments to Part 814—Premarket Approval of Medical Devices
16. Conforming amendments to Part 820—Quality System Regulation
17. Conforming amendments to Part 821—Medical Device Tracking Requirements
18. Conforming amendments to Part 822—Postmarket Surveillance

TABLE 4—FIRST YEAR ESTIMATED BURDENS [1]

	Number of respondents [2]	Number of responses per respondent [3]	Total annual responses [4]	Average burden per response [5]	Total hours [6]
Reporting	372	102	37,938	0.070 (4 minutes)	2,662
Recordkeeping	366	371	135,652	0.081 (5 minutes)	11,055
Third-Party Disclosure (UDI)	359	5,304	1,905,303	0.012 (1 minute)	23,790
Third-Party Disclosure (Date Format)	6,199	102	632,298	1 hour	632,298

[1] Table 4 shows the burden to labelers affected in the first year.

[2] Maximum number of respondents for any regulatory requirement within each category. Individual regulatory requirements within the category may involve fewer respondents.
[3] Maximum number of responses for any regulatory requirement within each category. Individual regulatory requirements within the category may involve fewer responses.
[4] Maximum total annual responses for any regulatory requirement within each category. Individual regulatory requirements within the category may involve fewer total annual responses.
[5] Rounded to three decimals. Total hours reflect a more precise, non-rounded average burden per response. An approximate (non-rounded) conversion to minutes is shown in parentheses.
[6] Total hours are based on a more precise burden per response than the rounded value shown in these tables.

TABLE 5—ONGOING ESTIMATED ANNUAL BURDENS

	Number of respondents [1]	Number of responses per respondent [2]	Total annual responses [3]	Average burden per response [4]	Total hours [5]
Reporting	6,199	51	316,149	0.023 (1 minute)	7,289
Recordkeeping	5,987	51	305,337	0.989 (59 minutes)	302,121
Third-Party Disclosure	5,987	51	305,337	0.885 (53 minutes)	270,143

[1] Maximum number of respondents for any regulatory requirement within each category. Individual regulatory requirements within the category may involve fewer respondents.
[2] Maximum number of responses for any regulatory requirement within each category. Individual regulatory requirements within the category may involve fewer responses.
[3] Maximum total annual responses for any regulatory requirement within each category. Individual regulatory requirements within the category may involve fewer total annual responses.
[4] Rounded to three decimals. Total hours reflect a more precise, non-rounded average burden per response. An approximate (non-rounded) conversion to minutes is shown in parentheses.
[5] Total hours are based on a more precise burden per response than the rounded value shown in these tables.

The information collection provisions in this final rule have been submitted to OMB for review as required by section 3507(d) of the PRA.

Before the effective date of this final rule, FDA will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions in this final rule. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

VI. Environmental Impact

FDA has determined under 21 CFR 25.30(h) 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.

VII. Effective Dates

A. *Effective Dates.* This rule is effective on December 23, 2013, except the following provisions are effective October 24, 2013—

- § 801.55—Request for an exception from or alternative to a unique device identifier requirement.
- § 830.10—Incorporation by reference.
- §§ 830.100, 830.110, 830.120, and 830.130—Provisions regarding FDA accreditation of issuing agencies.

B. *Compliance Dates.* FDA is establishing compliance dates for the following provisions of this final rule in order to provide labelers, FDA, and the health care community adequate time to build and test the systems and infrastructure required to implement the final rule's requirements, and to spread the costs and burdens of implementation over a period of years. FDA believes this approach will help ensure the efficient and effective implementation of the final rule.

Compliance dates for: § 801.18—Format of dates provided on a medical device label; § 801.20—Label to bear a unique device identifier; § 801.50—Special labeling requirements for stand-alone software; and § 830.300—Devices subject to device identification data submission requirements.

FDA is establishing compliance dates for §§ 801.18, 801.20, 801.50, and 830.300 as follows for any device that its labeler puts in commercial distribution after the applicable date indicated below:

1. For a class III medical device or a device licensed under the Public Health Service Act, September 24, 2014. FDA may, on its own initiative, or upon a written request made under § 801.55 by the labeler of device, grant a 1-year extension of this compliance date when FDA determines that the extension would be in the best interest of the public health. A written request for such an extension must:

a. Identify the device or devices that would be subject to the extension;

b. Provide, if known, the number of labelers and the number of devices that would be affected if we grant the extension;

c. Explain why such an extension would be in the best interest of the public health;

d. Provide other requested information that the Center Director needs to clarify the scope and effects of the requested extension; and

e. Be submitted no later than June 23, 2014.

2. For an implantable, life-supporting, or life-sustaining device that is not covered by paragraph 1., September 24, 2015.

3. For a class II medical device that is not covered by paragraph 2., September 24, 2016.

4. For a class I medical device that is not covered by paragraph 2., September 24, 2018.

5. For a convenience kit that is not classified into class I, II, or III, the earliest compliance date that would apply to any device in the convenience kit if distributed separately from the convenience kit.

6. For a device that is not classified into class I, II, or III, September 24, 2018.

Compliance dates for § 801.45—Devices that must be directly marked with a unique device identifier. FDA is establishing compliance dates for § 801.45 as follows—

1. For a device that is a life-supporting or life-sustaining device, September 24, 2015.

2. For any other device, 2 years after the compliance date that applies to the requirements of §§ 801.18, 801.20, 801.50, and 830.300.

TABLE 6—SUMMARY OF COMPLIANCE DATES FOR THE FINAL RULE

Compliance date	Requirement
1 year after publication of the final rule (September 24, 2014).	The labels and packages of class III medical devices and devices licensed under the Public Health Service Act (PHS Act) must bear a UDI. § 801.20. Dates on the labels of these devices must be formatted as required by § 801.18. Data for these devices must be submitted to the GUDID database. § 830.300. A 1-year extension of this compliance date may be requested under § 801.55; such a request must be submitted no later than June 23, 2014. Class III stand-alone software must provide its UDI as required by § 801.50(b).
2 years after publication of the final rule (September 24, 2015).	The labels and packages of implantable, life-supporting, and life-sustaining devices must bear a UDI. § 801.20. Dates on the labels of these devices must be formatted as required by § 801.18. A device that is a life-supporting or life-sustaining device that is required to be labeled with a UDI must a bear UDI as a permanent marking on the device itself if the device is intended to be used more than once and intended to be reprocessed before each use. § 801.45. Stand-alone software that is a life-supporting or life-sustaining device must provide its UDI as required by § 801.50(b). Data for implantable, life-supporting, and life-sustaining devices that are required to be labeled with a UDI must be submitted to the GUDID database. § 830.300.
3 years after publication of the final rule (September 24, 2016).	Class III devices required to be labeled with a UDI must bear a UDI as a permanent marking on the device itself if the device is a device intended to be used more than once and intended to be reprocessed before each use. § 801.45. The labels and packages of class II medical devices must bear a UDI. § 801.20. Dates on the labels of these devices must be formatted as required by § 801.18. Class II stand-alone software must provide its UDI as required by § 801.50(b). Data for class II devices that are required to be labeled with a UDI must be submitted to the GUDID database. § 830.300.
5 years after publication of the final rule (September 24, 2018).	A class II device that is required to be labeled with a UDI must bear a UDI as a permanent marking on the device itself if the device is a device intended to be used more than once and intended to be reprocessed before each use. § 801.45. The labels and packages of class I medical devices and devices that have not been classified into class I, class II, or class III must bear a UDI. § 801.20. Dates on the labels of *all* devices, including devices that have been excepted from UDI labeling requirements, must be formatted as required by § 801.18. Data for class I devices and devices that have not been classified into class I, class II, or class III that are required to be labeled with a UDI must be submitted to the GUDID database. § 830.300. Class I stand-alone software must provide its UDI as required by § 801.50(b).
7 years after publication of the final rule (September 24, 2020).	Class I devices, and devices that have not been classified into class I, class II, or class III that are required to be labeled with a UDI, must a bear UDI as a permanent marking on the device itself if the device is a device intended to be used more than once and intended to be reprocessed before each use. § 801.45.
Compliance dates for all other provisions of the final rule. Except for the provisions listed in this table, FDA requires full compliance with the final rule as of the effective date that applies to the provision.	

VIII. Federalism

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

IX. References

The following references have been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 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*. (FDA has verified the Web site addresses, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

1. See referenced ISO standards and ISO Technical Committees listed at *http://www.iso.org/iso/standards_development/technical_committees/list_of_iso_technical_committees/iso_technical_committee.htm?commid=45332*.
2. For information about UPC and other barcodes and GS1, go to *http://www.gs1us.org/standards/barcodes*.
3. ''The Health Industry Bar Code (HIBC) Supplier Labeling Standard,'' ANSI/HIBC 2.3–2009, Health Industry Business Communications Council, 2009, at *http://www.hibcc.org/publication/view/supplier-labeling-standard/*.
4. ''Automatic Identification of Medical Devices,'' ECRI Institute, August 17, 2005.
5. See record and public comments related to the October 25, 2006 public meeting, referenced at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/UniqueDeviceIdentification/*.
6. See ERG's 2006 report at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/UniqueDeviceIdentification/ucm054169.htm*.
7. See discussion of HL7 implementation of SPL model for medical product information at *http://wiki.hl7.org/index.php?title=Medical_Product_Information_(SPLr5)*.
8. Letter from Michael D. Maves, M.D., MBA, Executive Vice President and CEO, American Medical Association, regarding confusion caused by inconsistencies in the presentation of expiration dates on medical devices, August 27, 2008.

9. List of class I devices, by product code, that FDA has by regulation exempted from the GMP requirements of 21 CFR Part 820, Quality Systems Regulation, FDA, April 2012.
10. Unique Device Identification System; Proposed Rule: Preliminary Regulatory Impact Analysis; Initial Regulatory Flexibility Analysis; Unfunded Mandates Reform Act Analysis: available at *http://www.fda.gov/downloads/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/UCM310427.pdf*.
11. Supporting Statement for Unique Device Identification (UDI) System, 21 CFR Parts 16, 801, 803, 806, 810, 814, 820, 821, 822, and 830, OMB Control Number 0910–0720.
12. List of medical devices, by product code, that FDA classifies as implantable, life-saving, and life-sustaining devices for purposes of section 614 of FDASIA amending section 519(f) of the FD&C Act, September 2013.
13. Addendum to the Preliminary Regulatory Impact Analysis of the Proposed Rule to Require a Unique Device Identification System, Docket No. FDA–2011–N–0090.
14. ''Healthcare GTIN Allocation Rules, GS1 Global Healthcare User Group,'' ¶ 5.1.6., GS1, June 2013 (Issue 8).
15. See: International Standards ISO/IEC 15459–2:2006(E): Information Technology—Unique Identifiers—Part 2: Registration Procedures, ¶ 3.1.1, and ISO/IEC 15459–3:2006(E): Information Technology—Unique Identifiers—Part 3: Common Rules for Unique Identifiers, ¶ 4, nn. 2 and 3, listed at *http://www.iso.org/iso/standards_development/technical_committees/list_of_iso_technical_committees/iso_technical_committee.htm?commid=45332*.
16. See International Standard ISO/IEC 17077:2004(E) Conformity assessment—General requirements for accreditation bodies accrediting conformity assessment bodies, listed at *http://www.iso.org/iso/standards_development/technical_committees/list_of_iso_technical_committees/iso_technical_committee.htm?commid=45332*.
17. Unique Device Identification System; Final Rule: Final Regulatory Impact Analysis, Final Regulatory Flexibility Analysis, and Unfunded Mandates Reform Act Analysis; available at *http://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/ucm309815.htm*.

List of Subjects

21 CFR Part 16

Administrative practice and procedure.

21 CFR Part 801

Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Parts 803, 806, and 821

Imports, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 810

Administrative practice and procedure, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 814

Administrative practice and procedure, Confidential business information, Medical devices, Medical research, Reporting and recordkeeping requirements.

21 CFR Parts 820 and 822

Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 830

Administrative practice and procedure, Incorporation by reference, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 *et seq.,* as amended) and under authority delegated to the Commissioner of Food and Drugs, chapter I of title 21 is amended to read as follows:

PART 16—REGULATORY HEARING BEFORE THE FOOD AND DRUG ADMINISTRATION

■ 1. The authority citation for 21 CFR part 16 continues to read as follows:

Authority: 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–394, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201–262, 263b, 364.

■ 2. Amend § 16.1(b)(2) by numerically adding an entry for ''§ 830.130'' to read as follows:

§ 16.1 Scope.

* * * * *

(b) * * *

(2) * * *

§ 830.130, relating to suspension or revocation of the accreditation of an issuing agency.

* * * * *

PART 801—LABELING

■ 3. The authority citation for 21 CFR part 801 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 360i, 360j, 371, 374.

Subpart A—[Amended]

■ 4a. Add new § 801.3 to read as follows:

§ 801.3 Definitions.

As used in this part:

Automatic identification and data capture (AIDC) means any technology that conveys the unique device identifier or the device identifier of a device in a form that can be entered into an electronic patient record or other computer system via an automated process.

Center Director means the Director of the Center for Devices and Radiological Health or the Director of the Center for Biologics Evaluation and Research, depending on which Center has been assigned lead responsibility for the device.

Combination product has the meaning set forth in § 3.2(e) of this chapter.

Convenience kit means two or more different medical devices packaged together for the convenience of the user.

Device package means a package that contains a fixed quantity of a particular version or model of a device.

Expiration date means the date by which the label of a device states the device must or should be used.

FDA, we, or *us* means the Food and Drug Administration.

Finished device means any device or accessory to any device that is suitable for use or capable of functioning.

Global Unique Device Identification Database (GUDID) means the database that serves as a repository of information to facilitate the identification of medical devices through their distribution and use.

Human cells, tissues, or cellular or tissue-based product (HCT/P) regulated as a device means an HCT/P as defined in § 1271.3(d) of this chapter that does not meet the criteria in § 1271.10(a) and that is also regulated as a device.

Implantable device means a device that is intended to be placed in a surgically or naturally formed cavity of the human body. A device is regarded as an *implantable device* for the purpose of this part only if it is intended to remain implanted continuously for a period of 30 days or more, unless the Commissioner of Food and Drugs determines otherwise in order to protect human health.

Label has the meaning set forth in section 201(k) of the Federal Food, Drug, and Cosmetic Act.

Labeler means:

(1) Any person who causes a label to be applied to a device with the intent that the device will be commercially distributed without any intended subsequent replacement or modification of the label; and

(2) Any person who causes the label of a device to be replaced or modified with the intent that the device will be commercially distributed without any subsequent replacement or modification of the label, except that the addition of the name of, and contact information for, a person who distributes the device, without making any other changes to the label, is not a modification for the

purposes of determining whether a person is a labeler.

Lot or batch means one *finished device* or more that consist of a single type, model, class, size, composition, or software version that are manufactured under essentially the same conditions and that are intended to have uniform characteristics and quality within specified limits.

Shipping container means a container used during the shipment or transportation of devices, and whose contents may vary from one shipment to another.

Specification means any requirement with which a device must conform.

Unique device identifier (UDI) means an identifier that adequately identifies a device through its distribution and use by meeting the requirements of § 830.20 of this chapter. A unique device identifier is composed of:

(1) A *device identifier*—a mandatory, fixed portion of a UDI that identifies the specific version or model of a device and the labeler of that device; and

(2) A *production identifier*—a conditional, variable portion of a UDI that identifies one or more of the following when included on the label of the device:

(i) The lot or batch within which a device was manufactured;

(ii) The serial number of a specific device;

(iii) The expiration date of a specific device;

(iv) The date a specific device was manufactured;

(v) For an HCT/P regulated as a device, the distinct identification code required by § 1271.290(c) of this chapter.

Universal product code (UPC) means the product identifier used to identify an item sold at retail in the United States.

Version or model means all devices that have specifications, performance, size, and composition, within limits set by the labeler.

■ 4b. Add new § 801.18 to subpart A to read as follows:

§ 801.18 Format of dates provided on a medical device label.

(a) *In general.* Whenever the label of a medical device includes a printed expiration date, date of manufacture, or any other date intended to be brought to the attention of the user of the device, the date must be presented in the following format: The year, using four digits; followed by the month, using two digits; followed by the day, using two digits; each separated by hyphens. For example, January 2, 2014, must be presented as 2014–01–02.

(b) *Exceptions.* (1) A combination product that properly bears a National Drug Code (NDC) number is not subject to the requirements of paragraph (a) of this section.

(2) If the device is an electronic product to which a standard is applicable under subchapter J of this chapter, Radiological Health, the date of manufacture shall be presented as required by § 1010.3(a)(2)(ii) of this chapter.

■ 5a. Effective October 24, 2013, add subpart B consisting of § 801.55 to read as follows:

Subpart B—Labeling Requirements for Unique Device Identification

§ 801.55 Request for an exception from or alternative to a unique device identifier requirement.

(a) A labeler may submit a request for an exception from or alternative to the requirement of § 801.20 or any other requirement of this subpart for a specified device or a specified type of device. A written request for an exception or alternative must:

(1) Identify the device or devices that would be subject to the exception or alternative;

(2) Identify the provisions of this subpart that are the subject of the request for an exception or alternative;

(3) If requesting an exception, explain why you believe the requirements of this subpart are not technologically feasible;

(4) If requesting an alternative, describe the alternative and explain why it would provide for more accurate, precise, or rapid device identification than the requirements of this subpart or how the alternative would better ensure the safety or effectiveness of the device that would be subject to the alternative;

(5) Provide, if known, the number of labelers and the number of devices that would be affected if we grant the requested exception or alternative; and

(6) Provide other requested information that the Center Director needs to clarify the scope and effects of the requested exception or alternative.

(b) A written request for an exception or alternative must be submitted by sending it:

(1) If the device is regulated by the Center for Biologics Evaluation and Research (CBER), by email to: *cberudirequests@fda.hhs.gov* or by correspondence to: Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448.

(2) In all other cases, by email to: *udi@fda.hhs.gov*, or by correspondence to: UDI Regulatory Policy Support, Center for Devices and Radiological Health, Food and Drug Administration, Bldg. 66, Rm. 3303, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002.

(c) The Center Director may grant an exception or alternative, either in response to a request or on his or her own initiative, if the Center Director determines that an exception is appropriate because the requirements of this subpart are not technologically feasible, or that an alternative would provide for more accurate, precise, or rapid device identification than the requirements of this subpart or would better ensure the safety or effectiveness of the device that would be subject to the alternative. If we grant an exception or alternative, we may include any safeguards or conditions deemed appropriate to ensure the adequate identification of the device through its distribution and use. Any labeler may make use of an exception or alternative granted under this section, provided that such use satisfies all safeguards or conditions that are part of the exception or alternative.

(d) FDA may initiate and grant an exception or alternative if we determine that the exception or alternative is in the best interest of the public health. Any such exception or alternative will remain in effect only so long as there remains a public health need for the exception or alternative.

(e) The Center Director may rescind an exception or alternative granted under this section if, after providing an opportunity for an informal hearing as defined in section 201(x) of the Federal Food, Drug, and Cosmetic Act and under part 16 of this chapter, the Center Director determines that the exception or alternative no longer satisfies the criteria described in this paragraph (e) or that any safeguard or condition required under this paragraph (e) has not been met.

■ 5b. Effective December 23, 2013, add §§ 801.20, 801.30, 801.35, 801.40, 801.45, and 801.50 to subpart B to read as follows:

Sec.
801.20 Label to bear a unique device identifier.
801.30 General exceptions from the requirement for the label of a device to bear a unique device identifier.
801.35 Voluntary labeling of a device with a unique device identifier.
801.40 Form of a unique device identifier.
801.45 Devices that must be directly marked with a unique device identifier.
801.50 Labeling requirements for stand-alone software.

§ 801.20 Label to bear a unique device identifier.

(a) *In general.* (1) The label of every medical device shall bear a unique device identifier (UDI) that meets the requirements of this subpart and part 830 of this chapter.

(2) Every device package shall bear a UDI that meets the requirements of this subpart and part 830 of this chapter.

(b) *Exceptions.* Exceptions to the general rule of paragraph (a) of this section are provided by §§ 801.30, 801.45, and 801.128(f)(2), and § 801.55 provides a means to request an exception or alternative not provided by those provisions.

§ 801.30 General exceptions from the requirement for the label of a device to bear a unique device identifier.

(a) *In general.* The following types of devices are excepted from the requirement of § 801.20; a device within one or more of the following exceptions is not required to bear a unique device identifier (UDI):

(1) A finished device manufactured and labeled prior to the compliance date established by FDA for § 801.20 regarding the device. This exception expires with regard to a particular device 3 years after the compliance date established by FDA for the device.

(2) A class I device that FDA has by regulation exempted from the good manufacturing practice requirements of part 820 of this chapter, exclusive of any continuing requirement for recordkeeping under §§ 820.180 and 820.198.

(3) Individual single-use devices, all of a single version or model, that are distributed together in a single device package, intended to be stored in that device package until removed for use, and which are not intended for individual commercial distribution. This exception is not available for any implantable device. The device package containing these individual devices is not excepted from the requirement of § 801.20, and must bear a UDI.

(4) A device used solely for research, teaching, or chemical analysis, and not intended for any clinical use.

(5) A custom device within the meaning of § 812.3(b) of this chapter.

(6) An investigational device within the meaning of part 812 of this chapter.

(7) A veterinary medical device not intended for use in the diagnosis of disease or other conditions in man, in the cure, mitigation, treatment, or prevention of disease in man, or intended to affect the structure or any function of the body of man.

(8) A device intended for export from the United States.

(9) A device held by the Strategic National Stockpile and granted an exception or alternative under § 801.128(f)(2).

(10) A device for which FDA has established a performance standard under section 514(b) of the Federal Food, Drug, and Cosmetic Act and has provided therein an exception from the requirement of § 801.20, or for which FDA has recognized all or part of a performance standard under section 514(c) of the Federal Food, Drug, and Cosmetic Act and has included an exception from the requirement of § 801.20 within the scope of that recognition.

(11) A device packaged within the immediate container of a combination product or convenience kit, *provided that* the label of the combination product or convenience kit bears a UDI.

(b) *National Drug Code (NDC) Numbers.* If a combination product properly bears an NDC number on its label—

(1) The combination product is not subject to the requirements of § 801.20.

(2) A device constituent of such a combination product whose components are physically, chemically, or otherwise combined or mixed and produced as a single entity as described by § 3.2(e)(1) of this chapter is not subject to the requirements of § 801.20.

(3) Each device constituent of such a combination product, other than one described by § 3.2(e)(1) of this chapter, must bear a UDI on its label unless paragraph (a)(11) of this section applies.

(c) *Exception for shipping containers.* This rule does not require a UDI to be placed on any shipping container.

(d) The UDI of a class I device is not required to include a production identifier.

§ 801.35 Voluntary labeling of a device with a unique device identifier.

(a) The labeler of a device that is not required to bear a unique device identifier (UDI) may voluntarily comply with § 801.20. If a labeler voluntarily includes a UDI for a device, the labeler may voluntarily provide information concerning the device under subpart E of part 830 of this chapter.

(b) A device may bear both a Universal Product Code (UPC) and a UDI on its label and packages.

§ 801.40 Form of a unique device identifier.

(a) Every unique device identifier (UDI) must meet the technical requirements of § 830.20 of this chapter. The UDI must be presented in two forms:

(1) Easily readable plain-text, and

(2) Automatic identification and data capture (AIDC) technology.

(b) The UDI must include a device identifier segment. Whenever a device label includes a lot or batch number, a serial number, a manufacturing date, an expiration date, or for a human cell, tissue, or cellular or tissue-based product (HCT/P) regulated as a device, a distinct identification code as required by § 1271.290(c) of this chapter, the UDI must include a production identifier segment that conveys such information.

(c) If the AIDC technology is not evident upon visual examination of the label or device package, the label or device package must disclose the presence of AIDC technology.

(d) A class I device that bears a Universal Product Code (UPC) on its label and device packages is deemed to meet all requirements of subpart B of this part. The UPC will serve as the unique device identifier required by § 801.20.

§ 801.45 Devices that must be directly marked with a unique device identifier.

(a) *In general.* A device that must bear a unique device identifier (UDI) on its label must also bear a permanent marking providing the UDI on the device itself if the device is intended to be used more than once and intended to be reprocessed before each use.

(b) *UDI for direct marking.* The UDI provided through a direct marking on a device may be:

(1) Identical to the UDI that appears on the label of the device, or

(2) A different UDI used to distinguish the unpackaged device from any device package containing the device.

(c) *Form of a UDI when provided as a direct marking.* When a device must bear a UDI as a direct marking, the UDI may be provided through either or both of the following:

(1) Easily readable plain-text;

(2) Automatic identification and data capture (AIDC) technology, or any alternative technology, that will provide the UDI of the device on demand.

(d) *Exceptions.* The requirement of paragraph (a) of this section shall not apply to any device that meets any of the following criteria:

(1) Any type of direct marking would interfere with the safety or effectiveness of the device;

(2) The device cannot be directly marked because it is not technologically feasible;

(3) The device is a single-use device and is subjected to additional processing and manufacturing for the purpose of an additional single use.

(4) The device has been previously marked under paragraph (a) of this section.

(e) *Exception to be noted in design history file.* A labeler that decides to make use of an exception under paragraph (d of this section) must document the basis of that decision in the design history file required by § 820.30(j) of this chapter.

§ 801.50 Labeling requirements for stand-alone software.

(a) Stand-alone software that is not distributed in packaged form (e.g., when downloaded from a Web site) is deemed to meet the UDI labeling requirements of this subpart if it complies with the requirements of paragraph (b) of this section and conveys the version number in its production identifier.

(b) Regardless of whether it is or is not distributed in packaged form, stand-alone software regulated as a medical device must provide its unique device identifier through either or both of the following:

(1) An easily readable plain-text statement displayed whenever the software is started;

(2) An easily readable plain-text statement displayed through a menu command (e.g., an ''About * * *'' command).

(c) Stand-alone software that is distributed in both packaged form and in a form that is not packaged (e.g., when downloaded from a Web site) may be identified with the same device identifier.

■ 5c. Effective December 23, 2013, add § 801.57 to subpart B to read as follows:

§ 801.57 Discontinuation of legacy FDA identification numbers assigned to devices.

(a) On the date your device must bear a unique device identifier (UDI) on its label, any National Health-Related Item Code (NHRIC) or National Drug Code (NDC) number assigned to that device is rescinded, and you may no longer provide an NHRIC or NDC number on the label of your device or on any device package.

(b) If your device is not required to bear a UDI on its label, any NHRIC or NDC number assigned to that device is rescinded as of September 24, 2018, and beginning on that date, you may no longer provide an NHRIC or NDC number of the label of your device or on any device package.

(c) A labeler who has been assigned an FDA labeler code to facilitate use of NHRIC or NDC numbers may continue to use that labeler code under a system for the issuance of UDIs, *provided that*—

(1) Such use is consistent with the framework of the issuing agency that operates that system; and

(2) No later than September 24, 2014, the labeler submits, and obtains FDA approval of, a request for continued use of the assigned labeler code. A request for continued use of an assigned labeler code must be submitted by email to: *udi@fda.hhs.gov*, or by correspondence to: UDI Regulatory Policy Support, Center for Devices and Radiological Health, Food and Drug Administration, Bldg. 66, Rm. 3303, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002.

(d) Each request for continued use of an assigned labeler code must provide—

(1) The name, mailing address, email address, and phone number of the labeler who is currently using the labeler code;

(2) The owner/operator account identification used by the labeler to submit registration and listing information using FDA's Unified Registration and Listing System (FURLS).

(3) The FDA labeler code that the labeler wants to continue using.

■ 6. Revise § 801.119 to read as follows:

§ 801.119 In vitro diagnostic products.

A product intended for use in the diagnosis of disease and which is an in vitro diagnostic product as defined in § 809.3(a) of this chapter shall be deemed to be in compliance with the requirements of this part and section 502(f)(1) of the Federal Food, Drug, and Cosmetic Act if it meets the requirements of subpart B of this part and the requirements of § 809.10 of this chapter.

■ 7. Amend § 801.128 by redesignating paragraphs (f)(2) through (f)(7) as paragraphs (f)(3) through (f)(8), respectively, and by adding new paragraph (f)(2) to read as follows:

§ 801.128 Exceptions or alternatives to labeling requirements for medical devices held by the Strategic National Stockpile.

* * * * *

(f) * * *

(2) Subpart B of this part and part 830 of this chapter in its entirety;

* * * * *

PART 803—MEDICAL DEVICE REPORTING

■ 8. The authority citation for 21 CFR part 803 continues to read as follows:

Authority: 21 U.S.C. 352, 360, 360i, 360j, 371, 374.

■ 9. Amend § 803.3 by alphabetically adding the following definitions to read as follows:

§ 803.3 How does FDA define the terms used in this part?

* * * * *

Human cell, tissue, or cellular or tissue-based product (HCT/P) regulated as a device means an HCT/P as defined in § 1271.3(d) of this chapter that does not meet the criteria in § 1271.10(a) and that is also regulated as a device.

* * * * *

Unique device identifier (UDI) means an identifier that adequately identifies a device through its distribution and use by meeting the requirements of § 830.20 of this chapter. A *unique device identifier* is composed of:

(1) A *device identifier*—a mandatory, fixed portion of a UDI that identifies the specific version or model of a device and the labeler of that device; and

(2) A *production identifier*—a conditional, variable portion of a UDI that identifies one or more of the following when included on the label of the device:

(i) The lot or batch within which a device was manufactured;

(ii) The serial number of a specific device;

(iii) The expiration date of a specific device;

(iv) The date a specific device was manufactured.

(v) For an HCT/P regulated as a device, the distinct identification code required by § 1271.290(c) of this chapter.

* * * * *

■ 10. Amend § 803.32 by redesignating paragraphs (c)(6) through (c)(10) as paragraphs (c)(7) through (c)(11), respectively, and by adding new paragraph (c)(6) to read as follows:

§ 803.32 If I am a user facility, what information must I submit in my individual adverse event reports?

* * * * *

(c) * * *

(6) The unique device identifier (UDI) that appears on the device label or on the device package;

* * * * *

■ 11. Amend § 803.33 by redesignating paragraphs (a)(7)(iv) through (a)(7)(vi) as paragraphs (a)(7)(v) through (a)(7)(vii), respectively, and by adding new paragraph (a)(7)(iv) to read as follows:

§ 803.33 If I am a user facility, what must I include when I submit an annual report?

(a) * * *

(7) * * *

(iv) The unique device identifier (UDI) that appears on the device label or on the device package;

* * * * *

■ 12. Amend § 803.42 by redesignating paragraphs (c)(6) through (c)(10) as paragraphs (c)(7) through (c)(11), respectively, and by adding new paragraph (c)(6) to read as follows:

§ 803.42 If I am an importer, what information must I submit in my individual adverse event reports?

* * * * *

(c) * * *

(6) The unique device identifier (UDI) that appears on the device label or on the device package;

* * * * *

■ 13. Amend § 803.52 by redesignating paragraphs (c)(6) through (c)(10) as paragraphs (c)(7) through (c)(11), respectively, and by adding new paragraph (c)(6) to read as follows:

§ 803.52 If I am a manufacturer, what information must I submit in my individual adverse event reports?

* * * * *

(c) * * *

(6) The unique device identifier (UDI) that appears on the device label or on the device package;

* * * * *

PART 806—MEDICAL DEVICES; REPORTS OF CORRECTIONS AND REMOVALS

■ 14. The authority citation for 21 CFR part 806 continues to read as follows:

Authority: 21 U.S.C. 352, 360, 360i, 360j, 371, 374.

■ 15. Amend § 806.2 by redesignating paragraphs (f) through (l) as paragraphs (g) through (m), respectively, and by adding paragraphs (f) and (n) to read as follows:

§ 806.2 Definitions.

* * * * *

(f) *Human cell, tissue, or cellular or tissue-based product (HCT/P) regulated as a device* means an HCT/P as defined in § 1271.3(d) of this chapter that does not meet the criteria in § 1271.10(a) and that is also regulated as a device.

* * * * *

(n) *Unique device identifier (UDI)* means an identifier that adequately identifies a device through its distribution and use by meeting the requirements of § 830.20 of this chapter. A UDI is composed of:

(1) A *device identifier*—a mandatory, fixed portion of a UDI that identifies the specific version or model of a device and the labeler of that device; and

(2) A *production identifier*—a conditional, variable portion of a UDI that identifies one or more of the following when included on the label of the device:

(i) The lot or batch within which a device was manufactured;

(ii) The serial number of a specific device;

(iii) The expiration date of a specific device;

(iv) The date a specific device was manufactured.

(v) For an HCT/P regulated as a device, the distinct identification code required by § 1271.290(c) of this chapter.

■ 16. Amend § 806.10 by revising paragraph (c)(5) to read as follows:

§ 806.10 Reports of corrections and removals.

* * * * *

(c) * * *

(5) The unique device identifier (UDI) that appears on the device label or on the device package, or the device identifier, universal product code (UPC), model, catalog, or code number of the device and the manufacturing lot or serial number of the device or other identification number.

* * * * *

■ 17. Amend § 806.20 by revising paragraph (b)(2) to read as follows:

§ 806.20 Records of corrections and removals not required to be reported.

* * * * *

(b) * * *

(2) The unique device identifier (UDI) of the device, or the device identifier, universal product code (UPC), model, catalog, or code number of the device and the manufacturing lot or serial number of the device or other identification number.

* * * * *

PART 810—MEDICAL DEVICE RECALL AUTHORITY

■ 18. The authority citation for 21 CFR part 810 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 332, 333, 334, 351, 352, 355, 360h, 360i, 371, 374, 375.

■ 19. Amend § 810.2 by redesignating paragraphs (h) through (k) as paragraphs (i) through (l), respectively, and by adding paragraphs (h) and (m) to read as follows:

§ 810.2 Definitions.

* * * * *

(h) *Human cell, tissue, or cellular or tissue-based product (HCT/P) regulated as a device* means an HCT/P as defined in § 1271.3(d) of this chapter that does not meet the criteria in § 1271.10(a) and that is also regulated as a device.

* * * * *

(m) *Unique device identifier (UDI)* means an identifier that adequately identifies a device through its distribution and use by meeting the requirements of § 830.20 of this chapter. A unique device identifier is composed of:

(1) A *device identifier*—a mandatory, fixed portion of a UDI that identifies the specific version or model of a device and the labeler of that device; and

(2) A *production identifier*—a conditional, variable portion of a UDI that identifies one or more of the following when included on the label of the device:

(i) The lot or batch within which a device was manufactured;

(ii) The serial number of a specific device;

(iii) The expiration date of a specific device;

(iv) The date a specific device was manufactured.

(v) For an HCT/P regulated as a device, the distinct identification code required by § 1271.290(c) of this chapter.

■ 20. Amend § 810.10 by removing the word ''and'' at the end of paragraph (b)(2)(iii) and by adding paragraph (b)(2)(v) to read as follows:

§ 810.10 Cease distribution and notification order.

* * * * *

(b) * * *

(2) * * *

(v) The unique device identifier (UDI) that appears on the device label or on the device package; and

* * * * *

PART 814—PREMARKET APPROVAL OF MEDICAL DEVICES

■ 21. The authority citation for 21 CFR part 814 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 353, 360c–360j, 371, 372, 373, 374, 375, 379, 379e, 381.

■ 22. Amend § 814.3 by adding new paragraphs (p), (q), and (r) to read as follows:

§ 814.3 Definitions.

* * * * *

(p) *Human cell, tissue, or cellular or tissue-based product (HCT/P) regulated as a device* means an HCT/P as defined in § 1271.3(d) of this chapter that does not meet the criteria in § 1271.10(a) and that is also regulated as a device.

(q) *Unique device identifier (UDI)* means an identifier that adequately identifies a device through its distribution and use by meeting the requirements of § 830.20 of this chapter. A unique device identifier is composed of:

(1) A *device identifier*—a mandatory, fixed portion of a UDI that identifies the specific version or model of a device and the labeler of that device; and

(2) A *production identifier*—a conditional, variable portion of a UDI that identifies one or more of the following when included on the label of the device:

(i) The lot or batch within which a device was manufactured;

(ii) The serial number of a specific device;

(iii) The expiration date of a specific device;

(iv) The date a specific device was manufactured.

(v) For an HCT/P regulated as a device, the distinct identification code required by § 1271.290(c) of this chapter.

(r) *Universal product code (UPC)* means the product identifier used to identify an item sold at retail in the United States.

■ 23. Amend § 814.84 by adding new paragraph (b)(4) to read as follows:

§ 814.84 Reports.

* * * * *

(b) * * *

(4) Identify each device identifier currently in use for the device, and each device identifier for the device that has been discontinued since the previous periodic report. It is not necessary to identify any device identifier discontinued prior to December 23, 2013.

PART 820—QUALITY SYSTEM REGULATION

■ 24. The authority citation for 21 CFR part 820 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 360, 360c, 360d, 360e, 360h, 360i, 360j, 360l, 371, 374, 381, 383; 42 U.S.C. 216, 262, 263a, 264.

■ 25. Amend § 820.3 by adding new paragraphs (bb), (cc), and (dd) to read as follows:

§ 820.3 Definitions.

* * * * *

(bb) *Human cell, tissue, or cellular or tissue-based product (HCT/P) regulated as a device* means an HCT/P as defined in § 1271.3(d) of this chapter that does not meet the criteria in § 1271.10(a) and that is also regulated as a device.

(cc) *Unique device identifier (UDI)* means an identifier that adequately identifies a device through its distribution and use by meeting the requirements of § 830.20 of this chapter. A unique device identifier is composed of:

(1) A *device identifier*—a mandatory, fixed portion of a UDI that identifies the specific version or model of a device and the labeler of that device; and

(2) A *production identifier*—a conditional, variable portion of a UDI that identifies one or more of the following when included on the label of the device:

(i) The lot or batch within which a device was manufactured;

(ii) The serial number of a specific device;

(iii) The expiration date of a specific device;

(iv) The date a specific device was manufactured.

(v) For an HCT/P regulated as a device, the distinct identification code required by § 1271.290(c) of this chapter.

(dd) *Universal product code (UPC)* means the product identifier used to identify an item sold at retail in the United States.

■ 26. Amend § 820.120 by revising the first sentence of paragraph (b) to read as follows:

§ 820.120 Device labeling.

* * * * *

(b) *Labeling inspection.* Labeling shall not be released for storage or use until a designated individual(s) has examined the labeling for accuracy including, where applicable, the correct unique device identifier (UDI) or universal product code (UPC), expiration date, control number, storage instructions, handling instructions, and any additional processing instructions. * * *

* * * * *

■ 27. Amend § 820.184 by revising paragraph (f) to read as follows:

§ 820.184 Device history record.

* * * * *

(f) Any unique device identifier (UDI) or universal product code (UPC), and any other device identification(s) and control number(s) used.

■ 28. Amend § 820.198 by revising paragraph (e)(3) to read as follows:

§ 820.198 Complaint files.

* * * * *

(e) * * *

(3) Any unique device identifier (UDI) or universal product code (UPC), and any other device identification(s) and control number(s) used;

* * * * *

■ 29. Amend § 820.200 by revising paragraph (d)(2) to read as follows:

§ 820.200 Servicing.

* * * * *

(d) * * *

(2) Any unique device identifier (UDI) or universal product code (UPC), and any other device identification(s) and control number(s) used;

* * * * *

PART 821—MEDICAL DEVICE TRACKING REQUIREMENTS

■ 30. The authority citation for 21 CFR part 821 continues to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 360, 360e, 360h, 360i, 371, 374.

■ 31. Amend § 821.3 by adding new paragraphs (n) and (o) to read as follows:

§ 821.3 Definitions.

* * * * *

(n) *Human cell, tissue, or cellular or tissue-based product (HCT/P) regulated as a device* means an HCT/P as defined in § 1271.3(d) of this chapter that does not meet the criteria in § 1271.10(a) and that is also regulated as a device.

(o) *Unique device identifier (UDI)* means an identifier that adequately identifies a device through its distribution and use by meeting the requirements of § 830.20 of this chapter. A unique device identifier is composed of:

(1) A *device identifier*—a mandatory, fixed portion of a UDI that identifies the specific version or model of a device and the labeler of that device; and

(2) A *production identifier*—a conditional, variable portion of a UDI that identifies one or more of the following when included on the label of the device:

(i) The lot or batch within which a device was manufactured;

(ii) The serial number of a specific device;

(iii) The expiration date of a specific device;

(iv) The date a specific device was manufactured.

(v) For an HCT/P regulated as a device, the distinct identification code required by § 1271.290(c) of this chapter.

■ 32. Amend § 821.25 by revising paragraphs (a)(2)(i) and (a)(3)(i) to read as follows:

§ 821.25 Device tracking system and content requirements: manufacturer requirements.

(a) * * *

(2) * * *

(i) The unique device identifier (UDI), lot number, batch number, model number, or serial number of the device or other identifier necessary to provide for effective tracking of the devices;

* * * * *

(3) * * *

(i) The unique device identifier (UDI), lot number, batch number, model number, or serial number of the device or other identifier necessary to provide for effective tracking of the devices;

* * * * *

■ 33. Amend § 821.30 by revising paragraphs (a)(2), (b)(2), and (c)(1)(i) to read as follows:

§ 821.30 Tracking obligations of persons other than device manufacturers: distributor requirements.

(a) * * *

(2) The unique device identifier (UDI), lot number, batch number, model number, or serial number of the device or other identifier used by the manufacturer to track the device;

* * * * *

(b) * * *

(2) The unique device identifier (UDI), lot number, batch number, model number, or serial number of the device or other identifier used by the manufacturer to track the device;

* * * * *

(c) * * *

(1) * * *

(i) The unique device identifier (UDI), lot number, batch number, model number, or serial number of the device or other identifier used by the manufacturer to track the device;

* * * * *

PART 822—POSTMARKET SURVEILLANCE

■ 34. The authority citation for 21 CFR part 822 continues to read as follows:

Authority: 21 U.S.C. 331, 352, 360i, 360l, 371, 374.

■ 35. Amend § 822.3 by redesignating paragraphs (e) through (m) as paragraphs (f) through (n), respectively, and by adding new paragraphs (e) and (o) to read as follows:

§ 822.3 How do you define the terms used in this part?

* * * * *

(e) *Human cell, tissue, or cellular or tissue-based product (HCT/P) regulated as a device* means an HCT/P as defined in § 1271.3(d) of this chapter that does not meet the criteria in § 1271.10(a) and that is also regulated as a device.

* * * * *

(o) *Unique device identifier (UDI)* means an identifier that adequately identifies a device through its distribution and use by meeting the requirements of § 830.20 of this chapter. A UDI is composed of:

(1) A *device identifier*—a mandatory, fixed portion of a UDI that identifies the specific version or model of a device and the labeler of that device; and

(2) A *production identifier*—a conditional, variable portion of a UDI that identifies one or more of the following when included on the label of the device:

(i) The lot or batch within which a device was manufactured;

(ii) The serial number of a specific device;

(iii) The expiration date of a specific device;

(iv) The date a specific device was manufactured.

(v) For an HCT/P regulated as a device, the distinct identification code required by § 1271.290(c) of this chapter.

■ 36. Amend § 822.9 by revising paragraph (a)(4) to read as follows:

§ 822.9 What must I include in my submission?

* * * * *

(a) * * *

(4) Premarket application/submission number and device identifiers for your device;

* * * * *

■ 37a. Effective October 24, 2013, add new part 830 to read as follows:

PART 830—UNIQUE DEVICE IDENTIFICATION

Subpart A—[Reserved]

Subpart B—Requirements for a Unique Device Identifier

Sec.
830.10 Incorporation by reference.

Subpart C—FDA Accreditation of an Issuing Agency

830.100 FDA accreditation of an issuing agency.
830.110 Application for accreditation as an issuing agency.
830.120 Responsibilities of an FDA-accredited issuing agency.
830.130 Suspension or revocation of the accreditation of an issuing agency.

Subpart D—[Reserved]

Subpart E—[Reserved]

Authority: 21 U.S.C. 321, 331, 352, 353, 360, 360d, 360i, 360j, 371.

Subpart A—[Reserved]

Subpart B—Requirements for a Unique Device Identifier

§ 830.10 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Food and Drug Administration must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, 301–827–6860, and is available from the source listed in paragraph (b) of this section. Copies are also available for purchase from the American National Standards Institute (ANSI), mailing address: ANSI, Attn: Customer Service Department, 25 West 43rd St., 4th floor, New York, NY 10036, phone: 212–642–4980, and may be ordered online at *http://webstore.ansi.org/*. The material is also available for inspection 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/code_of_federal_regulations/ibr_locations.html.*

(b) International Organization for Standardization (ISO), mailing address: ISO, Attn: ISO Central Secretariat, 1, ch. de la Voie-Creuse, Case postale 56, CH–1211 Geneva 20, Switzerland, phone (dialing from the United States): 011–41–22–749–0111, and may be ordered online at *http://www.standardsinfo.net*.

(1) ISO/IEC 646:1991(E), Information technology—ISO 7-bit coded character set for information interchange (third edition; December 15, 1991), into §§ 830.20(c) and 830.100(b);

(2) ISO/IEC 15459–2:2006(E), Information technology—Unique identifiers—Part 2: Registration procedures (second edition; March 1, 2006), into §§ 830.20(b) and 830.100(b);

(3) ISO/IEC 15459–4:2008(E), Information technology—Unique identifiers—Part 4: Individual items (second edition; July 15, 2008), into §§ 830.20(b) and 830.100(b);

(4) ISO/IEC 15459–6:2007(E), Information technology—Unique identifiers—Part 6: Unique identifier for product groupings (first edition; June 15, 2007), into §§ 830.20(b) and 830.100(b).

Subpart C—FDA Accreditation of an Issuing Agency

§ 830.100 FDA accreditation of an issuing agency.

(a) *Eligibility.* A private organization may apply for accreditation as an issuing agency.

(b) *Accreditation criteria.* FDA may accredit an organization as an issuing agency, if the system it will operate:

(1) Will employ unique device identifiers (UDIs) that meet the requirements of this part to adequately identify a device through its distribution and use;

(2) Conforms to each of the following international standards:

(i) ISO/IEC 15459–2, which is incorporated by reference at § 830.10;

(ii) ISO/IEC 15459–4, which is incorporated by reference at § 830.10;

(iii) ISO/IEC 15459–6, which is incorporated by reference at § 830.10.

(3) Uses only characters and numbers from the invariant character set of ISO/IEC 646, which is incorporated by reference at § 830.10.

(4) Will be available to all users according to a single set of consistent, fair, and reasonable terms and conditions.

(5) Will protect against conflicts of interest between the issuing agency (and its officers, employees, and other agents) and labelers (and their officers, employees, and other agents) seeking to use UDIs that may impede the applicant's ability to independently operate a fair and neutral identifier system.

§ 830.110 Application for accreditation as an issuing agency.

(a) *Application for initial accreditation.* (1) An applicant seeking initial FDA accreditation as an issuing agency shall notify FDA of its desire to be accredited by sending a notification by email to *udi@fda.hhs.gov*, or by correspondence to: UDI Regulatory Policy Support, Center for Devices and Radiological Health, Food and Drug Administration, Bldg. 66, Rm. 3303, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002.

(2) FDA will provide the applicant with additional information to aid in submission of an application for approval as an issuing agency, together with an email address for submission of an application.

(3) The applicant shall furnish to FDA, via email to the email address provided in paragraph (a)(1) of this section, an application containing the following information, materials, and supporting documentation:

(i) Name, address, and phone number of the applicant;

(ii) Detailed descriptions of any standards or criteria the applicant will apply to participating labelers;

(iii) A detailed description of the guidelines that govern assignment of a unique device identifier (UDI) to a device;

(iv) A detailed description of the review and decisionmaking process the applicant will apply when determining whether a particular labeler may use the applicant's UDI system, including:

(A) Copies of the application forms, guidelines, instructions, and other materials the applicant will send to medical device labelers who wish to use the applicant's unique device identification system;

(B) Policies and procedures for notifying a labeler of deficiencies in its use of UDIs;

(C) Procedures for monitoring a labeler's correction of deficiencies in its use of UDIs;

(D) Policies and procedures for suspending or revoking a labeler's use of the applicant's UDI system, including any appeals process.

(v) Description of the applicant's electronic data management system with respect to its review and decision processes and the applicant's ability to provide electronic data in a format compatible with FDA data systems;

(vi) Fee schedules, if any, together with an explanation of any fee waivers or reductions that are available;

(vii) Detailed information regarding any financial or other relationship between the applicant and any labeler(s) or governmental entity(ies); and

(viii) Other information required by FDA to clarify the application for accreditation.

(b) *Application for renewal of accreditation.* An accredited issuing agency that intends to continue to serve as an issuing agency beyond its current term shall apply to FDA for renewal or notify FDA of its plans not to apply for renewal in accordance with the following procedures and schedule:

(1) At least 9 months before the date of expiration of its accreditation, an issuing agency shall inform FDA, at the address given in paragraph (a)(1) of this section, of its intent to seek renewal.

(2) FDA will notify the issuing agency of the relevant information, materials, and supporting documentation that we will require the issuing agency to submit as part of the renewal procedure. We will tailor these requirements to reflect our experience with the issuing agency during the current and any prior period of accreditation. We will limit our request to the types of the information required by paragraph (a)(3) of this section, and we will require less information if experience shows that we need only a subset of that information.

(3) At least 6 months before the date of expiration of its accreditation, an issuing agency shall furnish to FDA, at the email address we provide, a copy of a renewal application containing the information, materials, and supporting documentation requested by FDA in accordance with paragraph (b)(2) of this section.

(4) Any issuing agency that does not plan to renew its accreditation shall so notify FDA at the address given in paragraph (a)(1) of this section at least 9 months before the expiration of the issuing agency's term of accreditation and shall include a description of its plans for allowing continued use of UDIs issued prior to the expiration of the current term of accreditation.

(c) *FDA action on an application for initial or renewal accreditation.* (1) FDA will conduct a review and evaluation to determine whether the applicant meets the requirements of this subpart and whether the UDI system proposed by the applicant will meet the requirements of this subpart.

(2) Within 60 days of receipt of an application for accreditation, FDA will notify the applicant of any deficiencies in its application and will request correction of those deficiencies within 60 days. The applicant may request an extension if it needs additional time to correct deficiencies in its application. If the deficiencies are not resolved to FDA's satisfaction within the specified time period, the application for accreditation as an issuing agency may be denied.

(3) FDA shall notify the applicant whether the application for accreditation has been granted or denied. That notification shall list any conditions of approval or state the reasons for denial.

(4) If FDA denies an application, we will advise the applicant of the circumstances under which a denied application may be resubmitted.

(5) If FDA does not reach a final decision on a renewal application before the expiration of an issuing agency's current accreditation, the approval will be deemed extended until FDA reaches a final decision on the application.

(d) *Relinquishment of accreditation.* If an issuing agency decides to relinquish its accreditation before expiration of the current term of accreditation, it shall submit a letter of such intent to FDA, at the address provided in paragraph (a)(1) of this section, at least 9 months before relinquishing its accreditation.

(e) *Notice of termination of accreditation.* An issuing agency that does not apply for renewal of its accreditation, is denied renewal of accreditation by FDA, or relinquishes its accreditation and duties before expiration of the current term of accreditation, shall notify all labelers that are using the issuing agency's UDI system, in a manner and time period approved by FDA, of the date that the issuing agency will cease to serve as an FDA-accredited issuing agency.

(f) *Term of accreditation.* The initial term of accreditation for an issuing agency shall be for a period of 3 years. An issuing agency's term of accreditation may be periodically renewed for a period of 7 years.

§ 830.120 Responsibilities of an FDA-accredited issuing agency.

To maintain its accreditation, an issuing agency must:

(a) Operate a system for assignment of unique device identifiers (UDIs) that meets the requirements of § 830.20;

(b) Make available information concerning its system for the assignment of UDIs;

(c) Maintain a list of labelers that use its system for the assignment of UDIs and provide FDA a copy of such list in electronic form by December 31 of each year;

(d) Upon request, provide FDA with information concerning a labeler that is employing the issuing agency's system for assignment of UDIs; and

(e) Remain in compliance with the eligibility and accreditation criteria set forth in § 830.100.

§ 830.130 Suspension or revocation of the accreditation of an issuing agency.

FDA may suspend or revoke the accreditation of an issuing agency if FDA finds, after providing the issuing agency with notice and opportunity for an informal hearing in accordance with part 16 of this chapter, that the issuing agency or any officer, employee, or other agent of the issuing agency:

(a) Has been guilty of misrepresentation or failure to disclose required information in obtaining accreditation;

(b) Has failed to fulfill the responsibilities outlined in § 830.120;

(c) Has failed to protect against conflicts of interest that may impede the issuing agency's ability to independently operate a fair and neutral identifier system;

(d) In the operation of the issuing agency, has engaged in any anticompetitive activity to restrain trade; or

(e) Has violated or aided and abetted in the violation of any regulation issued under section 510(e) or section 519(f) of the Federal Food, Drug, and Cosmetic Act.

Subpart D—[Reserved]

Subpart E—[Reserved]

■ 37b. Effective December 23, 2013, add subpart A to part 830 to read as follows:

Subpart A—General Provisions

§ 830.3 Definitions.

As used in this part:

Automatic identification and data capture (AIDC) means any technology that conveys the unique device identifier or the device identifier of a device in a form that can be entered into an electronic patient record or other computer system via an automated process.

Center Director means the Director of the Center for Devices and Radiological Health or the Director of the Center for Biologics Evaluation and Research, depending on which Center has been assigned lead responsibility for the device.

Device package means a package that contains a fixed quantity of a particular version or model of a device.

Expiration date means the date by which the label of a device states the device must or should be used.

FDA, we, or *us* means the Food and Drug Administration.

Federal Food, Drug, and Cosmetic Act means 21 U.S.C. 321 *et seq.,* as amended.

Finished device means any device or accessory to any device that is suitable for use or capable of functioning.

Global Unique Device Identification Database (GUDID) means the database that serves as a repository of information to facilitate the identification of medical devices through their distribution and use.

Human cell, tissue, or cellular or tissue-based product (HCT/P) regulated as a device means an HCT/P as defined in § 1271.3(d) of this chapter that does not meet the criteria in § 1271.10(a) and that is also regulated as a device.

Issuing agency means an organization accredited by FDA to operate a system for the issuance of unique device identifiers.

Label has the meaning set forth in section 201(k) of the Federal Food, Drug, and Cosmetic Act.

Labeler means:

(1) Any person who causes a label to be applied to a device with the intent that the device will be commercially distributed without any subsequent replacement or modification of the label; and

(2) Any person who causes the label of a device to be replaced or modified with the intent that the device will be commercially distributed without any subsequent replacement or modification of the label, except that the addition of the name of, and contact information for, a person who distributes the device, without making any other changes to the label, is not a modification for the purposes of determining whether a person is a labeler.

Lot or batch means one *finished device* or more that consist of a single type, model, class, size, composition, or software version that are manufactured under essentially the same conditions and that are intended to have uniform characteristics and quality within specified limits.

Shipping container means a container used during the shipment or transportation of devices, and whose contents may vary from one shipment to another.

Small business means a medical device manufacturer with 500 or fewer employees, or a medical device relabeler or repackager with 100 or fewer employees.

Specification means any requirement with which a device must conform.

Unique device identifier (UDI) means an identifier that adequately identifies a device through its distribution and use by meeting the requirements of § 830.20. A UDI is composed of:

(1) A *device identifier*—a mandatory, fixed portion of a UDI that identifies the specific version or model of a device and the labeler of that device; and

(2) A *production identifier*—a conditional, variable portion of a UDI that identifies one or more of the following when included on the label of the device:

(i) The lot or batch within which a device was manufactured;

(ii) The serial number of a specific device;

(iii) The expiration date of a specific device;

(iv) The date a specific device was manufactured.

(v) For an HCT/P regulated as a device, the distinct identification code required by § 1271.290(c) of this chapter.

Universal product code (UPC) means the product identifier used to identify an item sold at retail in the United States.

Version or model means all devices that have specifications, performance, size, and composition, within limits set by the labeler.

■ 37c. Effective December 23, 2013, add §§ 830.20, 830.40, 830.50, and 830.60 to subpart B to read as follows:

Sec.
830.20 Requirements for a unique device identifier.
830.40 Use and discontinuation of a device identifier.
830.50 Changes that require use of a new device identifier.
830.60 Relabeling of a device that is required to bear a unique device identifier.

§ 830.20 Requirements for a unique device identifier.

A unique device identifier (UDI) must:

(a) Be issued under a system operated by FDA or an FDA-accredited issuing agency;

(b) Conform to each of the following international standards:

(1) ISO/IEC 15459–2, which is incorporated by reference at § 830.10;

(2) ISO/IEC 15459–4, which is incorporated by reference at § 830.10; and

(3) ISO/IEC 15459–6, which is incorporated by reference at § 830.10.

(c) Use only characters and numbers from the invariant character set of ISO/IEC 646, which is incorporated by reference at § 830.10.

§ 830.40 Use and discontinuation of a device identifier.

(a) Only one device identifier from any particular system for the issuance of unique device identifiers (UDIs) may be used to identify a particular version or model of a device. A particular version or model may be identified by UDIs from two or more systems for the issuance of UDIs.

(b) A device identifier shall be used to identify only one version or model.

(c) In the event that a version or model of a device is discontinued, its device identifier may not be reassigned to another device. If a discontinued version or model is re-introduced and no changes have been made that would require the use of a new device identifier, the device identifier that was previously in use may be used to identify the device.

(d) In the event that an issuing agency relinquishes or does not renew its accreditation, you may continue to use a previously issued UDI until such time as § 830.50 requires you to assign a new device identifier.

§ 830.50 Changes that require use of a new device identifier.

(a) Whenever you make a change to a device that is required to bear a unique device identifier (UDI) on its label, and the change results in a new version or model, you must assign a new device identifier to the new version or model.

(b) Whenever you create a new device package, you must assign a new device identifier to the new device package.

§ 830.60 Relabeling of a device that is required to bear a unique device identifier.

If you relabel a device that is required to bear a unique device identifier (UDI), you must:

(a) Assign a new device identifier to the device, and

(b) Keep a record showing the relationship of the prior device identifier to your new device identifier.

■ 37d. Effective December 23, 2013, add subparts D and E to part 830 to read as follows:

Subpart D—FDA as an Issuing Agency

830.200 When FDA will act as an issuing agency.
830.210 Eligibility for use of FDA as an issuing agency.
830.220 Termination of FDA service as an issuing agency.

Subpart E—Global Unique Device Identification Database

830.300 Devices subject to device identification data submission requirements.
830.310 Information required for unique device identification.
830.320 Submission of unique device identification information.
830.330 Times for submission of unique device identification information.
830.340 Voluntary submission of ancillary device identification information.
830.350 Correction of information submitted to the Global Unique Device Identification Database.
830.360 Records to be maintained by the labeler.

Subpart D—FDA as an Issuing Agency

§ 830.200 When FDA will act as an issuing agency.

(a) During any period where there is no accredited issuing agency, FDA will act as an issuing agency.

(b) If FDA determines that a significant number of small businesses would be substantially and adversely affected by the fees required by all accredited issuing agencies, FDA will act as an issuing agency.

(c) FDA may, in its discretion, act as an issuing agency if we determine it is necessary for us to do so to ensure the continuity or the effectiveness of the system for the identification of medical devices.

(d) FDA may, in its discretion, act as an issuing agency if we determine it is appropriate for us to do so in order to facilitate or implement an alternative granted under § 801.55 of this chapter.

§ 830.210 Eligibility for use of FDA as an issuing agency.

When FDA acts as an issuing agency, any labeler will be permitted to use FDA's unique device identification system, regardless of whether the labeler is considered a small business.

§ 830.220 Termination of FDA service as an issuing agency.

(a) FDA may end our services as an issuing agency if we determine that the conditions that prompted us to act no longer exist and that ending our services would not be likely to lead to a return of the conditions that prompted us to act.

(b) If FDA has ended our services as an issuing agency, a labeler may continue to use a device identifier assigned under FDA's unique device identification system until such time as § 830.50 requires the use of a new device identifier.

Subpart E—Global Unique Device Identification Database

§ 830.300 Devices subject to device identification data submission requirements.

(a) *In general.* The labeler of a device must provide the information required by this subpart for each version or model required to bear a unique device identifier (UDI).

(b) *Voluntary submission of information.* If a labeler voluntarily includes a UDI on the label of a device under § 801.40, the labeler may also voluntarily submit information concerning that device under this part.

(c) *Exclusions.* FDA may reject or remove any device identification data where:

(1) The device identifier submitted does not conform to § 830.20;

(2) The information concerns a device that is neither manufactured in the United States nor in interstate commerce in the United States,

(3) The information concerns a product that FDA determines is not a device or a combination product that includes a device constituent part,

(4) The information concerns a device or a combination product that requires, but does not have, FDA premarket approval, licensure, or clearance;

(5) A device that FDA has banned under section 516 of the Federal Food, Drug, and Cosmetic Act; or

(6) FDA has suspended the accreditation of the issuing agency that operates the system used by the labeler.

§ 830.310 Information required for unique device identification.

The contact for device identification designated under § 830.320(a) shall provide FDA with the following information concerning each version or model of a device required to bear a unique device identifier (UDI) on its label:

(a) *Concerning the labeler:*

(1) The name of the labeler;

(2) A telephone number or email address that will allow FDA to communicate with the contact for device identification designated under § 830.320(a); and

(3) The name of each issuing agency whose system is used by the labeler to assign UDIs used by the labeler.

(b) *Concerning each version or model of a device with a UDI on its label:*

(1) The device identifier portion of the UDI assigned to the version or model;

(2) When reporting a substitution of a new device identifier that will be used in lieu of a previously reported identifier, the device identifier that was previously assigned to the version or model;

(3) If § 801.45 of this chapter requires the device to bear a UDI as a permanent marking on the device itself, either:

(i) A statement that the device identifier that appears as a permanent marking on the device is identical to that reported under paragraph (b)(1) of this section, or

(ii) The device identifier portion of the UDI that appears as a permanent marking on the device;

(4) The proprietary, trade, or brand name of the device as it appears on the label of the device;

(5) Any version or model number or similar reference that appears on the label of the device;

(6) If the device is labeled as sterile, a statement to that effect;

(7) If the device is labeled as containing natural rubber latex that contacts humans, or is labeled as having packaging containing natural rubber latex that contacts humans, as described by §§ 801.437(b)(1), 801.437(b)(3), and 801.437(f) of this chapter, a statement to that effect;

(8) Whether a patient may be safely exposed to magnetic resonance imaging, nuclear magnetic resonance imaging, or magnetic resonance tomography while using the device, or while the device is implanted in patient.

(9) If the device is available in more than one size, the size of the particular version or model, together with the unit of measure, as it appears on the label of the device;

(10) The type of production identifiers that appear on the label of the device;

(11) The FDA premarket submission number of a cleared or approved device, or a statement that FDA has by regulation exempted the device from premarket notification;

(12) The FDA listing number assigned to the device;

(13) The Global Medical Device Nomenclature (GMDN) term or code for the device;

(14) The total number of individual devices contained in the device package.

§ 830.320 Submission of unique device identification information.

(a) *Designation of contact for device identification.* Each labeler must designate an individual to serve as the point of contact with FDA on matters relating to the identification of medical devices marketed by the labeler. The contact for device information is responsible for ensuring FDA is provided with all information required by this part. The contact for device information may authorize an issuing agency or any other person to provide information to FDA on behalf of the labeler.

(b) *Information shall be submitted via electronic means.* All information required by this subpart shall be submitted electronically to FDA's Global Unique Device Identification Database (GUDID) in a format that we can process, review, and archive, unless the labeler has obtained a waiver from electronic submission of unique device identifier (UDI) data.

(c) *Waiver from electronic submission.* (1) A labeler may request a waiver from electronic submission of UDI data by submitting a letter addressed to the appropriate Center Director explaining why electronic submission is not technologically feasible; send the request by email to: *udi@fda.hhs.gov*, or by correspondence to: UDI Regulatory Policy Support, Center for Devices and Radiological Health, Food and Drug Administration, Bldg. 66, Rm. 3303, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002.

(2) If the establishment where the labeler is located has obtained a waiver from electronic submission of registration and listing information under section 510(p) of the Federal Food, Drug, and Cosmetic Act, the labeler is deemed to have a waiver from electronic submission of UDI data.

(3) A labeler that has a waiver from electronic submission of UDI data must send a letter containing all of the information required by § 830.310, as well as any ancillary information permitted to be submitted under § 830.340 that the labeler wishes to submit, within the time permitted by § 830.330, addressed to: UDI Regulatory Policy Support, Center for Devices and Radiological Health, Food and Drug Administration, Bldg. 66, Rm. 3303, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002.

§ 830.330 Times for submission of unique device identification information.

(a) The labeler shall submit to FDA the information required by § 830.310 no later than the date the label of the device must bear a unique device identifier under § 801.20 of this chapter.

(b) The labeler of a device shall submit to FDA an update to the information required by § 830.310 whenever the information changes. The updated information must be submitted no later than the date a device is first labeled with the changed information. If the information does not appear on the label of a device, the updated information must be submitted within 10 business days of the change.

§ 830.340 Voluntary submission of ancillary device identification information.

(a) You may not submit any information to the Global Unique Device Identification Database (GUDID) other than that specified by § 830.310, except where FDA acts to permit the submission of specified additional types of information, termed ancillary information.

(b) FDA will provide information through the FDA Web site at *http://www.fda.gov/udi/* concerning the types of ancillary information that may be submitted to the GUDID.

(c) FDA may periodically change the types of ancillary information that may be submitted to the GUDID. We will announce any change on the FDA Web site at *http://www.fda.gov/udi/* at least 60 days before making the change.

§ 830.350 Correction of information submitted to the Global Unique Device Identification Database.

(a) If FDA becomes aware that any information submitted to the Global Unique Device Identification Database (GUDID) appears to be incorrect or potentially misleading, we may notify the labeler of the specific information that appears to be incorrect, and request that the labeler provide corrected information or explain why the information is correct. The labeler must provide corrected information or provide a satisfactory explanation of why the information is correct within 30 days of receipt of FDA's notification.

(b) If the labeler does not respond to FDA's notification within 30 days of receipt, or if FDA determines, at any time, that any information in the GUDID is incorrect or could be misleading, we may delete or correct the information. Any action taken by FDA under this paragraph does not relieve the labeler of its responsibility under paragraph (a) of this section to provide corrected information or an explanation of why the information previously submitted is correct.

§ 830.360 Records to be maintained by the labeler.

(a) Each labeler shall retain, and submit to FDA upon specific request, records showing all unique device identifiers (UDIs) used to identify devices that must bear a UDI on their label, and the particular version or model associated with each device identifier. These records must be retained for 3 years from the date the labeler ceases to market the version or model.

(b) Compliance with this section does not relieve the labeler of the need to comply with recordkeeping requirements of any other FDA regulation.

Dated: September 18, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–23059 Filed 9–20–13; 8:45 am]

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Part VI

Department of Transportation

Federal Railroad Administration

49 CFR Part 228

Second Interim Statement of Agency Policy and Interpretation on the Hours of Service Laws as Amended in 2008; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 228

[Docket No. 2013–0011, Notice No. 1]

Second Interim Statement of Agency Policy and Interpretation on the Hours of Service Laws as Amended in 2008

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Interim statement of agency policy and interpretation, hours of service laws as amended in 2008; request for public comment.

SUMMARY: The hours of service laws are Federal railroad safety laws that govern such matters as the maximum on-duty periods and minimum off-duty periods for railroad employees performing certain functions. In this document FRA supplements its existing interpretations of the hours of service laws by stating the agency's interim position on some additional interpretive questions primarily involving two provisions of those laws that were added in 2008. First, this document further interprets the hours of service laws related to train employees, particularly the ''consecutive-days'' provision of those laws. Although the consecutive-days provision was also discussed in FRA's June 2009 interim interpretations and February 2012 final interpretations, this document addresses the application of that provision to certain circumstances that were not specifically addressed in those interpretations. Second, this document further interprets the provision of the hours of service laws that makes signal employees operating motor vehicles subject to the hours of service laws and other hours of service requirements administered by FRA and exempt from the hours of service requirements promulgated by any other Federal authority. FRA invites public comment on these additional interim interpretations.

DATES: This document is effective October 24, 2013. Comments on the interim interpretations are due by November 25, 2013. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You may submit comments on the interim interpretations set forth in this document, identified as Docket No. FRA–2013–0011, by any of the following methods:

- *Web site:* The Federal eRulemaking Portal, *http://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, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number for this interim statement of agency policy and interpretation. Note that all submissions received will be posted without change to *http://www.regulations.gov* including any personal information.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or to Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Colleen A. Brennan, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE., RCC–12, Mail Stop 10, Washington, DC 20590 (telephone 202–493–6028 or 202–493–6052); Matthew T. Prince, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE., RCC–12, Mail Stop 10, Washington, DC 20590 (telephone 202–493–6146 or 202–493–6052); Rich Connor, Operating Practices Specialist, Operating Practices Division, Office of Safety Assurance and Compliance, FRA, 1200 New Jersey Avenue SE., RRS–11, Mail Stop 25, Washington, DC 20590 (telephone 202–493–1351); or George C. Hartman, Acting Staff Director, Signal and Train Control Division, Office of Safety Assurance and Compliance, FRA, Mail Stop 25, West Building 3rd Floor West, Room W35–333, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone: 202–493–6225).

SUPPLEMENTARY INFORMATION:

Abbreviations of Terms Frequently Used in This Document

AAR Association of American Railroads
BRS Brotherhood of Railroad Signalmen
CFR Code of Federal Regulations
ch. chapter
FMCSA Federal Motor Carrier Safety Administration
FRA Federal Railroad Administration
HS hours of service (when the term is used as an adjective, except as part of the name of an Act of Congress or the title of a document, and not when the term is used as a noun)
RSIA Rail Safety Improvement Act of 2008, Public Law 110–432, Div. A, 122 Stat. 4848
Sec. Section (Unless otherwise noted, all references to a ''Sec.'' are to a section in title 49 of the U.S. Code.)
U.S.C. United States Code

Definitions of Terms Frequently Used in This Document [1]

Consecutive-days provision of the HS laws means 49 U.S.C. 21103(a)(4).

Consecutive-days provision of the Passenger Train Employee HS Regulations means 49 CFR 228.405(a)(3).

Extended-rest provision of the HS laws means 49 U.S.C. 21103(a)(4).

Extended-rest provision of the Passenger Train Employee HS Regulations means 49 CFR 228.405(a)(3).

Final Interpretations means FRA's ''Statement of Agency Policy and Interpretation on the Hours of Service Laws as Amended; Response to Public Comment'' published at 77 FR 12408–31 (February 29, 2012).

Freight train employee means a train employee who is not a passenger train employee.

June 2009 Interim Interpretations means FRA's ''Interim Statement of Agency Policy and Interpretation on the Hours of Service Laws as Amended; Proposed Interpretation; Request for Public Comment'' published at 74 FR 30665–77 (June 26, 2009).

Passenger train employee means a *train employee who is engaged in commuter or intercity rail passenger transportation,* as defined by 49 CFR 228.403(c).

Passenger Train Employee HS Regulations means the passenger train employee hours of service regulations codified at 49 CFR part 228, subpart F.

Second Interim Interpretations means this document, FRA's ''Interim Statement of Agency Policy and Interpretation on the Hours of Service Laws as Amended in 2008; Request for Public Comment'' published on September 24, 2013.

''Signal employee exclusivity'' provision means 49 U.S.C. 21104(e).

Secretary means the Secretary of Transportation.

Table of Contents for Supplementary Information

I. Executive Summary of the Second Interim Statement of Agency Policy and Interpretation on the Hours of Service Laws as Amended in 2008 (Second Interim Interpretations)
A. Statutory and Regulatory Background and FRA's Previous Interpretations

[1] See also Appendix A to this document for a table briefly summarizing the Federal hours of service requirements. Many terms frequently used in this document are defined in FRA's regulations at 49 CFR 228.5.

(Section II and Section III.A of the Second Interim Interpretations)
B. Unavailability for Service for Purposes of the Statutory Consecutive-Days Provision (Sec. 21103(a)(4)) (Section III.B of the Second Interim Interpretations)
C. Primarily, Initiating an On-duty Period for Purposes of Sec. 21103(a)(4); Secondarily, Application of Subsections (a)(1), (a)(3), (c)(1), (c)(4), and (e) of Sec. 21103 (Section III.C of the Second Interim Interpretations)
D. Requirements after Final Release at the Away-from-Home Terminal after the Employee Has Initiated an On-duty Period on Six Consecutive Days (Section III.D of the Second Interim Interpretations)
E. ''Signal Employee Exclusivity'' Provision (Section IV of the Second Interim Interpretations)
II. Background on the Hours of Service Laws and FRA's Previous Publications Interpreting the Hours of Service Laws as Amended in 2008
III. Additional Questions Primarily Regarding the Consecutive-Days Limitation for Freight Train Employees and the Requirement of at Least 48 or 72 Hours Off Duty at the Home Terminal During Which Time the Employee Is Unavailable for Service for Any Railroad
A. Legislative, Statutory, and Regulatory Background on the Hours of Service Requirements Related to Train Employees
B. When Is a Train Employee Unavailable for Service for Any Railroad Such That the Extended Rest of 48 or 72 Hours Required by Sec. 21103(a)(4) May Begin to Run?
1. Summary of Issue and Interim Interpretation
2. Detailed Discussion of Interim Interpretation
C. How Does Sec. 21103(a)(4) Apply to an Employee Who Initiates an On-Duty Period Performing Multiple Types of Covered Service During One Duty Tour or Within a Period of Six or Seven Consecutive Days? How Do Subsections (a)(1), (a)(3), (c)(1), (c)(4), and (e) of Sec. 21103 Apply to an Employee Performing Multiple Types of Covered Service Within the Relevant Time Periods?
1. Summary of Issues and Interim Interpretation
2. Detailed Discussion of Interim Interpretation
a. Option 1: Broad Reading—All Forms of Covered Service Count as Initiating an On-Duty Period Under Under Sec. 21103(a)(4).
b. Option 2: Narrow Reading—Only Duty Tours Including Time Engaged in or Connected With the Movement of a Train Count as Initiating an On-Duty Period Under Sec. 21103(a)(4).
c. Decision: FRA Chooses the Narrow Reading of ''On-Duty Period'' for Purposes of Sec. 21103(a)(4).
d. Further Clarification: Service as a Passenger Train Employee Is Within the Scope of ''On-Duty Period'' Under Sec. 21103(a)(4), Despite the Sec. 21102(c) Exemption.
e. Further Clarification: Service as a Passenger Train Employee Is Within the Scope of the Calendar Monthly Limits Set by Sec. 21103(a)(1) and (c)(1).
f. Further Clarification: Requirements for Rest Set by Sec. 21103(a)(3), (c)(4), and (e), After a Single Duty Tour That Includes Service as a Freight Train Employee, Must Also Be Met Before Performing any Service for the Railroad or Else the Additional Service Will Commingle.
g. Further Clarification: Single Duty Tours Performing Multiple Types of Covered Service
h. More Examples of the Application of the Statutory or the Regulatory Consecutive-Days Provision, or Both, to a Single Duty Tour or to Several Duty Tours Involving Performance of One or More Types of Covered Service
D. Under Sec. 21103(a)(4), a Railroad May Not Require or Allow a Train Employee To Initiate an On-Duty Period After the Employee Has Initiated an On-Duty Period Each Day for Six Consecutive Days Followed by More Than 24 Hours Off Duty at the Away-From-Home Terminal. Following Such Service, When that Employee Returns to the Home Terminal, the Employee Must Remain Unavailable for Service at the Home Terminal for at Least 48 Hours
1. Summary of Issue and Interim Interpretation
2. Detailed Discussion of Interim Interpretation
IV. Application of the ''Signal Employee Exclusivity'' Provision to Individuals Who Drive Commercial Motor Vehicles for the Purpose of Themselves Installing, Maintaining, or Repairing Signal Systems
A. Summary of Issue and Interim Interpretation
B. Detailed Discussion of Issue and Interim Interpretation
C. Reiteration of FRA's Longstanding Interpretations of Travel Time Involving Signal Employees

I. Executive Summary of the Second Interim Statement of Agency Policy and Interpretation on the Hours of Service Laws as Amended in 2008 (Second Interim Interpretations)

A. Statutory and Regulatory Background and FRA's Previous Interpretations (Section II and Section III.A of the Second Interim Interpretations)

Federal laws governing railroad employees' hours of service date back to 1907 [2] and are presently codified as positive law at Secs. 21101–21109 [3] and 21303.[4] FRA, under delegations from the Secretary of Transportation,[5] has long administered the statutory HS requirements for the three groups of employees now covered by the statute; namely, employees performing the functions of a train employee, signal employee, or dispatching service employee, as those terms are defined at Sec. 21101. These terms are also defined for purposes of FRA's HS recordkeeping and reporting regulations (49 CFR part 228, subpart B) at 49 CFR 228.5 and discussed in FRA's ''Requirements of the Hours of Service Act; Statement of Agency Policy and Interpretation'' at 49 CFR part 228, appendix A, most of which was issued in the 1970s.

The HS statutory requirements have been amended several times over the years, most recently by the Rail Safety Improvement Act of 2008 [6] (RSIA). The RSIA substantially amended the requirements of Sec. 21103, applicable to a train employee, defined as an ''individual engaged in or connected with the movement of a train, including a hostler,'' [7] and the requirements of Sec. 21104, applicable to a signal employee, defined as an ''individual who is engaged in installing, repairing, or maintaining signal systems.'' [8] The RSIA also added new provisions at Secs. 21102(c) and 21109 that together made train employees providing rail passenger transportation subject not to Sec. 21103 but to HS regulations, if issued timely by the Secretary. Subsequently, FRA, as the Secretary's delegate, issued those regulations, codified at 49 CFR part 228, subpart F (Passenger Train Employee HS Regulations), which became effective on October 15, 2011. Until those regulations were issued, train employees providing commuter rail passenger transportation or intercity rail passenger transportation were subject to Sec. 21103 as it existed immediately before the RSIA amendments.

Following the enactment of the RSIA, FRA published an interim statement of agency policy and interpretation (June 2009 Interim Interpretations) to address questions of statutory interpretation that

[2] See the Hours of Service Act (Pub. L. 59–274, 34 Stat. 1415 (1907)). Effective July 5, 1994, Public Law 103–272, 108 Stat. 745 (1994), repealed the Hours of Service Act as amended, then codified at 45 U.S.C. 61–64b, and also revised and reenacted its provisions, without substantive change, as positive law at Sec. 21101–21108 and 21303.

[3] These sections may also be cited as 49 U.S.C. chapter 211.

[4] For a table comparing and contrasting the current Federal hours of service (HS) requirements with respect to freight train employees, passenger train employees, signal employees, and dispatching service employees, please see Appendix A to the Second Interim Interpretations.

[5] See 49 CFR 1.89.

[6] Public Law 110–432, Div. A, 122 Stat. 4848.

[7] Sec. 21101(5).

[8] Sec. 21101(4). The RSIA also amended the definition of ''signal employee'' effective October 16, 2008. Before the RSIA, the term meant ''an individual *employed by a railroad carrier* who is engaged in installing, repairing, or maintaining signal systems.'' Emphasis added.

had arisen so far with respect to the HS laws as amended by the RSIA (the new HS laws). 74 FR 30665 (June 26, 2009). Subsequently FRA published final interpretations that responded to public comments on the June 2009 Interim Interpretations and made certain revisions. 77 FR 12408 (February 29, 2012) (Final Interpretations). In responding to those comments, FRA recognized that the commenters had raised some important issues on which FRA had not taken a position in the June 2009 Interim Interpretations. Section III of the Second Interim Interpretations, below, addresses several such issues, each related primarily to the consecutive-days limitations and extended-rest requirements of Sec. 21103(a)(4), but also touching on other requirements of Sec. 21103 and on the extended-rest requirements of the Passenger Train Employee HS Regulations (49 CFR 228.405(a)(3)). Further, following the publication of the Final Interpretations, in responding to a letter dated April 9, 2012, from the Association of American Railroads (AAR), FRA agreed in a letter dated June 22, 2012, to address the agency's exclusive Federal jurisdiction over the HS of signal employees in a notice to be published in the **Federal Register**. This issue is discussed in Section IV of the Second Interim Interpretations, below. For these reasons, FRA has decided to publish the Second Interim Interpretations to deal with these important issues, and to seek public comment on these issues, so that FRA will be able to speak to the concerns raised by the industry with full understanding of the positions of the various parts of the industry, and the practical implications of these interpretations.

B. Unavailability for Service for Purposes of the Statutory Consecutive-Days Provision (Sec. 21103(a)(4)) (Section III.B of the Second Interim Interpretations)

The extended-rest requirement of Sec. 21103(a)(4) is for a minimum of 48 or 72 ''consecutive hours off duty at the employee's home terminal *during which time the employee is unavailable for any service for any railroad carrier.''* Emphasis added. The question of what it means to be ''unavailable for service'' under Sec. 21103(a)(4) and, therefore, when an employee begins his or her required minimum 48 or 72 consecutive hours off duty at the employee's home terminal, was not addressed in the June 2009 Interim Interpretations. Rather, the issue was raised by implication in public comments on the June 2009 Interim Interpretations addressing the application of Sec. 21103(a)(4) with respect to employees who are released immediately after reporting for duty, if this release occurs on the sixth or seventh consecutive day on which the employee has initiated an on-duty period. FRA concludes that an employee who has worked less than the maximum of 12 consecutive hours or 12 hours in the aggregate under the HS laws, is considered to have received sufficient rest to comply with Sec. 21103(a)(4) if that employee in fact performs no further service for any railroad (''de facto unavailability'') during a 48- or 72-hour rest period at the employee's home terminal. The merely theoretical, legal availability of the employee to be required or allowed to return to work all or part of the remainder of the employee's maximum duty tour [9] does not in itself negate the employee's unavailability for purposes of Sec. 21103(a)(4). In addition, notification of the employee that the 48- or 72-hour rest period has begun is not required. Likewise, an employee who has reached the maximum of 12 hours of time on duty also may begin both the statutory minimum off-duty period and the 48- or 72-hour extended-rest period concurrently. FRA considered two alternatives to its interim interpretation. Under one alternative, an employee would not be deemed unavailable for service and subject to the extended rest required by Sec. 21103(a)(4) until the employee is legally unavailable for further service. The other alternative would base an employee's unavailability for service on the notice provided to the employee as to the nature and duration of the off-duty period at the time that the employee began the off-duty period. For reasons described below, FRA rejected both of these alternative interpretations.

C. Primarily, Initiating an On-duty Period for Purposes of Sec. 21103(a)(4); Secondarily, Application of Subsections (a)(1), (a)(3), (c)(1), (c)(4), and (e) of Sec. 21103 (Section III.C of the Second Interim Interpretations)

With certain exceptions, Sec. 21103(a)(4) prohibits a railroad from requiring or allowing an employee to go or remain on duty as a train employee after the employee has initiated an on-duty period each day on six consecutive days unless that employee has received the 48-hour rest period described above. If one of the exceptions applies, after the employee has initiated an on-duty period each day as a train employee on seven consecutive days, a 72-hour rest period is required before the employee goes on duty again as a train employee. The application of Sec. 21103(a)(4) to an employee who works in multiple types of covered service, either on a single day or during a period of six or seven consecutive days, was also not addressed in the June 2009 Interim Interpretations, but was raised in BLET and UTU's joint comment on those Interim Interpretations, in which they asked for clarification on how Sec. 21103 and Sec. 21105 (which provides the HS limitations for dispatching service employees) interact.

For reasons discussed in detail below, in Section III.C. 2.a–e of the Second Interim Interpretations, FRA interprets the relevant scope of ''on-duty period'' for purposes of Sec. 21103(a)(4) to extend only to on-duty periods as a train employee, including on-duty periods as either a freight train employee or a passenger train employee; accordingly, only when an individual performs train employee functions (i.e., is engaged in or connected with the movement of a train) will such an individual be considered to have ''initiated an on-duty period'' for the purposes of Sec. 21103(a)(4). Examples applying these principles are found primarily at Section III.C.2.h of the Second Interim Interpretations. FRA also considered an interpretation that would have counted all forms of covered service as initiating an on-duty period for the purposes of Sec. 21103(a)(4), so that even duty tours consisting only of service as a signal employee or a dispatching service employee, without any service as a train employee, would count toward the consecutive-days limitation of Sec. 21103(a)(4). This alternate interim interpretation was rejected for reasons explained in detail below in Section III.C. 2.a–c of the Second Interim Interpretations.

Section III.C.2.f–g of the Second Interim Interpretations provides further clarification and examples of how the various statutory and regulatory limitations work together, and the application of the respective commingled service provisions (Secs. 21103(b)(3), 21104(b)(2), and 21105(c) and 49 CFR 228.405(b)(3)) to individual duty tours in which multiple types of covered service are performed. When an employee performs service that is governed by more than one HS requirement, the railroad must comply with all of the requirements governing that service during the relevant period

[9] *Duty tour* means—(1) The total of all periods of *covered service* and *commingled service* for a train employee or a signal employee occurring between two *statutory off-duty periods* (i.e., off-duty periods of a minimum of 8 to 10 hours); or (2) The total of all periods of *covered service* and *commingled service* for a dispatching service employee occurring in any 24-hour period. 49 CFR 228.5.

of time, including the most stringent of the requirements governing that service.

As discussed in Section III.C. 2.e, for similar reasons, on an interim basis, FRA also interprets appropriate periods of time accrued in a passenger-train-employee duty tour to count toward the respective limitations of Sec. 21103(a)(1) (limiting on-duty time and certain other service for the railroad to 276 hours per calendar month) and Sec. 21103(c)(1) (limiting certain limbo time per calendar month) if the employee engages in freight-train-employee duty tours in the same calendar month. Likewise, as discussed in Section III.C.2.f–g, although a duty tour that does not include any time spent as a freight train employee does not trigger the 10-hour statutory minimum off-duty period between duty tours required by Sec. 21103(a)(3), uninterrupted as required by Sec. 21103(e), or the requirement for ''additional rest'' under Sec. 21103(c)(4), once these requirements have been triggered by a duty tour including service as a freight train employee, the required off-duty period, including any necessary ''additional rest,'' must be provided before the employee performs any other service for the railroad, or else that subsequent service will commingle with the previous duty tour under Sec. 21103(b)(3).

D. Requirements After Final Release at the Away-From-Home Terminal After the Employee Has Initiated an On-Duty Period on Six Consecutive Days (Section III.D of the Second Interim Interpretations)

FRA has also not previously addressed the following question, which involves an exception to Sec. 21103(a)(4): May an employee initiate a seventh on-duty period 24 hours or more after the employee is finally released from his or her sixth consecutive duty tour at the employee's away-from-home terminal, or does Sec. 21103(a)(4)(A)(i)–(ii) authorize a train employee to initiate an on-duty period only if it is consecutive to the sixth consecutive day? Under FRA's interim interpretation, the railroad may not require or allow a train employee to initiate an on-duty period after the employee has initiated an on-duty period each day for six consecutive days, has been finally released at the away-from-home terminal, and then has spent more than 24 hours off duty there. Rather, as described below, the railroad may require or allow the employee to engage in non-covered service at the away-from-home terminal, if desired, but must deadhead the employee to his or her home terminal and must then give the employee 48 hours off duty at the home terminal before requiring or allowing the employee to report for duty again to perform service as a freight train employee. In addition, if the railroad has nevertheless required or allowed the employee to initiate an on-duty period at the away-from-home terminal after the seventh consecutive day, the railroad must give the employee 72 hours off duty at the home terminal before requiring or allowing the employee to report for duty again to perform as a freight train employee. FRA considered, but rejected for reasons discussed below, an alternative reading of the text, that would understand the authorization to ''work a seventh consecutive day'' as allowing one final initiation of an on-duty period when the employee ends the sixth consecutive on-duty period at the away-from-home terminal, even if the initiation of that final on-duty period occurs after the seventh consecutive day.

E. ''Signal Employee Exclusivity'' Provision (Section IV of the Second Interim Interpretations)

Finally, the ''signal employee exclusivity'' provision (Section 21104(e)) states that the ''hours of service, duty hours, and rest periods of signal employees shall be governed exclusively by [the HS laws]. Signal employees operating motor vehicles shall not be subject to any [HS] rules, duty hours or rest period rules promulgated by any Federal authority, including the [FMCSA] other than the [FRA].'' FRA revises its prior interpretation of that provision. In the Final Interpretations, FRA took the position that driving a motor vehicle itself was noncovered service that would not count as time on duty; only if the driving occurred within a duty tour that included time when the employee was engaged in installing, repairing or maintaining signal systems, would the time spent driving commingle under the commingling provision at Section 21104(b)(2) and count as time on duty. As a consequence, the time spent driving that was separate from a duty tour that contained covered service was not time on duty as a signal employee that was governed by Sec. 21104, and could be subject to the HS regulations of the Federal Motor Carrier Safety Administration (FMCSA HS regulations). For the reasons described below, FRA's new interim interpretation views an individual's operation of a motor vehicle, when such driving is for the purpose of allowing that individual to install, repair, or maintain signal systems, to be a function that is time on duty under the ''signal employee'' provisions of the HS laws, regardless of whether the operation of the motor vehicle is within the same duty tour as the direct work on the signal system, or is separated from it by at least 10 hours off duty. As a result, such operation of a motor vehicle for that purpose is itself subject to the limitations of the HS laws, and to the exclusivity provision that exempts the operation from other Federal requirements concerning HS, duty hours, or rest periods, including FMCSA's HS Regulations. It should be noted, however, that many of FRA's longstanding interpretations of travel time for signal employees are unchanged. For example, normal commuting between the individual's home and his or her regular reporting point is not time on duty. Those existing interpretations are briefly reiterated.

II. Background on the Hours of Service Laws and FRA's Previous Publications Interpreting the Hours of Service Laws as Amended in 2008

FRA is the agency of DOT that administers the Federal railroad safety laws.[10] Federal laws governing railroad employees' hours of service date back to 1907 [11] and are presently codified as positive law at Secs. 21101–21109 [12] and 21303.[13] FRA, under delegations from the Secretary of Transportation (Secretary), has long administered the statutory HS requirements for the three groups of employees now covered by the statute; namely, employees performing the functions of a train employee, signal employee, or dispatching service employee, as those terms are defined at Sec. 21101. These terms are also defined for purposes of FRA's hours of service recordkeeping and reporting regulations (49 CFR part 228, subpart B) at 49 CFR 228.5 and discussed in FRA's ''Requirements of the Hours of Service Act; Statement of

[10] See 49 U.S.C. 103 (the statutory provision establishing FRA and conferring on the Administrator of FRA the duties and powers to carry out certain Federal railroad safety laws, including the hours of service (HS) laws) and 49 CFR 1.89 (the delegation from the Secretary of Transportation to the Administrator of FRA to carry out all the Federal railroad safety laws).

[11] See the Hours of Service Act (Pub. L. 59–274, 34 Stat. 1415 (1907)). Effective July 5, 1994, Public Law 103–272, 108 Stat. 745 (1994), repealed the Hours of Service Act as amended, then codified at 45 U.S.C. 61–64b, and also revised and reenacted its provisions, without substantive change, as positive law at Sec. 21101–21108 and 21303.

[12] These sections may also be cited as 49 U.S.C. chapter 211.

[13] For a table comparing and contrasting the current Federal HS requirements with respect to freight train employees, passenger train employees, signal employees, and dispatching service employees, please see Appendix A to the Second Interim Interpretations.

Agency Policy and Interpretation'' at 49 CFR part 228, appendix A, most of which was issued in the 1970s.

The HS statutory requirements have been amended several times over the years, most recently by the Rail Safety Improvement Act of 2008 (RSIA). See Public Law 110–432, Div. A, 122 Stat. 4848, enacted October 16, 2008. Section 108 of the RSIA, captioned ''Hours-of-service reform,'' made important changes to 49 U.S.C. chapter (ch.) 211, Hours of Service, as amended through October 15, 2008 (the old HS laws). See 122 Stat. 4860–4866. Because of the significance of the amendments to the old HS laws made by Sec. 108 of the RSIA, FRA published an interim statement of agency policy and interpretation (June 2009 Interim Interpretations) to address questions of statutory interpretation that had arisen so far with respect to the HS laws as amended by the RSIA (the new HS laws). 74 FR 30665 (June 26, 2009). FRA also invited comment on the June 2009 Interim Interpretations.

Subsequently FRA published final interpretations that responded to public comments on the June 2009 Interim Interpretations and made certain revisions. 77 FR 12408 (February 29, 2012) (Final Interpretations). In responding to those comments, FRA recognized that the commenters had raised some important issues on which FRA had not taken a position in the June 2009 Interim Interpretations. Further, responding to a letter dated April 9, 2012, from AAR, about the Final Interpretations, FRA agreed in a letter dated June 22, 2012, to address the agency's exclusive Federal jurisdiction over the hours of service of signal employees in a notice to be published in the **Federal Register**. For these reasons, FRA has decided to publish these additional interim interpretations (Second Interim Interpretations) dealing with these important issues, and to seek public comment, so that FRA will be able to speak to the concerns raised by the industry with full understanding of the positions of the various parts of the industry on these issues.

III. Additional Questions Primarily Regarding the Consecutive-Days Limitation for Freight Train Employees and the Requirement of at Least 48 or 72 Hours Off Duty at the Home Terminal During Which Time the Employee Is Unavailable for Service for Any Railroad

A. Legislative, Statutory, and Regulatory Background on the Hours of Service Requirements Related to Train Employees

Sec. 108 of the RSIA amended in various ways the then-existing limitations in the old HS laws on the duty hours of ''train employees'' at 49 U.S.C. 21103 and added new provisions at 49 U.S.C. 21102(c) and 21109 that as a group reformed the Federal scheme for the hours of service of train employees. The RSIA did not amend the definition of ''train employee'' at 49 U.S.C. 21101(5) (which continues to read ''an individual engaged in or connected with the movement of a train, including a hostler'') and did not amend the rules for determining ''time on duty'' under 49 U.S.C. 21103 (which continues to provide for counting as ''time on duty'' any other type of service for the railroad that occurred within the same duty tour as the train-employee covered service).[14] However, the new provision at 49 U.S.C. 21102(c) created two separate sets of HS requirements for train employees based on the type of train service that the employees were performing at the relevant point in time.

In particular, train employees when not providing commuter rail passenger transportation or intercity rail passenger transportation but otherwise engaged in or connected with the movement of a train (described in this document as ''freight train employees'') became subject to Sec. 21103 as amended by the RSIA (new Sec. 21103 or [unmodified] Sec. 21103). In contrast, train employees ''when providing commuter rail passenger transportation or intercity rail passenger transportation'' (described in this document as ''passenger train employees'') instead remained subject to 49 U.S.C. Sec. 21103 as it existed on the day before the enactment of the RSIA (old Sec. 21103) until October 15, 2011 and then on October 15, 2011, became subject to FRA's regulations at 49 CFR part 228, subpart F, entitled ''Substantive Hours of Service Requirements for Train Employees Engaged in Commuter or Intercity Rail Passenger Transportation'' (Passenger Train Employee HS Regulations). 76 FR 50397 (Aug. 12, 2011). Those regulations define a ''train employee who is engaged in commuter or intercity rail transportation'' to include all train employees engaged in commuter or intercity rail passenger transportation, and any other train employee who is employed by a commuter railroad or an intercity passenger railroad. 49 CFR 228.403(c). FRA intended by this language to clarify that train employees employed by passenger railroads who perform service such as work train service, or other such ancillary train service, as part of their employment for the commuter railroad or intercity passenger railroad, would be covered by the Passenger Train Employee HS Regulations, rather than the requirements of Sec. 21103. The definition also specifically excluded from the coverage of the Passenger Train Employee HS Regulations those train employees employed by other kinds of railroads who perform work train service or pilot service. 49 CFR 228.403(c).

The Passenger Train Employee HS Regulations establish rules for determining ''time on duty'' that are identical to the rules in Sec. 21103(b), but contain a somewhat different set of HS requirements for passenger train employees. See 49 CFR 228.401 and 228.405. For example, under these regulations, 12 hours on duty not consecutively but in aggregate service in a 24-hour period as a passenger train employee triggers a requirement for only 8 consecutive hours off duty, whereas under Sec. 21103(a)(3), 12 hours on duty in a 24-hour period (even if not 12 consecutive hours) as a freight train employee must be followed by 10 hours off duty, and under Sec. 21103(e) those hours must not be interrupted by a communication from the railroad ''that could reasonably be expected to disrupt the employee's rest[,]'' except in an emergency. In addition, the Passenger Train Employee HS Regulations contain no equivalent to several of the limitations added by the RSIA for freight train employees, such as Sec. 21103(e)'s requirement that minimum off-duty periods and periods of interim release must be uninterrupted by communications from the railroad ''that could reasonably be expected to disrupt the employee's rest,'' or Sec. 21103(a)(1)'s limit for freight train employees of 276 hours per calendar month spent either on duty, awaiting or in deadhead transportation from a duty assignment to the employee's point of final release, or in other mandatory service for the railroad.

[14] See 49 U.S.C. 21103(b)(3). See also definitions of ''commingled service'' and ''duty tour'' for purposes of FRA's HS recordkeeping regulations at 49 CFR 228.5.

Among the amendments to old Sec. 21103 made by Sec. 108(b) of the RSIA was the addition of a provision, codified at 49 U.S.C. 21103(a)(4) (Sec. 21103(a)(4)), that requires that, as a general rule, after a train employee initiates an on-duty period each day for six consecutive days,[15] the employee must have received ''at least 48 consecutive hours off duty at the employee's home terminal during which time the employee is unavailable for any service for any railroad carrier'' before the employee may go on duty again. Sec. 21103(a)(4)(A) provides an exception to this general rule: that if the on-duty period that was initiated on the sixth consecutive day ends at a location other than the employee's home terminal, the employee may initiate an on-duty period for a seventh consecutive day, but must then receive ''at least 72 consecutive hours off duty at the employee's home terminal during which time the employee is unavailable for any service for any railroad carrier . . . .''

Sec. 21103(a)(4)(B) provides that employees may also initiate an on-duty period for a seventh consecutive day and must then receive 72 consecutive hours off duty at the employee's home terminal if, for a period of 18 months after the enactment of the RSIA, such schedules are expressly provided for in an existing collective bargaining agreement, or after that 18-month period has ended, such schedules are expressly provided for either by a collective bargaining agreement entered into during that period or provided for by a pilot program that is authorized by collective bargaining agreement or by a pilot program under the HS laws at Sec. 21108 related to work and rest cycles.

Sec. 21103(a)(4) also provides that the Secretary may waive the requirements of 48 and 72 consecutive hours off duty (extended rest) if all of the following requirements are met: (1) The procedures of Sec. 20103 are followed (i.e., essentially, public notice and an opportunity for an oral presentation are provided prior to issuing the waiver); (2) a collective bargaining agreement provides a different arrangement; and (3) the Secretary determines that the arrangement is in the public interest and consistent with safety. See the undesignated last sentence of Sec. 21103(a)(4).

In the Final Interpretations, FRA construed ''day'' for the purposes of Sec. 21103(a)(4) to refer to the 24-hour period during which a duty tour takes place. Given that redefinition of ''day,'' two initiations of an on-duty period are on consecutive days where they are separated by less than 24 hours of time off duty, measured from the time of the employee's final release from duty until the time that the employee next reports for duty.[16]

B. When is a train employee unavailable for service for any railroad such that the extended rest of 48 or 72 hours required by sec. 21103(a)(4) may begin to run?

1. Summary of Issue and Interim Interpretation

The question of what it means to be ''unavailable for service'' under Sec. 21103(a)(4) and, therefore, when an employee begins his or her required minimum 48 or 72 hours off duty at his or her home terminal, was not addressed in the June 2009 Interim Interpretations. Rather, the issue was raised by implication in public comments on the June 2009 Interim Interpretations addressing the application of Sec. 21103(a)(4) with respect to employees who are released immediately after reporting for duty, if this release occurs on the sixth or seventh consecutive day on which the employee has initiated an on-duty period. See, e.g., comments of the Brotherhood of Locomotive Engineers and Trainmen and the United Transportation Union, Docket No. FRA–2009–0057–0044, at 6. For the reasons discussed below, FRA concludes that an employee who has worked less than the maximum of 12 consecutive hours or 12 hours in the aggregate under the HS laws, will be considered to have received sufficient rest for the railroad to comply with Sec. 21103(a)(4) if that employee in fact is not required or permitted to perform further service (de facto unavailability'') during a 48- or 72-hour rest period. Furthermore, the merely theoretical, legal availability of the employee to be required or allowed to return to work all or part of the remainder of the employee's maximum duty tour, does not in itself negate the employee's unavailability for purposes of Sec. 21103(a)(4). and that notification of the employee that the 48- or 72-hour rest period has begun is not required. Naturally, an employee who has reached the maximum of 12 hours of time on duty also may begin both the statutory minimum off-duty period and the 48- or 72-hour extended rest period concurrently.

The language of Sec. 21103(a)(4)(A) and (B) states repeatedly that during the 48- or 72-hour off-duty period, the employee must be ''unavailable for any service for any railroad carrier.'' As was discussed in the Final Interpretations in section IV.B.1, 77 FR at 12420–21, FRA understands this statutory language to mean that the extended-rest period required by Sec. 21103(a)(4) begins when a train employee is ''finally released from duty'' within the meaning of Sec. 21103(b), which establishes the rules for determining under subsection (a) of this section the time a train employee is on or off duty[,]'' and that when the employee is finally released from duty, both the minimum extended-rest period required by Sec. 21103(a)(4) (48 or 72 hours as appropriate) and the other statutory minimum off-duty periods[17] begin to run concurrently, not consecutively. In the event that the railroad calls the employee back to perform additional covered service,[18] or other service for the carrier (such as to deadhead to a new point of final release prior to the completion of a statutory off-duty period), this additional service within the 24-hour period that began when the employee reported for duty is classified as ''time on duty'' or ''neither time on duty nor time off duty'' for purposes of Sec. 21103(a). as those terms are discussed in Sec. 21103(b), that will attach to and extend the prior duty tour. As a result, the required rest periods would both start anew at the point in time of the subsequent release from duty, and the period of time previously considered to be accruing towards the statutory minimum off-duty period before the employee was called for additional service would become either time on duty or an interim

[15] For additional discussion of the meaning of ''consecutive day'' in this context, see Final Interpretations, section IV.B.1, 77 FR at 12417–19.

[16] Note, however, that due to the nature of passenger train employee assignments and the time-specific limitations of the Passenger Train Employee HS Regulations, the consecutive-days limitation for passenger train employees considers the initiation of on-duty periods on a specified number of calendar days rather than 24-hour periods. See 49 CFR 228.405(a)(3).

[17] For train employees providing freight train service, the ''statutory minimum off-duty period'' is defined by Sec. 21103(a)(3) to be a minimum of 10 consecutive hours, as potentially extended by Sec. 21103(c)(4) if the combination of an employee's time on duty and time spent waiting for or in deadhead transportation to the point of final release exceeds 12 hours, with any time in excess of 12 hours added to the statutory minimum off-duty period. See also 49 CFR 228.5. While it is true that other rest periods required by the statute, such as the 48- or 72-hour rest period required by Sec. 21103(a)(4) and the additional rest that may be required under Sec. 21103(c)(4), are also ''statutory minimum'' rest periods, the term ''statutory minimum off-duty period'' has been defined in FRA's HS recordkeeping regulation at 49 CFR 228.5 to refer to the off-duty period required to begin a new 24-hour period for the purpose of calculating total time on duty.

[18] For train employees, ''covered service'' is service ''engaged in or connected with the movement of a train,'' as described in 49 U.S.C. 21101(5). See also definition of ''covered service'' at 49 CFR 228.5.

release.[19] Once an employee is finally released from duty after having initiated an on-duty period on a sixth or seventh consecutive day, the employee is required to receive a statutory minimum off-duty period of at least 10 hours, and the 48- or 72-hour extended rest period, respectively, either (1) when he or she has accumulated 12 or more hours of time on duty within the meaning of Sec. 21103(b), or (2) when the duty tour is at the 24-hour point from the beginning of the duty tour, therefore ending the employee's availability to accrue additional time on duty within the duty tour due to Sec. 21103(a)(3), whichever event occurs first. This is necessary in order to ensure the employee receives sufficient rest before being required or allowed to go on duty again as a freight train employee. If neither of these events occurs, an employee could lawfully (under the HS laws) be called back to perform further covered service or other service for the railroad within the same duty tour, regardless of the expectation of either the employee or the railroad at the time that the employee was released.

As will be described below, this retrospective determination of an employee's unavailability, such that an employee is deemed to have been unavailable for service during the times in which the employee does not, in fact, perform service, is consistent with the text of the HS laws and prior FRA interpretations of those laws, takes heed of the structure of railroad operations, and provides clarity to both employees and railroads. FRA seeks comment on this interim interpretation that ''unavailable'' for the purposes of Sec. 21103(a)(4) means de-facto unavailability.

2. Detailed Discussion of Interim Interpretation

Historically, FRA has not required employees or railroads to contemporaneously declare for what type of off-duty period the employee is being released, as there is no statutory requirement to provide such notification.[20] Rather, the classification of a duty period (and any periods of release within or following a duty tour) is determined by a retrospective look at the actions of the employee and the railroad to determine whether in fact the railroad required or allowed the employee to go or remain on duty during the purported period of release. Although a railroad may intend to provide an employee with an interim release, that release will ripen into a statutory minimum off-duty period as soon as the employee has had a sufficient number of hours off duty. Likewise, an employee may be released from duty and assume that the release is a final release that will be followed by a statutory minimum off-duty period, but be called back to resume the previous duty tour prior to or after an interim release of 4 hours or more, if the employee had not reached either the statutory maximum number of 12 hours of time on duty or the 24-hour point from the beginning of the duty tour. Nothing in the text of the RSIA compels FRA to change this interpretation of the laws, nor do the changes made to the statute by the RSIA reveal Congressional intent to modify this aspect of FRA's application of the laws. Congress could have required a railroad to specify at the time of release whether a period of off-duty time would be an interim release or a statutory minimum off-duty period, but has not chosen to do so.

Before arriving at the decision that the determination of unavailability should be made retrospectively and be based on the employee's de-facto unavailability, FRA considered two alternative interpretations of the requirement that the employee be unavailable for service for any railroad during the extended-rest period. FRA declines to adopt either of these alternative interpretations for the reasons explained below.

First, FRA could instead have established a formalistic, bright-line rule that if an employee is legally available (under the HS laws) to perform additional service for the railroad then the employee is not yet unavailable, for purposes of Sec. 21103(a)(4), to begin his or her 48 or 72 hours off duty. Take the example of an employee who has begun a duty tour and then is released from duty without having accumulated a total of 12 hours of time on duty in the duty tour. The employee is legally available to perform additional service for the railroad until the earlier of three circumstances—until (1) the employee completes the remainder of his or her 12 hours of time on duty in the duty tour; (2) the expiration of the 24-hour period that began at the commencement of the employee's duty tour; or (3) the completion of a statutory minimum off-duty period after the employee's release from duty, which would also cut short the maximum 24-hour period that began at the commencement of the duty tour and begin a new 24-hour period in which the employee will accrue time on duty in the next duty tour, regardless of whether any additional service is actually performed after the employee is released. In the first circumstance, the employee is no longer legally permitted to perform service under Sec. 21103(a)(2) because the employee has served the maximum of 12 hours in the duty tour. In the second circumstance (the expiration of the 24-hours period that began when the employee started the duty tour), the employee is no longer legally permitted to perform service under Sec. 21103(a)(3) and must be given 10 consecutive hours off duty because the employee has not had at least 10 consecutive hours off duty during the prior 24 hours. In the third circumstance, the employee's completion of the statutory minimum off-duty period has ended the employee's duty tour, and the employee's availability for service in that duty tour, and the employee is, therefore, no longer legally permitted to perform service under Sec. 21103(a)(4). Under this approach, the 48- or 72-hour off-duty period required by Sec. 21103(a)(4) would not begin to run until either the expiration of the 24-hour period that began when the employee reported for duty, or the beginning of a new 24-hour period by virtue of the employee's having had a statutory minimum off-duty period The employee may have already been off duty for several hours or even a statutory minimum off-duty period, from the time of the employee's release that ultimately became the employee's final release from that duty tour, to the end of the 24-hour period. In cases where the employee is off duty prior to the end of the 24-hour period, the practical effect of this approach would be to extend the 48- or 72-hour required off-duty period.

Second, FRA could have taken a situational/notice-focused approach to the interpretation of unavailability, in which the agency would analyze the actual circumstances of each period of off-duty time, and the expectations of the employee and the railroad when the period began, to determine if the employee was made aware that he or she was ''unavailable'' during a given period of time, such that the period of

[19] An interim release for train employees is a period available for rest lasting at least 4 hours within a duty tour, as described in Sec. 21103(b)(5)–(b)(7). If an employee receives 10 or more hours of time off duty, the time off duty becomes a statutory minimum off-duty period rather than an interim release (unless additional time off is required under Sec. 21103(c)(4)). See also 49 CFR 228.5.

[20] See Sec. 21103(b). See also, 49 CFR part 228, appendix A: ''Any period available for rest that is of four or more hours and is at a designated terminal is off-duty time.'' The appendix makes no reference to a requirement to notify an employee that the time available for rest is either an interim release or a statutory minimum off-duty period. See also S. Rep. 91–604 (1969), reprinted in 1969 U.S.C.C.A.N. 1636, 1640 (not identifying any expectation that employees would be informed of the length of an upcoming rest period).

time would count toward the 48- or 72-hour off-duty period. If the employee were not explicitly told he or she would no longer be available for service, the employee would remain available during the off-duty time until the expiration of the 24-hour period or until the employee had received a statutory minimum off-duty period.

Both of these alternative interpretations share a maximal interpretation of the word ''unavailable'' in the statutory language, by construing an employee as available during a period simply because service during the given period would not violate the HS laws (i.e., the railroad is not prohibited from requiring or allowing the employee to perform the service), even if the employee did not actually perform service during the given period. However, the implications of these maximal interpretations are inconsistent with FRA's existing interpretations.

For example, to adopt the situational/notice-focused interpretation, FRA would have to impose on railroads the burdensome new steps of (1) determining in advance whether a rest period provided to an employee who has not accrued 12 hours total time on duty within the duty tour is intended to be an interim release, or whether it will be a statutory minimum off-duty period of at least 10 hours that will render the employee unavailable for service, and (2) notifying the employee of this determination. Where such notification was not provided and the employee remained off duty, the ''situational'' analysis would result in an outcome identical to the broader bright-line rule; because the employee was not given notice that he or she would be made unavailable for additional service, the duty tour would not end until the end of the 24-hour period or the completion of a statutory minimum off-duty period. FRA would also be forced to determine how to handle situations in which a railroad requires further service from an employee who had not reached 12 hours total time on duty, after having notified the employee at the time of the release that he or she was being released for a statutory minimum off-duty period, and not available for subsequent service, given the lack of statutory or regulatory provisions to restrict such a practice, as discussed above.

For related reasons, the bright-line, formalistic rule also would require sharp deviation from past interpretations and other provisions in the statutory text. If FRA were to adopt a bright-line rule, generally requiring an employee to have had a statutory minimum off-duty period of 10 hours before the period of extended rest of 48 or 72 hours during which the employee is unavailable for service could begin, the total duration of the rest period required by new Sec. 21103 would, in effect, be extended by 10 hours. Nothing in the text of the RSIA requires explicitly that the extended-rest period and the statutory minimum off-duty period must run consecutively rather than concurrently. In contrast with Sec. 21103(a)(4), Sec. 21103(c) explicitly describes the time off duty required by that subsection as ''additional time off duty'' based on what has occurred in the preceding duty tour. Sec. 21103(a)(4)(A) simply describes the required time off as ''at least 48 consecutive hours off duty . . . [,]'' which is required after a series of duty tours. See also S. Rep. 110–270 at 20, which describes Sec. 21103(a)(4) as requiring an employee ''to be given 48 consecutive hours of rest'' immediately after discussing the statutory minimum off-duty period; had the rest periods been intended to run consecutively, the rest period required by Sec. 21103(a)(4) would have been described as ''additional'' or otherwise distinguished. The legislative history similarly lacks any discussion of the off-duty periods running consecutively. With scant support for broadening the total required rest period to 58 or 82 hours, FRA is reluctant to do so, absent a compelling reason to read the statute in such a manner.

Furthermore, both the situational/notice-focused approach and the bright-line, formalistic rule also apply poorly to the realities of the railroad industry. Because train employees are legally permitted to perform covered service for 12 hours in a 24-hour period, an employee who is released from duty after having performed less than 12 hours of service in a given duty tour is subject to being called for further service in that same duty tour. The situational/notice-focused approach would require employees to be notified in advance that they were not subject to being called for service after a release, contrary to past practice, in order to begin their extended-rest period prior to the end of the 24-hour period. The bright-line, formalistic rule, by instead stipulating that the extended-rest period may not begin until the 24-hour period is extinguished or exhausted, similarly does not account for the nature of railroad operations. Although a train employee who has performed 11 hours and 30 minutes of service may still theoretically return to perform service for another half hour, such brief service is exceedingly unlikely. FRA believes that requiring an employee in this situation to have a statutory minimum off-duty period or reach the end of the 24-hour period before he or she may begin the extended-rest period required by Sec. 21103(a)(4) takes an excessively formalist position on what it means for an employee to be ''unavailable.''

Finally, both the situational/notice-focused approach and the bright-line, formalistic rule would serve to create confusion as to how much rest is required. Because the extended-rest period would begin only when the employee became legally unavailable for further covered service, the start of the 48- or 72-hour period would generally be at the end of the 24-hour period that began when the employee initiated his or her sixth or seventh consecutive duty tour. However, if the employee were finally released from duty for a statutory minimum off-duty period less than 14 hours after initiating the on-duty period, then the extended-rest period would instead begin at the end of the employee's statutory minimum off-duty period. As such, under both of these alternative rules (except under the situational approach in which the employee is notified of his or her unavailability at the time of the employee's release, and does not in fact perform further service), the 48- or 72-hour extended-rest period could be lengthened by 10 hours or more beyond the statutory requirement. In addition, the required length of the aggregate minimum rest period will vary depending on the length of the employee's most recent duty tour, including interim releases and limbo time resulting from deadheading from a duty assignment to the place of final release, and whether the employee has reached his or her maximum of 276 hours for the calendar month under Sec. 21103(a)(1). In order for an employee to know when he or she may next be called to report for duty, the employee would have to be far more familiar with the intricacies of the HS laws then had previously been required.

Of the three possible interpretations, FRA believes that its chosen interpretation, discussed above, which treats employees as unavailable for service when they are not in fact required or allowed to perform service (regardless of whether the employee might legally have been called to perform further service or whether the employee was notified in advance that the release would be for 48 or 72 hours), hews most closely to the language and intent of the statute. In addition to requiring more rest than specifically required by the statutory language, both of the alternative interpretations would also require significant changes to the railroad industry beyond those

contemplated by Congress. The complexity of both of the alternative interpretations, in conjunction with those changes, would also create a significant risk of confusion in the industry, possibly leading to decreased compliance with the HS laws. Accordingly, FRA will interpret the extended-rest period as running concurrently with the statutory minimum off-duty period, with both beginning at the time an employee is finally released from his or her sixth or seventh consecutive duty tour. FRA seeks comment on this interim interpretation.

C. How does Sec. 21103(a)(4) apply to an employee who initiates an on-duty period performing multiple types of covered service during one duty tour or within a period of six or seven consecutive days? How do subsections (a)(1), (a)(3), (c)(1), (c)(4), and (e) of Sec. 21103 apply to an employee performing multiple types of covered service within the relevant time periods?

1. Summary of Issues and Interim Interpretation

The application of Sec. 21103(a)(4) to an employee who works in multiple types of covered service,[21] either on a single day or during a period of six or seven consecutive days, was not addressed in the June 2009 Interim Interpretations. The issue was raised in BLET and UTU's joint comment on the June 2009 Interim Interpretations, in which they asked for clarification on how Sec. 21103 and Sec. 21105 (which provides the HS limitations for dispatching-service employees) interact. The unions described an employee who regularly performs covered service as a train employee, but who occasionally works in a yardmaster position that may or may not include covered service as a dispatching service employee.

The language of Sec. 21103(a)(4) is ambiguous and susceptible to several reasonable interpretations. Sec. 21103(b) establishes the various rules to apply ''[i]n determining under subsection (a) of this section the time a train employee is on or off duty. . . .'' It is arguable, however, that, even though Sec. 21103(b) determines what is ''time on duty'' or ''time off duty'' for purposes of Section 21103(a), Sec. 21103(b) does not determine what is an ''on-duty period'' for purposes of Sec. 21103(a)(4). For the reasons discussed below, on an interim basis, FRA interprets the relevant scope of ''on-duty period'' for purposes of Sec. 21103(a)(4) to extend only to on-duty periods as a train employee, including on-duty periods as either a freight train employee or a passenger train employee; accordingly, only when an individual performs train employee functions (i.e., is engaged in or connected with the movement of a train) will such an individual be considered to have ''initiated an on-duty period'' for the purposes of Sec. 21103(a)(4). Therefore, only an on-duty period that includes service as either a freight train employee or a passenger train employee is counted as the initiation of an on-duty period for the purposes of Sec. 21103(a)(4).

FRA does not consider an on-duty period including only signal-employee covered service or only dispatching-service-employee covered service or a combination of these two types of service to constitute the initiation of an ''on-duty period'' under Sec. 21103(a)(4). FRA seeks comment on this interim interpretation.

Further, because the limitation of Sec. 21103(a)(4) prohibits only going or remaining on duty as a freight train employee,[22] FRA's interim interpretation is that once the extended-rest requirement is triggered (by an employee initiating on-duty periods as a freight train employee or a passenger train employee each day on six or seven consecutive days), the employee is barred from performing covered service as a freight train employee until he or she has had the extended rest required by Sec. 21103(a)(4), but he or she is not barred by Sec. 21103(a)(4) from reporting for duty as a passenger train employee.[23] Nor is the employee barred by Sec. 21103(a)(4) from reporting for duty as either a signal employee or a dispatching service employee, because neither of these types of covered service is subject to a consecutive-days limitation. FRA likewise seeks comment on this interim interpretation.

FRA also invites comment on its interim interpretation that appropriate periods of time accrued in a passenger-train-employee duty tour count towards the respective limitations of Sec. 21103(a)(1) (limiting on-duty time and certain other service for the railroad to 276 hours per calendar month) and Sec. 21103(c)(1) (limiting certain limbo time per calendar month) if the employee also engages in freight-train-employee duty tours in the same calendar month. FRA also requests comment on its related interim interpretation that while a duty tour that does not include any time spent as a freight train employee may not trigger the requirement for additional rest under Sec. 21103(c)(4), once the additional rest requirement has been triggered, the additional rest is added to the statutory minimum off-duty period that must be provided before the employee performs any other service, or that subsequent service will commingle with the previous duty tour.

2. Detailed Discussion of Interim Interpretation

In general, the function-based nature of the HS laws requires a contemporaneous determination of what covered service, if any, an individual has performed or is performing within relevant time periods, rather than considering any individual employee as always a covered-service employee based on the employee's job title, or the functions that the employee is qualified to perform, regardless of the actual functions performed by the employee during a given period of time. For example, to ascertain if a locomotive engineer who has been performing freight-train-employee covered service is in violation of the 12-hour limitation on total time on duty in a duty tour at a given moment, one would look to the characteristics of that individual's service for the railroad and decide, using Sec. 21103(b) as the guide for determining which periods of time were time on duty, whether the individual had accrued more than 12 hours of total time on duty, and therefore whether the railroad would violate Sec. 21103(a)(2) by allowing the individual to remain on duty. This application of the statute was relatively simple for the HS limitations that existed prior to the enactment of the RSIA, because both the limitations on total time on duty and minimum off-duty periods were fairly easily applied and, most importantly, only affected the immediate duty tour. Under old Sec. 21103(a), after 12 hours on duty as a train employee, the employee was required to have 10 hours off duty prior to performing any additional service; after less than 12 hours on duty as a train employee, the employee was required to have 8 hours off duty prior to perform any additional service. However, the RSIA's amendments to the HS laws now include limitations on service as a train employee that apply to much longer periods of time than a single duty tour.

[21] ''Covered service'' refers to any service subject to either Sec. 21103 (applicable to freight train employees), Sec. 21104 (applicable to signal employees), Sec. 21105 (applicable to dispatching service employees), or FRA's Passenger Train Employee HS Regulations (applicable to passenger train employees). See also 49 CFR 228.5, definition of ''Covered service.''

[22] See 49 U.S.C. 21102(c)(3); see also 49 CFR 228.405.

[23] However, if the employee had also reached the consecutive-days limitation in 49 CFR 228.405(a)(3), the employee would be barred by that regulatory provision from performing covered service as a passenger train employee.

In applying these limitations that look back and are applied to an employee's activities either during a number of previous, consecutive days as in Sec. 21103(a)(4), or during an entire calendar month as in Sec. 21103(a)(1) and (c)(1), this temporal frame of reference becomes much more important.[24] Each of the limitations of Sec. 21103(a) is phrased in the equivalent of the present tense [25] with the prior conduct discussed in the present perfect tense, indicating that the appropriate frame of reference is in the moment that a train employee is potentially required or allowed to engage in some activity—generally [26] remaining on duty or going on duty.[27]

With respect to the consecutive-days limitation, the result is that the limitation applies in the context of determining whether a train employee may be required or allowed to report for duty at a particular time, based on the employee's prior history of initiating on-duty periods. At the time that the employee reports for duty, the employee must necessarily be a train employee subject to Sec. 21103. Of course, if the employee were not subject to Sec. 21103 at a given time, he or she would not need to determine if Sec. 21103(a)(4) would prohibit the railroad from requiring or allowing him or her to report for duty.

In determining the proper application of the consecutive-days limitation, the operative question is as follows: When a train employee looks back upon his or her prior service for the railroad in light of Sec. 21103(a)(4), does ''an on-duty period'' refer to (1) any form of on-duty period under 49 U.S.C. ch. 211 or FRA's HS regulations for passenger train employees authorized by that chapter; or (2) ''the time a train employee is on duty'' under Sec. 21103(b)(2), meaning as either a freight train employee or a passenger train employee?

a. Option 1: Broad Reading—All Forms of Covered Service Count as Initiating an On-Duty Period Under Sec. 21103(a)(4)

A broad reading of ''on-duty period'' recognizes that Congress chose to distinguish between the terms ''time on duty'' and ''on-duty period,'' and incorporates that distinction into the understanding of which on-duty periods should be included in the determination of whether a train employee may report for duty without violating Sec. 21103(a)(4). The broad reading is consistent with the canon of statutory interpretation that distinctions in terms used by Congress should be given effect.[28] In addition, FRA has previously acknowledged, in a contemporaneous interpretation of Sec. 21103(a)(4) that ''on-duty period'' cannot be synonymous with ''time on duty.'' See FRA's Final Interpretations, section IV.B.4, ''Does the initiation of an on-duty period incident to an early release qualify as an initiation for the purposes of sec. 21103(a)(4)?'' Final Interpretations, 77 FR at 12420–21. In order to avoid the peculiar outcome of an employee's forced release from duty immediately after reporting for duty on a sixth consecutive day, FRA linked the concept of the ''on-duty period'' in this particular context to duty tours, with the ''on-duty period'' ending only at the end of the duty tour when the employee is finally released from duty.[29]

There is also statutory support for understanding ''on-duty period'' in the context of 49 U.S.C. ch. 211 as a whole, rather than consisting of only duty tours that include ''time on duty'' as defined in Sec. 21103(b). Prior to the 1994 recodification of the HS laws, which changed only the form of the laws but not their meaning,[30] ''time on duty'' specifically included ''[s]uch period of time as is otherwise provided by this Act.'' Sec. 1(b)(3)(E) of the Hours of Service Act, then codified at 45 U.S.C. 61 (1994); repealed, revised, and reenacted without substantive change by Public Law 103–272. Although the current provisions governing signal employees and dispatching service employees govern the maximum time on duty in a duty tour and minimum off-duty periods of such individuals, as the more specifically applicable sections of the chapter, this definition of the term ''on duty period'' would nonetheless include time on duty in both of the other forms of covered service as within the scope of the ''on-duty period'' referenced in Sec. 21103(a)(4). In the current text of the HS laws, 49 U.S.C. 21102(b) and 21109(a)(1) make reference to ''on duty'' generally to apply to all forms of covered service. Hereinafter, any reference to a subsection is to subsection of Sec. 21103. Additionally, the ''signal employee exclusivity'' provision, discussed in more detail in Section IV of this document, below, requires that the hours of service of signal employees ''shall be governed exclusively by this *chapter*'' (emphasis added), suggesting a broader scope. Each of these factors provides intrinsic textual support to the broad interpretation of Sec. 21103(a)(4), which would include all forms of on-duty periods subject to 49 U.S.C. ch. 211 or FRA's Passenger Train Employee HS Regulations authorized by that chapter (meaning as a freight train employee, a passenger train employee, a signal employee, or a dispatching service employee), as within the scope of Sec. 21103(a)(4)'s counting of consecutive days.

b. Option 2: Narrow Reading—Only Duty Tours Including Time Engaged in or Connected With the Movement of a Train Counts as Initiating an On-Duty Period Under Sec. 21103(a)(4)

Alternatively to Option 1 above, a narrow reading of ''on-duty period'' starts from the premise that Secs. 21103,

[24] Sec. 21103(a)(1) institutes a monthly 276-hour limitation on total time on duty, time spent waiting for or in deadhead transportation to the place of final release, and any other mandatory service for the carrier.

[25] Literally, the limitations set forth at Sec. 21103(a) are written as prohibitions against the railroad requiring or allowing one of its train employees to commit a certain act (i.e., generally, to go or remain on duty) after certain prior conduct by the employee. The relevant provisions read: ''a railroad carrier and its officers and agents may not require or allow a train employee to . . . remain or go on duty after that employee has initiated an on-duty period each day. . . .''

[26] Sec. 21103(a)(1) also prohibits a railroad from requiring or allowing a train employee to ''*be in any other mandatory service for the carrier* in any calendar month where the employee has spent a total of 276 hours [in specified service for the railroad] . . .'' Emphasis added.

[27] See, e.g., *Carr* v. *U.S.,* 130 S.Ct. 2229, 2236 (2010) (''Consistent with normal usage, we have frequently looked to Congress' choice of verb tense to ascertain a statute's temporal reach.'')

[28] See Sutherland § 46:6 (''[C]ourts do not construe different terms within a statute to embody the same meaning. However, it is possible to interpret an imprecise term differently in two separate sections of a statute which have different purposes. Yet when the legislature uses certain language in one part of the statute and different language in another, the court assumes different meanings were intended.'')

[29] ''[T]he restriction of Sec. 21103(a)(4) does not apply until the employee is finally released from duty; that is, an employee may continue to perform covered service until the end of the relevant duty tour, including any periods of interim release (because, during an interim release, the employee is not 'finally' released from duty).'' If FRA had instead considered an on-duty period to be something less than a duty tour, an employee who reported for duty on his or her sixth consecutive day, but was released from duty because, for example, the train for which the employee was called was not in fact available, that release would trigger the 48-hour rest requirement, because the employee had reported for duty, thereby initiating the on-duty period. However, as interpreted by FRA, the employee may be released for an interim release, with the possibility of being called to perform further service within the same duty tour, and the 48-hour rest requirement of Sec. 21103(a)(4) would not be triggered until the employee's final release from that duty tour. *Id.* at 12421.

[30] See Sutherland 28:11 (''Inasmuch as the function of a code is principally to reorganize the law and to state it in simpler form, the presumption is that a change in language is for purposes of clarity rather than for a change in meaning.'') The legislative history of the 1994 recodification also makes clear that the legislation did not create any substantive change to the application of any of the recodified laws, including the application of the HS laws. H. Rep. No. 1758, at 1, 3, 104–108 (1993).

21104, and 21105 are distinct entities. Because each of the sections refers to time performing the respective forms of covered service as ''time on duty,'' the narrow reading implies that the sections must be read as wholly exclusive from one another. Under this reading, the fact that a form of covered service is recognized as time on duty under one section is irrelevant to its treatment under another section. This implication leads to the interpretation that, because Sec. 21103(b) defines ''the time a train employee is on or off duty,'' and because the employee is generally only subject to Sec. 21103 when he or she is on duty as a train employee, only time that is time on duty under Sec. 21103(b) should be considered a period of time on duty (i.e., an ''on-duty period'') for the purposes of Sec. 21103(a)(4). As such, only a duty tour including ''time the employee is engaged in or connected with the movement of a train,'' as specified by Sec. 21103(b)(2), is counted as a duty tour including the initiation of an on-duty period for the purposes of Sec. 21103(a)(4). Neither covered service solely as a signal employee as defined in Sec. 21104, nor covered service solely as a dispatching service employee as defined in Sec. 21105, is time engaged in or connected with the movement of a train. Without time, in the course of a duty tour, during which the individual is engaged in or connected with the movement of a train, the individual is not on duty under Sec. 21103(a), including Sec. 21103(a)(4), and therefore, under the narrow reading, the individual has not initiated an ''on-duty period.''

c. Decision: FRA Chooses the Narrow Reading of ''On-Duty Period'' for Purposes of Sec. 21103(a)(4)

Although FRA views both of these readings of ''on-duty period'' as reasonable, the narrow reading of ''on-duty period'' is more consistent with FRA's existing interpretations, which treat Secs. 21103, 21104, and 21105 as analytically distinct from one another. FRA also recognizes the potential for confusion that could result from applying the consecutive-days limitation to individuals for duty tours in which no train-employee covered service was performed. Prior agency interpretations noted that—''[w]hen an employee performs service covered by more than one restrictive provision, the most restrictive provision determines the total lawful on-duty-time.'' See discussion at 49 CFR part 228, app. A, under the heading ''General Provisions (Applicable to All Covered Service),'' ''Commingled Service.'' The narrow reading maintains that understanding by counting days toward the consecutive-days limitation only when an individual performs train-employee covered service, regardless of what other activities the individual may perform during such duty tours. See, below, Section III.C.2.d–h of this document for further discussion and application of this principle.

FRA recognizes that duty tours that contain only covered service as a signal employee or a dispatching service employee may contribute to the fatigue of the employees who perform such service, and that Congress established other limitations on the hours of service of employees performing these functions. In addition, an employee's service for a railroad that is not covered service under the hours of service laws could also contribute to fatigue. FRA believes that the most logical reading of the statutory language would apply the consecutive-days limitation of Sec. 21103(a)(4) only to duty tours including covered service as a train employee, for the reasons described above. However, FRA will monitor the situation, and may consider revising this interpretation in the future if the fatigue implications warrant it.

d. Further Clarification: Service as a Passenger Train Employee Is Within the Scope of ''On-Duty Period'' Under Sec. 21103(a)(4), Despite the Sec. 21102(c) Exemption

With the adoption of the narrow reading of ''on-duty period,'' which includes only periods of time on duty as a train employee within the scope of that term in Sec. 21103(a)(4), an additional question is presented: does a period of time on duty spent exclusively as a passenger train employee (who is subject to the limitations of the Passenger Train Employee HS Regulations, rather than Sec. 21103, according to Sec. 21102(c)(3)) count as an ''on-duty period'' for the purposes of Sec. 21103(a)(4)? FRA believes that to include periods of time on duty as a passenger train employee as an on-duty period for the purposes of Sec. 21103(a)(4) is most consistent with the text of the statute as a whole and with the Passenger Train Employee HS Regulations as a whole.

In the RSIA, Congress did not disturb the longstanding functional approach to determining when a train employee would be subject to the new Sec. 21103, and when a train employee would be subject first to old Sec. 21103, and ultimately to FRA's regulations governing train employees engaged in commuter or intercity rail passenger transportation. Employees performing both kinds of service continue to be called ''train employees[,]'' and the term ''train employee'' continues to be defined, for the purposes of both sets of applicable requirements, as an individual engaged in or connected with the movement of a train.

Congress could have separately created the terms ''freight train employee'' and ''passenger train employee'' and defined the new terms to make clear that covered service as one kind of train employee does not count as covered service for the other kind of train employee. Similarly, Congress could have amended Sec. 21103(b)(2) and (3) by inserting ''freight'' in front of ''train'' to narrow the time counted toward ''time on duty'' for purposes of Sec. 21103(a). Likewise, Congress also could have written the language of Sec. 21103(a)(4) to limit it expressly, so that it only applied to initiating an on-duty period as a freight train employee, or as a train employee subject only to the requirements of this section in the particular duty tour. Congress did not do any of these. For that matter, Congress did not even expressly limit the language of Sec. 21103(a)(4) to initiating an on-duty period as a train employee, though FRA does so limit the provision for the purposes of this interim interpretation, for the reasons described in this Section III.C.2.b–c.

By contrast, in the RSIA, Congress amended the definition of ''signal employee,'' so that it no longer applied only to railroad employees performing the functions of a signal employee. See Sec. 108(a) of the RSIA and Sec. 21101(4). However, the definition of ''train employee'' in the very next paragraph of the statute was not changed, and no distinction was created functionally between train employees in freight or passenger service. See 49 U.S.C. 21101(5). Each is still simply called ''train employee[,]'' and that term should be interpreted to mean the same thing in all places that it is used in the statute, and the provisions applicable to that type of employee must apply to all employees so defined.

In addition, the functional approach to determining when an individual becomes a covered service employee of one form or another means that the individual is a passenger train employee for purposes of the Passenger Train Employee HS Regulations only during those periods of time within which he or she is a train employee who is engaged in commuter or intercity rail passenger transportation, as detailed in 49 CFR 228.405(b) (''Determining time on duty), e.g., being engaged in or connected with the movement of a train, including being a hostler, providing

commuter or intercity rail passenger transportation. Note that under 49 CFR 228.405(b)(3) periods spent performing other types of covered service and noncovered service count as on-duty time as a passenger train employee if they occur in the same duty tour as passenger-train-employee covered service.

However, Sec. 21102(c)(3)(B) exempts railroads from compliance with Sec. 21103 for ''train employees with respect to the provision of commuter rail passenger transportation or intercity rail passenger transportation''; i.e., passenger train employees. Therefore, individuals are subject to the Sec. 21102(c)(3)(B) exemption only while they are performing covered service as a passenger train employee. Any individual who is not a train employee who is engaged in commuter or intercity rail passenger transportation is not subject to the Sec. 21102(c)(3)(B) exemption. Because Sec. 21102(c)(3)(B) exempts railroads from compliance with Sec. 21103 with respect to all passenger train employees, an individual who is subject to Sec. 21103 is necessarily not within the scope of the exemption provided by Sec. 21102(c)(3)(B) and is not a passenger train employee at the time when the individual is subject to Sec. 21103.

Because any individual who is subject to Sec. 21103 is not subject to Sec. 21102(c)(3)(B), the distinction between service as a passenger train employee and freight train service is irrelevant when applying Sec. 21103. The text of Sec. 21103 makes no distinction between freight trains and passenger trains. Recalling that the definitions in Sec. 21103(b)(2) and (3) of ''time on duty'' for purposes of Sec. 21103(a)(4) are phrased in the present tense and that all limitations of Sec. 21103(a) are phrased in the equivalent of the present tense, with prior conduct discussed in the present perfect tense, the appropriate frame of reference for determining whether Sec. 21103(a)(4) precludes the employee from being on duty is the time when the employee seeks to go on duty, including only those exemptions or exclusions that apply to the employee at that moment. Therefore, when an employee reports for duty as a freight train employee subject to Sec. 21103, any prior time on duty ''engaged in or connected with the movement of a train,'' regardless of whether it was as a passenger train employee or freight train employee, is counted when determining whether Sec. 21103(a)(4) precludes the employee from being on duty.

When a railroad seeks to determine whether an employee is permitted to remain or go on duty with respect to the limitation of Sec. 21103(a)(4), the determination of whether the employee has initiated an on-duty period on each of the prior 6 or more consecutive days is made within the context of Sec. 21103(b), which defines what constitutes ''time on duty.'' Sec. 21103(b)(2) includes any time ''engaged in or connected with the movement of a train'' to be ''time on duty.'' Duty tours as a passenger train employee include some time ''engaged in or connected with the movement of a train,'' and are therefore time on duty under Sec. 21103(b)(2). Although those duty tours are exempt by Sec. 21102(c)(3)(B) from the limits and requirements of Sec. 21103 at the time when the duty tours occur, an employee subject to Sec. 21103 is no longer subject to that exemption, as discussed above. Thus, at the moment that a railroad or a train employee looks back to see whether the employee may be required or allowed to go on duty as a freight train employee, the employee's assignment is to work as a freight train employee, and in looking back at the employee's prior duty tours, should view them as subject to, rather than exempt from, Sec. 21103, even if some of the duty tours involved service engaged in or connected with the movement of a passenger train.

In the context of determining whether the individual has initiated an on-duty period each day on prior consecutive days, ''time the employee is engaged in or connected with the movement of a train is time on duty.'' Sec. 21103(b)(2). Since time on duty as a passenger train employee is unequivocally time ''engaged in or connected with the movement of a train,'' and, as discussed above, the statute does not differentiate between time spent engaged in or connected with the movement of a passenger train from time spent engaged in or connected with the movement of a freight train, on-duty periods including train service providing commuter or intercity rail passenger transportation constitute on-duty periods for the purpose of Sec. 21103(a)(4).

In addition to maintaining fidelity both to the statutory language and to FRA's functional approach to applying the HS laws, the principle of including on-duty periods in passenger-train-employee covered service within the scope of Sec. 21103(a)(4) avoids the safety risks resulting from allowing an individual to initiate an on-duty period as a train employee each day for an indefinite number of days without triggering the consecutive-days limitation, simply because he or she occasionally initiates an on-duty period as a passenger train employee instead of as a freight train employee.

FRA's interim interpretation is also consistent with both informal guidance FRA has provided on this question and FRA's response to an AAR comment on FRA's notice of proposed rulemaking on passenger train employee hours of service, in which AAR suggested that train employees employed by freight railroads who may occasionally perform service as a passenger train employee should be covered only by Sec. 21103, and should be excluded from the scope of FRA's regulation. See comments of AAR, Docket No. FRA–2009–0043. FRA declined AAR's suggestion to extend the work train and pilot exceptions for train employees employed by freight railroads to all train employees employed by freight railroads,[31] believing that train employees engaged in or connected with commuter or intercity rail passenger transportation should be covered by its regulation, regardless of the nature of the railroad by which the employee is employed. FRA's decision in the rulemaking was based in part on the same policy concerns just discussed, the need to protect an individual who sometimes performs freight train employee service and sometimes performs passenger train employee service, from the safety risks of cumulative fatigue. Under this interim interpretation, employees performing both kinds of service are subject to both sets of requirements, as appropriate. For employees who perform duty tours both as a passenger train employee and as a freight train employee, it is necessary for railroads to track both types of duty tours and perform the appropriate consecutive-days limitation analyses to determine whether the employee may legally be required or allowed to go on duty in a particular kind of service. The analyses are separate: only the freight consecutive-days limitation analysis (Sec. 21103(a)(4)) must be applied to determine if an employee may report for duty as a freight train employee, and only the passenger consecutive-days limitation analysis (49 CFR 228.405(a)(3)) must be performed to

[31] FRA's definition of ''Train employee who is engaged in commuter or intercity rail passenger transportation'' excludes a train employee of a freight railroad ''who is engaged in work train service even though that work train service might be related to providing commuter or intercity rail passenger transportation, and a train employee of'' a freight ''railroad who serves as a pilot on a train operated by a commuter railroad or intercity passenger railroad.'' 49 CFR 228.403(c).

determine if an employee may report for duty as a passenger train employee.[32]

e. Further Clarification: Service as a Passenger Train Employee Is Within the Scope of the Calendar Monthly Limits Set by Sec. 21103(a)(1) and (c)(1)

As previously noted in passing in the discussions above, FRA wishes to highlight that, like subsection (a)(4) of Sec. 21103 and for similar reasons,[33] other provisions of Sec. 21103 count toward their respective limitations or requirements, appropriate periods of time accrued during passenger-train-employee duty tours and related activity. Some of these limitations apply to a calendar month, and some of the limitations and requirements apply to a single duty tour.

In particular, the monthly limitations are Sec. 21103(a)(1) (limiting the combined total of time on duty, time spent awaiting or in deadhead transportation from a duty assignment to the point of final release, and time spent in any other mandatory service for the railroad to 276 hours per calendar month) and Sec. 21103(c)(1) (limiting certain limbo time per calendar month). FRA does not, however, expect the cumulative monthly limitations of either Sec. 21103(a)(1) or Sec. 21103(c)(1) to be reached in fact for individuals who sometimes serve as passenger train employees, based on the existing nature of such duty tours. Additionally, a railroad could violate Sec. 21103(c)(1) with respect to a particular employee only at a time when that employee was subject to Sec. 21103(c)(1); i.e., during a duty tour including service as a freight train employee. If an employee reaches more than 30 hours of time countable towards the 30-hour monthly limitation during a passenger train employee duty tour, and proceeds to go on duty only as a passenger train employee for the rest of the calendar month, then no violation of Sec. 21103(c)(1) has occurred.

f. Further Clarification: Requirements for Rest Set by Sec. 21103(a)(3), (c)(4), and (e), After a Single Duty Tour That Includes Service as a Freight Train Employee, Must Also Be Met Before Performing Any Service for the Railroad or Else the Additional Service Will Commingle

Statutory requirements for minimum amounts of undisturbed rest apply only to performing a single duty tour that includes at least some service as a freight train employee. These requirements are the following: (1) Sec. 21103(a)(3) (which requires that an individual have had 10 consecutive hours off duty in the 24 hours prior to remaining or going on duty as a freight train employee); (2) Sec. 21103(c)(4) (additional rest requirement) (which requires extra time off duty in addition to the 10 consecutive hours for freight train employees after reaching more than 12 consecutive hours of combined time on duty and time waiting for or in deadhead transportation to the point of final release); and (3) Sec. 21103(e) (which requires that these off-duty periods be free from communication that could reasonably be expected to interrupt the freight train employee's rest (free from communication)).

Of course, a duty tour as a passenger train employee that did not include covered service as a freight train employee would not trigger the requirement for 10 consecutive hours off duty unless the employee had been on duty for 12 consecutive hours, in which case 10 consecutive hours off duty would be required under the Passenger Train Employee HS Regulations at 49 CFR 228.403(a)(2), not because of Sec. 21103(a)(3). Likewise, a duty tour as a passenger train employee that did not include covered service as a freight train employee would not trigger the requirement that the off-duty period be free from communication, or the requirement for additional rest. However, if the rest requirement of Sec. 21103(a)(3) for 10 consecutive hours off duty and the requirement of Sec. 21103(e) that the rest period be free from communication are triggered by a duty tour that included covered service as a freight train employee, then the statutory minimum off-duty period following that duty tour must comply with those requirements before the employee performs any other service for the railroad, or else the subsequent service for the railroad will commingle, even if that subsequent service does not include covered service as a freight train employee. See Sec. 21103(b)(3).[34] Likewise, if the additional rest requirement is triggered by a duty tour that included covered service as a freight train employee that encompasses a total of more than 12 hours of time on duty and time waiting for or in deadhead transportation, then the statutory minimum off-duty period following that duty tour must also include the additional rest prior to the employee performing any other service for the railroad, even if that subsequent service does not include covered service as a freight train employee.

g. Further Clarification: Single Duty Tours Performing Multiple Types of Covered Service

The longstanding statutory provisions regarding commingled service (Sec. 21103(b)(3), Sec. 21104(b)(2), and Sec. 21105(c)) and the more recent regulatory provision regarding commingled service (49 CFR 228.405(b)(3)), respectively, continue to govern a duty tour in which an individual performs the duties of a freight train employee, signal employee, dispatching service employee, or passenger train employee, respectively. For example, any time spent performing service for a railroad that is not separated by at least 10 uninterrupted hours off duty from subsequent service defined as ''time on duty'' by Sec. 21103(b) is commingled service under Sec. 21103(b)(3), because it occurs within the same ''24-hour period'' as the covered service subject to Sec. 21103(b). As a result, a duty tour as a passenger train employee that is followed by a duty tour as a freight train employee must be separated by at least 10 uninterrupted hours off duty to avoid their commingling. If the duty tour as a freight train employee triggers Sec. 21103(c)(4)'s additional uninterrupted rest requirement, that additional rest must also be completed before the employee next reports for duty as a passenger train employee in order to avoid the possible commingling of the subsequent duty tour as a passenger train employee with the prior triggering duty tour as a freight train employee.

FRA requests comment on the implications of its interim interpretation of Sec. 21103(a)(4) on other provisions of Sec. 21103. As a result of adopting the narrower interpretation, excluding

[32] The passenger train employee consecutive-days limitation analysis depends on the type of the assignments performed on each of the consecutive days. A *Type 1 assignment* means an assignment that requires the employee to report for duty no earlier than 4 a.m. on a calendar day and be released from duty no later than 8 p.m. on the same calendar day. Any other assignment is Type 2, except that a Type 2 assignment may be considered a Type 1 assignment if it is analyzed and shown to not pose an excess risk of fatigue and does not require the employee to be on duty for any period of time between midnight and 4 a.m. See 49 CFR 228.5; see also 76 FR 50360 (Aug. 12, 2011).

[33] In addition, of course, any mandatory service for the railroad (not just passenger train employee service or freight train employee service) counts toward the 276-hour monthly maximum set by Sec. 21103(a)(1), but passenger train employee service counts as time ''on duty'' for purposes of Sec. 21103(a)(1)(i).

[34] Sec. 21103(b)(3) reads as follows: ''(b) Determining time on duty.—In determining under subsection (a) of this section the time a train employee is on or off duty, the following rules apply: * * * (3) Time spent performing any other service for the railroad carrier during a 24-hour period in which the employee is engaged in or connected with the movement of a train time is time on duty.''

signal-employee covered service and dispatching-service-employee covered service for the purposes of the consecutive-days limitation, FRA views duty tours containing only signal-employee covered service or dispatching-service-employee covered service as equivalent to periods that are neither time on duty nor time off duty for purposes of Sec. 21103(a)(4), where the individual is performing non-covered service. For example, if an employee were to report for duty each day from 9 a.m. to 5 p.m. Monday through Saturday, with Monday's through Wednesday's time on duty including train-employee covered service and Thursday's through Saturday's time on duty not including train-employee covered service but including signal-employee covered service, that employee would not have triggered the ''consecutive-days'' limitation and could lawfully report again at 9 a.m. on Monday. FRA recognizes that Congress identified signal-employee covered service and dispatching-service-employee covered service as fatiguing; however, these forms of covered service do not constitute time on duty for the purposes of Sec. 21103 unless they commingle with train-employee covered service as provided in Sec. 21103(b)(3), and therefore, employees who perform these functions, but do not perform covered service as a train employee during the same duty tour, are not considered to have initiated on-duty periods for the purposes of the ''consecutive-days'' limitation.

If an employee performs multiple types of covered service in a single duty tour, including train-employee covered service, the time spent by the employee in carrying out functions other than covered service as a train employee is ''[t]ime spent performing other service for the railroad during a 24-hour period in which the employee is engaged in or connected with the movement of a train,'' which, in turn, is defined as ''time on duty'' for purposes of Sec. 21103 by Sec. 21103(b)(3). As a result, this time spent in service for the railroad other than train-employee covered service is defined by Sec. 21103(b)(3) as ''time on duty'' for purposes of Sec. 21103(a) and, therefore, counts as initiating an on-duty period for the purposes of Sec. 21103(a)(4). Performing signal-employee covered service or dispatching-service-employee covered service, which brings the employee under Sec. 21104 or Sec. 21105, respectively, during the performance of the particular type of service, does not negate the train-employee covered service also performed by the employee.

In the case of dispatching-service-employee covered service, Sec. 21105(a) provides that it applies, rather than Sec. 21103 or Sec. 21104, ''during any period of time the employee is performing duties of a dispatching service employee.'' At ''a tower, office, station, or place at which at least 2 shifts are employed, an individual performing dispatching service may not be required or allowed to remain or go on duty for more than a total of 9 hours during a 24-hour period.'' Sec. 21105(b)(1). At a one-shift location, such an individual is limited to a total of 12 hours on duty during a 24-hour period. Sec. 21105(b)(2). Unlike the 24-hour period relevant for the statutory provisions governing train employees and signal employees, Sec. 21105(b)'s ''24-hour period'' does not reset after an individual has had a certain amount of rest and then reports to perform duty governed by the section. Instead, Sec. 21105(b)(1) requires a continuous look back during the dispatching service employee's duty tour to determine whether the individual has been on duty for a total of 9 hours in any 24-hour period.

FRA does not interpret Sec. 21105(a) literally as an exemption from Sec. 21103 and Sec. 21104 with respect to periods of time performing the duties of a dispatching service employee and periods of time performing other service for the railroad within a 24-hour period in which the duties of a dispatching service are performed. Rather, FRA interprets Sec. 21105(a) as establishing an extra set of limitations that must be met, in addition to the limitations and requirements imposed by any other applicable HS requirement. The following two examples illustrate this interpretation.

Example 1

Facts: Individual X has been off duty Saturday and Sunday and then goes on duty as a dispatching service employee at a 2-shift tower at 12 noon on Monday and works for 4 hours, is then off duty for 12 hours, and finally reports for duty at 4 a.m. on Tuesday as a freight train employee.

Effect of law: Individual X may report and work as a freight train employee for only 5 hours prior to noon on Tuesday, for a grand total of the maximum 9 hours of service under Sec. 21105, without violating Sec. 21105, because X's service as a freight train employee commingles with his or her dispatching service. Note that X may report and work as a freight train employee at all only if during the 12 hours off duty, at least 10 consecutive hours were uninterrupted by communications from the railroad that could reasonably be expected to disrupt that rest (see Sec. 21103(e)) and if no other limitation or requirement in Sec. 21103 is violated (e.g., the 276-hour monthly maximum and the consecutive-days provision). After 4 p.m. on Tuesday, X's subsequent service is no longer within any 24-hour period that would include any of his or her time spent as a dispatching service employee from 12 noon to 4 p.m. on Monday, and is no longer limited to only 9 hours of time on duty for the remainder of his or her duty tour as a freight train employee.

Example 2

Facts: Individual Y returns from a long vacation, goes on duty as a freight train employee for 8 hours, and then immediately reports as a dispatching service employee at a 2-shift tower.

Effect of law: Individual Y may work at the 2-shift tower as a dispatching service employee for only one hour without violating Sec. 21105 because Y's 8 hours working as a freight train employee must be added to the 1 hour Y worked as a dispatching service employee. After working a total of 9 hours in a 24-hour period, Y has reached the Sec. 21105(b)(1) maximum of 9 hours on duty in a 24-hour period in a tower with 2 or more shifts.

Once the rest requirement of Sec. 21103(a)(4) is triggered because a duty tour includes performance of freight-train-employee functions to which the limitations of Sec. 21103 apply, the rest requirement of the consecutive-days limitation does not prevent an individual from lawfully reporting for covered service to which Sec. 21103 does not apply, or for noncovered service. When an individual's duty tour does not include his or her performance of freight-train-employee functions, that individual is not subject to Sec. 21103 during the duty tour, and, therefore, the consecutive-days limitation of Sec. 21103(a)(4) does not apply to the duty tour and prevent the individual from lawfully performing such other service.

On the other hand, in duty tours subject to multiple sections of the HS laws or the Passenger Train Employee HS Regulations, each of the applicable sections applies to the entire duty tour, due to commingled-service provisions, and a railroad must comply with all of the provisions applicable to a given duty tour. In particular, the consecutive-days limitation of Sec. 21103(a)(4) applies to such duty tours if those duty tours contain any time in which the employee is engaged in or connected with the movement of a train, whether

as a passenger train employee or as a freight train employee. Although both the dispatching-service-employee provision (Sec. 21105) and the Passenger Train Employee HS Regulations contain applicability sections, these applicability sections state that the substantive provision applies only to the time when the individual is performing a function of a dispatching service employee or a passenger train employee, respectively, including times in other service for the railroad that commingle during the single tour of duty, as noted above.[35] Section 21105(a) states that it applies ''during any period of time the employee is performing duties of a dispatching service employee,'' and 49 CFR 228.413, the regulatory exemption from Sec. 21103 for passenger train employees, states that the exemption applies with respect to ''train employees who *are* engaged in commuter or intercity rail passenger transportation.'' Emphasis added. In other words, if an individual's duty tour includes multiple types of covered service, the railroad must comply with all of the limitations and requirements applicable to each type of covered service throughout the duty tour.

Longstanding guidance from FRA in the context of commingled service during a single duty tour provides that ''[w]hen an employee performs service covered by more than one restrictive provision, the most restrictive provision determines the total lawful on-duty time.'' 49 CFR part 228, app. A, ''Commingled Service.'' Although this principle requires compliance with the most exacting and stringent of the applicable standards, the principle in effect ensures compliance with all of the HS provisions applicable to the service performed because complying with the most stringent standard will prevent violation of the less stringent standards, thus resulting in compliance with all of the HS provisions applicable to the service performed. Consistent with that traditional guidance, the interim interpretation maintains that when an employee performs service governed by more than one HS requirement for the minimum amount of off-duty time, the most generous provision determines the total amount of required off-duty time. Similarly, when an employee performs service covered by one provision that requires that the off-duty time be uninterrupted (i.e., Sec. 21103(e)) and other service covered by a provision that does not require that the off-duty time be uninterrupted, the higher standard determines whether the off-duty time be uninterrupted. FRA's interim interpretation maintains the underlying principle of applying to the service in question all relevant sections of the HS laws and the Passenger Train Employee HS Regulations and requiring compliance with the most stringent of those relevant sections.

h. More Examples of the Application of the Statutory or the Regulatory Consecutive-Days Provision, or Both, to a Single Duty Tour or to Several Duty Tours Involving Performance of One or More Types of Covered Service

The following additional examples illustrate the application of principles for interpreting Sec. 21103(a)(4) and the consecutive-days provision of the Passenger Train Employee HS Regulations (49 CFR 228.405(a)(3)) that have been discussed above in this Section III.C of this document.

Example 3

Facts: An individual reports for duty at 8:00 a.m. each day Monday through Saturday, performing only signal-employee or dispatching-service-employee covered service each day.

Effect of law: On Sunday, the individual has zero prior consecutive days counted for the purpose of Sec. 21103(a)(4) and, therefore, may report for duty as a freight train employee without violating Sec. 21103(a)(4).

Example 4

Facts: An individual reports for duty at 8:00 a.m. each day Monday through Saturday, performing both signal-employee covered service, or dispatching-service-employee covered service, and freight-train-employee covered service in a single duty tour each day.

Effect of law: On Sunday, the individual has initiated an on-duty period each day for six consecutive days for the purpose of Sec. 21103(a)(4), and must not perform freight-train-employee covered service subject to Sec. 21103 until he or she has had 48 hours at his or her home terminal free from any service for any railroad unless one or more of the exceptions of Sec. 21103(a)(4)(A)(i) or (a)(4)(B) apply. On Sunday, the individual may report for duty to perform signal-employee or dispatching-service-employee covered service, without violating Sec. 21103(a)(4), but he or she is nonetheless required to have had the 48 hours of time off duty at the employee's home terminal under Sec. 21103(a)(4) before next performing freight-train-employee covered service subject to Sec. 21103.

Example 5

Facts: An individual reports for duty at 8:00 a.m. each day Monday through Saturday performing passenger-train-employee covered service each day and is finally released at 6:00 p.m.

Effect of regulations and law: On Sunday, the individual has initiated an on-duty period each day for six consecutive days for the purpose of Sec. 21103(a)(4), and must not perform freight-train-employee covered service subject to Sec. 21103 until he or she has had 48 hours at his or her home terminal free from any service for any railroad unless one or more of the exceptions of Sec. 21103(a)(4)(A)(i) or (a)(4)(B) apply. However, a duty tour as a passenger train employee is subject to the Passenger Train Employee HS Regulations. Those regulations impose two requirements. First, the regulations require that the employee have had at least 8 consecutive hours off duty before going on duty as a passenger train employee. Second, the regulations include a provision that addresses cumulative fatigue in a somewhat different way than Sec. 21103(a)(4). Here, because the individual's duty tours as a passenger train employee did not include any Type 2 assignments (duty tours including any time on duty between 8 p.m. and 4 a.m. that either include time on duty between 12:00 a.m. and 4:00 a.m. or have not been analyzed and shown to not pose an excess risk of fatigue), they did not trigger the rest requirement of the consecutive-days limitation in the Passenger Train Employee HS Regulations (49 CFR 228.405(a)(3)). Accordingly, the individual may be required or allowed to report for duty as a passenger train employee.

Example 6

Facts: An individual reports for duty at 8:00 a.m. each day Monday through Wednesday, performing freight-train-employee covered service each day until 8 p.m., and then the individual reports for duty at 8:00 a.m. each day Thursday through Saturday, performing only dispatching-service-employee covered service each day until 5 p.m.

Effect of law: On Sunday, the individual has initiated an on-duty period for zero prior consecutive days counted for the purpose of Sec. 21103(a)(4), and may perform freight-train-employee covered service without violating Sec. 21103(a)(4).

[35] In addition, as discussed above, even a duty tour containing only service as a passenger train employee would count toward the consecutive-day limitation of Sec. 21103(a)(4).

Example 7

Facts: An individual reports for duty at 9:00 a.m. each day Monday through Wednesday performing passenger-train-employee covered service for eight hours each day (with final release at 5:00 p.m.), and then reports for duty at 9:00 a.m. each day Thursday through Saturday performing freight-train-employee covered service for eight hours each day (with final release at 5:00 p.m.).

Effect of regulations and law: For the purposes of determining whether the individual may report for duty on Sunday as a freight train employee without violating Sec. 21103(a)(4), the individual has initiated an on-duty period for six consecutive days, and must not perform freight-train-employee covered service subject to Sec. 21103 until he or she has had 48 hours at his or her home terminal free from any service for any railroad unless one or more of the exceptions of Sec. 21103(a)(4)(A)(i) or (a)(4)(B) apply. For the purposes of determining whether the individual may report for duty on Sunday as a passenger train employee, the individual has initiated an on-duty period for six consecutive calendar days. However, because these on-duty periods do not include any Type 2 assignments (duty tours including any time on duty between 8 p.m. and 4 a.m. that either include time on duty between 12:00 a.m. and 4:00 a.m. or have not been analyzed and shown to not pose an excess risk of fatigue), the individual may report for duty on Sunday as a passenger train employee without violating the consecutive-days provision of the Passenger Train HS Regulations.

Example 8

Facts: An individual reports for duty at 9:00 a.m. each day Monday through Wednesday performing passenger-train-employee covered service for eight hours each day (with final release at 5:00 p.m.), and then reports for duty at 1:00 p.m. each day Thursday through Saturday performing freight-train-employee covered service for eight hours each day (with final release at 9:00 p.m.).

Effect of regulations and law: For the purposes of determining whether Sec. 21103(a)(4) prohibits the railroad from requiring or allowing the individual to report for duty on Sunday as a freight train employee, the individual has initiated an on-duty period for six consecutive days and must not perform freight-train-employee covered service subject to Sec. 21103 until he or she has had 48 hours at his or her home terminal free from any service for any railroad unless one or more of the exceptions of Sec. 21103(a)(4)(A)(i) or (a)(4)(B) apply. For the purposes of determining whether the railroad may require or allow the individual to report for duty on Sunday as a passenger train employee without violating Sec. 21103(a)(4), the individual has initiated an on-duty period for six consecutive calendar days. Because several of these on-duty periods included duty tours with time on duty between the hours of 8 p.m. and 4 a.m. and the duty tours were not analyzed and shown not to pose an excess risk of fatigue, the individual has initiated an on-duty period for six consecutive days including one or more Type 2 assignments. As a result, the employee must have 24 hours of time off duty and free from any service for any railroad before next reporting for duty as a passenger train employee.

Example 9

Facts: An individual reports for duty each day at 8 a.m. for 8 hours of service as a passenger train employee, with the duty tour ending at 4 p.m., beginning on Monday, for 5 consecutive days, ending on Friday. On Saturday, the individual reports for duty at 6 p.m. for 8 hours of service as a freight train employee, with the duty tour ending at 2 a.m. on Sunday.

Effect of regulations and law: For the purposes of determining whether the individual may report for duty on or after 2 p.m. on Sunday, as a freight train employee, the individual has initiated an on-duty period for one prior consecutive day, and may report for duty to perform freight-train-employee covered service without violating Sec. 21103(a)(4). Specifically, because the individual was off duty for 26 hours between Friday at 4 p.m. and Saturday at 6 p.m., and 24 hours of time off duty is sufficient to end a series of consecutive days for Sec. 21103(a)(4), the duty tours prior to Saturday are not consecutive to the Saturday duty tour. For the purposes of determining whether the individual may report for duty on or after 2 p.m. on Sunday as a passenger train employee, the individual has initiated an on-duty period each day for 6 consecutive calendar days, including one Type 2 assignment–the Saturday duty tour, which extended into the hours between midnight and 4 a.m. and is therefore necessarily Type 2 regardless of any fatigue analysis that could have been performed on an assignment including the Saturday duty tour. As a result, the individual must have had at least 24 hours of time off duty and free from any service for any railroad before next reporting for duty as a passenger train employee.

D. Under Sec. 21103(a)(4), a Railroad May Not Require or Allow a Train Employee To Initiate an On-Duty Period After the Employee Has Initiated an On-Duty Period Each Day for Six Consecutive Days Followed By More Than 24 Hours Off Duty at the Away-From-Home Terminal. Following Such Service, When That Employee Returns to the Home Terminal, the Employee Must Remain Unavailable for Service at the Home Terminal for at Least 48 Hours

1. Summary of Issue and Interim Interpretation

Under Sec. 21103(a)(4), the railroad may not require or allow a train employee to initiate an on-duty period after the employee has an initiated an on-duty period each day for six consecutive days, has been finally released at the away-from-home terminal, and then has spent more than 24 hours off duty there. Rather, the railroad may require or allow the employee to engage in non-covered service at the away-from-home terminal, if desired, but must deadhead the employee to his or her home terminal and must then give the employee 48 consecutive hours off duty at the home terminal before requiring or allowing the employee to report for duty again to perform service as a freight train employee. If the railroad has required or allowed the employee to initiate an on-duty period at the away-from-home terminal after the seventh consecutive day, then railroad must give the employee 72 hours off duty before requiring or allowing the employee to report for duty again to perform service as a freight train employee.

2. Detailed Discussion of Interim Interpretation

When a train employee initiates an on-duty period each day for six consecutive days and the final period of on-duty time ends at the away-from-home terminal, Sec. 21103(a)(4)(A)(i) permits the employee to ''work a seventh consecutive day.'' Emphasis added. In the event that a railroad takes advantage of this allowance and has its employee work on a seventh consecutive day, Sec. 21103(a)(4)(A)(ii) requires that ''any employee who works a seventh consecutive day pursuant to subparagraph (i) shall have at least 72 consecutive hours off duty at the employee's home terminal during which time the employee is unavailable for any service for any railroad carrier.'' FRA

has not previously addressed the question of whether an employee may initiate a seventh on-duty period 24 hours or more [36] after the employee is finally released from his or her sixth consecutive duty tour, or if Sec. 21103(a)(4)(A)(i)–(ii) only authorizes a train employee to initiate an on-duty period that is consecutive to the sixth consecutive day.

The structure of Sec. 21103(a)(4) generally prohibits a train employee from remaining on duty or going on duty after the employee has initiated on-duty periods for six consecutive days, until the employee has at least 48 hours of time off duty at the home terminal unavailable for any service for any railroad. Sec. 21103(a)(4)(A) provides an exception to this general prohibition in subsection (a)(4)(A)(i), allowing an employee to initiate an on-duty period [37] on a ''seventh consecutive day.'' Subsection (a)(4)(A)(ii) requires that ''any employee who works a seventh consecutive day pursuant to subparagraph (i)'' have, instead of 48 hours, 72 hours of time off duty at the home terminal during which the employee is unavailable for any service for any railroad. Similarly, subsection (a)(4)(B) allows employees to initiate on-duty periods on seven consecutive days under collective bargaining agreements or authorized pilot programs; these employees must also have 72 hours of time off duty at the home terminal unavailable for any service for any railroad. Outside of these two exceptions, there is a violation of Sec. 21103(a)(4) if the railroad requires or allows a train employee to initiate an on-duty period after having required or allowed the employee to do so on six prior consecutive days and before having given the employee the 48 hours of time off duty.

FRA is aware that some railroads have scheduled employees to initiate on-duty periods each day for six consecutive days followed by more than a day spent off duty at the away-from-home terminal, and then, after the employee initiates an additional on-duty period and returns to his or her home terminal, have allowed the employee to initiate a new on-duty period after having only 48 hours off duty at the home terminal. Such a practice is plainly inconsistent with the language of the statute; as discussed above, any allowance that the statute provides for an employee to initiate an on-duty period after having already done so on six consecutive days is contingent upon that employee's receiving 72 hours of time off duty after the employee is finally released at the home terminal from the additional on-duty period that is allowed under one of the exceptions to the general six-day limitation. Specifically, when an employee is at the away-from-home terminal at the end of the duty tour initiated on the sixth consecutive day, he or she is permitted to initiate an on-duty period on ''the seventh consecutive day'' under Sec. 21103(a)(4)(A)(i), and an employee who initiates an on-duty period on this seventh consecutive day pursuant to that section must have the 72 hours of time off duty required by Sec. 21103(a)(4)(A)(ii) after the employee is finally released from the duty tour initiated on the seventh consecutive day. However, this does not resolve the question of what period of time constitutes ''the seventh consecutive day.''

Because the exception of paragraphs (a)(4)(A)(i) and (ii) discusses the additional on-duty period in the context of ''a seventh consecutive day,'' a literal reading of the statute, which FRA is adopting, would preclude the initiation of an on-duty period by an employee who had done so for six consecutive days, ending the final on-duty period at the away-from-home terminal, but did not initiate another on-duty period until more than 24 hours later, because at that time the initiation of the on-duty period would no longer fall on the ''seventh consecutive day.'' Under FRA's limited interpretation, after 24 hours at the away-from-home terminal (or more than a calendar day at the away-from-home terminal for a railroad that had not yet transitioned to FRA's final interpretation of ''day''), the authority of the railroad to require or allow an employee to initiate an on-duty period as a train employee under subsection (a)(4)(A)(i) disappears. As a result, the railroad's only choice in this circumstance would be that the employee must be deadheaded to his or her home terminal and receive at least 48 hours free from any service for any railroad before next initiating an on-duty period, though the employee could perform non-covered service before receiving the 48 hours of time off duty. Although this construction of the subsection has the virtue of hewing closely to the express terms of the statute, it results in the odd outcome that a railroad loses the authority to require or allow an employee to perform covered service because the employee has been off duty for too long.

FRA considered but rejected an alternative reading of the text that would avoid this incongruous result by understanding the authorization to ''work a seventh consecutive day'' as allowing one final initiation of an on-duty period when the employee ends the sixth consecutive on-duty period at the away-from-home terminal. This final on-duty period would generally be initiated within the seventh consecutive day, but in unusual circumstances where the employee remained off duty at the away-from-home terminal for more than 24 hours (or more than a calendar day for a railroad that had not yet transitioned to FRA's final interpretation), the final on-duty period would be authorized despite falling outside of the 24 hours (or calendar day) that constitute the seventh consecutive day. However, adoption of this alternative interpretation would have raised new questions concerning the time spent at the away-from-home terminal. Under that rejected reading, an employee could lawfully remain at the away-from-home terminal to engage in non-covered service for several days before next initiating an on-duty period, and the alternative broader interpretation would require determining whether this non-covered service would preclude subsequent covered service before having the required 48 hours of time off duty.

Although both of these interpretations are reasonable constructions of the statute given the nature of railroad operations, FRA views the limited interpretation, where an employee is not permitted to initiate an on-duty period after the end of the seventh consecutive day, as superior. In addition to being a more direct construction of the text of the statute, and providing more clarity to railroads and employees, the limited interpretation avoids the question of what, if any, non-covered service would be permitted between the sixth consecutive on-duty period and the final on-duty period, which could occur beyond the seventh consecutive day. Under the limited interpretation, an employee may engage in non-covered service separate from a duty tour at the away-from-home terminal after initiating an on-duty period on six consecutive days, but may not initiate a seventh duty tour prior to having the 48 hours of time off duty at the home terminal unless the duty tour is initiated within 24 hours, of the employee's final release from the duty tour initiated on the sixth consecutive day. Under the interpretation of ''day'' as a 24-hour period (24-hour-day interpretation), this non-covered service is necessarily limited to four hours if it is to avoid commingling with either the duty tour

[36] See Final Interpretations, 77 FR 12417–19 (defining ''day'' in this context to refer to a 24-hour period).

[37] See Final Interpretations, 77 FR 12419 (interpreting ''work'' in this context to refer to the initiation of an on-duty period).

initiated on the sixth consecutive day or the duty tour that follows the non-covered service on the seventh consecutive day, since there must be at least 10 hours of time off duty between the non-covered service and the duty tours before and after the non-covered service, and the duty tour following the non-covered service must be initiated 24 hours or less after the employee's final release from the duty tour initiated on the sixth consecutive day, for the seventh duty tour to be consecutive to it. As an example, if an employee were finally released at midnight, the following duty tour would have to begin prior to midnight of the following day in order to be on a consecutive day. In order to avoid commingling with both the prior and subsequent duty tours, the non-covered service must fall between 10 a.m., 10 hours after the midnight final release, and 2 p.m., 10 hours prior to the subsequent initiation of the on-duty period. This leaves only four hours of time for non-covered service outside of both duty tours; any greater amount of service would either commingle with the prior duty tour, commingle with the subsequent duty tour, or cause the subsequent duty tour to be initiated outside of the 24 hours that constitutes the ''seventh consecutive day.''

FRA seeks comment on the impact of this interpretation on railroad operations. Commenters arguing in favor of the broader interpretation, allowing for the initiation of an on-duty period under Sec. 21103(a)(4)(A)(i) more than 24 hours (or more than a calendar day for a railroad that had not yet transitioned to FRA's final interpretation), after the employee's final release from the duty tour initiated on the sixth consecutive day, are encouraged to discuss potential resolutions for the issue of intervening non-covered service separated from a duty tour.

IV. Application of the ''Signal Employee Exclusivity'' Provision to Individuals Who Drive Commercial Motor Vehicles for the Purpose of Themselves Installing, Maintaining, or Repairing Signal Systems

A. Summary of Issue and Interim Interpretation

The ''signal employee exclusivity'' provision, which was added by the RSIA and codified at Sec. 21104(e) (exclusivity provision), reads as follows:

> The hours of service, duty hours, and rest periods of signal employees shall be governed exclusively by this chapter. Signal employees operating motor vehicles shall not be subject to any hours of service rules, duty hours or rest period rules promulgated by any Federal authority, including the Federal Motor Carrier Safety Administration, other than the Federal Railroad Administration.

FRA has previously explained that there is no gap between the statutory HS limitations with respect to the installation, repair, and maintenance of signal systems, which are administered by FRA, and the regulatory HS limitations with respect to the operation of commercial motor vehicles, which are promulgated and administered by FMCSA. Final Interpretations, 77 FR at 12427–28. However, FRA's prior discussion of the issue allowed FMCSA's HS regulations (49 CFR part 395) (FMCSA's HS Regulations) to reach employees who generally performed signal covered service and were, therefore, generally considered ''signal employees'' on the occasions when those employees were driving a commercial motor vehicle during a period of time that was not within a duty tour that included any time spent performing covered service as a signal employee.

Both labor organizations and railroad industry organizations have identified the potential application of FMCSA's HS Regulations, including cumulative limitations that could reach into duty tours that are clearly governed by the FRA-enforced statutory HS limitations.[38] Although FRA previously interpreted the exclusivity provision in light of the definition of ''signal employee'' as ''an individual who is engaged in installing, repairing, or maintaining signal systems'' in Sec. 21101(4), FRA did not previously consider reinterpreting the definition of ''signal employee'' in light of the new exclusivity provision.

Now construing the whole statute, in accordance with traditional canons of statutory interpretation, FRA views the exclusivity provision as broadening the scope of what activity is denoted by the words ''engaged in installing, repairing, or maintaining signal systems.'' Specifically, as described in detail below, FRA views an individual's operation of a motor vehicle for the purpose of allowing that individual to install, repair, or maintain signal systems to be a function that is time on duty under the ''signal employee'' provisions of the HS laws, regardless of whether the operation of the motor vehicle is within the same duty tour as the direct work on the signal system, or is separated from it by at least 10 hours off duty. As a result, that operation of a motor vehicle for that purpose is itself subject to the limitations of the HS laws and to the exclusivity provision that exempts the operation from other Federal requirements concerning hours of service, duty hours, or rest periods, including FMCSA's HS Regulations.

It is important to note that this interpretation does not affect FRA's preexisting interpretations governing a signal employee's commuting time (i.e., time spent commuting by motor vehicle between the signal employee's residence and his or her headquarters), which remains classified as time off duty for purposes of Sec. 21104. In addition, as provided by Sec. 21104, travel time returning from a trouble call or an outlying work site to the employee's headquarters or residence at the end of a duty period, remains neither time on duty nor time off duty (except where such time is in transportation in an on-track vehicle). FRA seeks comment on this interim interpretation.

B. Detailed Discussion of Issue and Interim Interpretation

In response to the June 2009 Interim Interpretations, the Brotherhood of Railroad Signalmen (BRS) submitted a comment relating to several issues. Among the issues addressed by BRS was the exclusivity provision. BRS expressed concern that individuals generally performing signal covered service, who are, therefore, generally signal employees, might be excluded from FMCSA's HS Regulations as a result of this provision, but also would not be subject to the FRA-administered statutory HS limitations if they did not perform covered service installing repairing or maintaining signal systems that commingled under Sec. 21104(b)(2)[39] with the time that they spent driving a commercial motor vehicle to an outlying work site. BRS's proposed solution to this apparent issue was for FRA to classify driving commercial motor vehicles for the purposes of installing, maintaining, or repairing signal systems to be signal-employee covered service.

In the Final Interpretations, FRA responded to BRS's stated concern, that there was an apparent gap in the HS limitations of FRA and FMCSA, by explaining that the exclusivity provision applies only where other FRA-

[38] FRA notes that Sec. 21104(e) would preclude the application of any of FMCSA's HS Regulations to any duty tour of a signal employee, including cumulative limitations. See also 49 CFR 395.1(r), excluding signal employees from the application of 49 CFR part 395.

[39] Sec. 21104(b)(2) reads, ''(b) Determining time on duty.—In determining under subsection (a) of this section the time a signal employee is on duty or off duty, the following rules apply: * * * (2) Time spent performing any other service for the railroad carrier during a 24-hour period in which the employee is engaged in installing, repairing, or maintaining signal systems is time on duty.''

administered HS limitations apply. The Final Interpretations stated, ''the statute does not allow an individual subject to the exemption granted at Sec. 21104(e) not to be subject to Sec. 21104(a).'' Final Interpretations, 77 FR at 12427. However, FRA noted that the interpretation would not completely preclude the application of FMCSA's HS Regulations to individuals who generally perform signal covered service, since there are circumstances where such an individual may drive a commercial motor vehicle to an outlying work site and then be provided with a statutory minimum off-duty period of at least 10 hours before beginning to perform covered service at the work site. Under these circumstances, FRA's position in the Final Interpretations was that if driving the commercial motor vehicle is not covered service, then the individual is not performing signal-employee functions, is not a signal employee during the time spent driving, and is not subject to Sec. 21104, including the exclusivity provision. FRA expressed a willingness to work with FMCSA to address the issue, but viewed those efforts as outside the scope of interpreting the statute.

In addressing the purported gap between the HS limitations, FRA's Final Interpretations simply applied the preexisting understanding of what activities are classified as ''engaged in installing, repairing, or maintaining signal systems'' under the old, pre-RSIA HS laws. However, labor organizations and railroad industry organizations have implicitly suggested that FRA's understanding of covered service should be revised in light of the statutory changes. Having considered the statute in light of these arguments, FRA agrees that the exclusivity provision at Sec. 21104(e) broadens the definition of signal-employee covered service that brings an individual within the scope of Sec. 21104.

Following the 1976 amendment of the HS laws [40] to cover ''an individual employed by the carrier who is engaged in installing, repairing or maintaining signal systems,'' FRA published an interim statement of agency policy and interpretation for signal service. 42 FR 4464 (Jan. 25, 1977) (1977 Signal Interim Interpretations). See Sec. 4(d) of Public Law 94–348 (July 8, 1976), adding new Sec. 3A to the Hours of Service Act, then codified at 45 U.S.C. 64; 42 FR 4464, January 25, 1977. In that contemporaneous interpretation, FRA noted that ''[p]erhaps the most difficult problem posed by the general language of [the statutory provisions governing such individuals] is the definition of time on duty. Individuals who work on signal systems often spend much of their compensated time traveling for the carrier's purposes.'' FRA ultimately determined that travel time devoted to the carrier's work was to be considered commingling service (other service for the carrier during a 24-hour period in which the employee is engaged in installing, maintaining, or repairing signal systems), such that the travel time would be considered time on duty if not separated by a statutory minimum off-duty period from direct work to install, repair, or maintain signal systems. Time spent returning from trouble calls or an outlying work site at the end of scheduled hours, was considered neither time on duty nor time off duty, an interpretation subsequently ratified by Congress in the 1978 amendments to the HS laws. Sec. 4 of Public Law 95–574 (November 2, 1978). Commuting time between an employee's residence and the employee's regular reporting point, which is determined by an employee in his or her decision of where to live, was considered time off duty.

Based in part on the nature of the statute as it existed in 1977, FRA stated that the functional approach of the HS laws meant that ''driving signal department vehicles is not covered service under the [HS laws].'' 1977 Signal Interim Interpretations, 42 FR at 4466. At the time that FRA published the 1977 Signal Interim Interpretations, the limitations of the HS laws applied only to individual duty tours, so there was little concern with individuals moving into and out of the classification ''signal employee'' based upon the functions performed at any given moment or within or outside of any individual duty tour.

As noted above, in Section III.B of this document, the RSIA amendments to the HS laws have attached more significance to the classification of an individual as a covered service employee beyond the boundaries of a particular duty tour. Although the functional approach is inherent to the HS laws as they currently exist, and a change from that approach to a status-based approach would require additional statutory amendments, FRA nonetheless recognizes that the functions that bring an individual employee within the scope of Sec. 21104 must be construed ''in connection with every other part or section of the statute to produce a harmonious whole.'' [41]

In the RSIA, Congress added to Sec. 21104 new subsection (e), which specifically references FMCSA's rules related to hours of service, duty hours, and rest periods as not applying to signal employees. Although the exclusivity provision can bear an interpretation of signal-employee covered service as it existed prior to the RSIA, such a narrow interpretation would allow individuals who often perform the functions of signal employees to be subject to the regulations of FMCSA, which seems to be contrary to the purpose of the exclusivity provision. Or, to the extent that FMCSA has excluded such individuals from the scope of its regulations, such employees could have no substantive Federal limitation on the time that could be spent in the driving function, provided that it is separated from the work of installing, repairing, or maintaining signal systems by at least a statutory minimum off-duty period of 10 hours, a result that is equally untenable. An alternative reading of the exclusivity provision recognizes that Congress expressly excluded signal employees from the application of FMCSA's regulations, and interprets what is necessary for an individual to be a signal employee in light of that exclusion.

As discussed above, FRA has long understood that driving a motor vehicle is often an integral part of performing work on signal systems. Much of signal system installation, maintenance, and repair will necessarily occur at track wayside locations, requiring significant amounts of travel to and from those locations for the individuals performing such work. Because of the immense scale of the rail network in the United States, this driving time may sometimes be sufficiently long that the driving is separated from the direct work on a signal system by a statutory minimum off-duty period of 10 consecutive hours. Under earlier FRA interpretations, FRA viewed the HS laws as not reaching the period of time spent driving for the purposes of a railroad if it was separated from the period of covered service by a statutory minimum off-duty period and, therefore, not within the duty tour.[42] When outside of a duty tour, time spent driving by individuals who generally

[40] In 1976 the statute was still called the Hours of Service Act. See note 2.

[41] *United States* v. *Uvalle-Patricio,* 478 F.3d 699 (5th Cir. 2007) (internal citations omitted). See also, *e.g., Bilski* v. *Kappos,* 130 S.Ct. 3218 (2010); Sutherland § 46:5.

[42] As discussed above, normal commuting time between an employee's residence and his or her normal headquarters or regular reporting point was and is considered time off duty. 42 FR 4466.

perform signal covered service was only regulated if it fell within the regulatory jurisdiction of FMCSA and FMCSA's HS Regulations. However, the RSIA rejected this status quo, and unequivocally stated that ''signal employees operating motor vehicles shall not be subject to any hours of service rules . . . promulgated by any Federal authority, including the Federal Motor Carrier Safety Administration, other than the Federal Railroad Administration.'' Maintaining FRA's prior narrow reading of what constitutes covered service would not fully exclude signal employees from the reach of FMCSA's HS Regulations, since such regulations include cumulative limits on total on-duty time and include all compensated time as time on duty, even when not connected with time spent driving.[43] Congress specifically identified ''signal employees operating motor vehicles'' as subject to the HS laws and under the authority of FRA, and understanding the operation of a motor vehicle for the purpose of installing, repairing, or maintaining signal systems to be service that is ''engaged in'' those activities brings such individuals entirely within the scope of Sec. 21104, consistent with the statutory mandate.

Such an interpretation is also consistent with FRA's prior understanding of the activities generally within the scope of a signal employee's employment. In construing the statutory definition of what an individual must do to be considered a ''signal employee,'' it is appropriate to consider the actual duties generally performed by such individuals, giving deference to the words that Congress chose to define as well as to the definition Congress provided.[44] Both Congress and FRA have recognized that signal employees ''spend much of their compensated time traveling for the carrier's purposes.''[45] In discussing this issue previously, FRA noted that this fact created difficulties in interpreting what constituted time on duty for signal employees, and ultimately concluded that such time should be considered potentially commingling: Time on duty if commingled with other time on duty; and otherwise neither time on duty nor time off duty. FRA concludes that Congress intended Sec. 21104(e) to mean unequivocally that when these individuals are operating motor vehicles for the purpose of installing, repairing, or maintaining signal systems, these individuals shall be subject to the HS laws and not to FMCSA's HS Regulations; FRA's prior construction of the term ''signal employee'' and therefore the activities performed by an individual that make the individual subject to the HS laws, is not consistent with that congressional intent. Although FRA's prior reading of the statutory language was reasonable given the context of the HS laws as a whole, that context has now changed, and FRA's construction of the term ''signal employee'' must change with it.

Operating a motor vehicle from work site to work site is an integral part of the duty tour for many signal employees. Failing to recognize such operation as time on duty for signal employees, independent of whether the operation is immediately connected with the duty tour for which the vehicle is operated, would fail to account for Congress's clear statement that such activity should be governed by the HS laws. Accordingly, FRA understands an individual's operation of a motor vehicle for the purposes of that individual's installing, repairing, or maintaining signal systems to be service that is ''engaged in'' those activities and, therefore, signal-employee covered service. As a consequence, such driving time by the individual is time on duty for the purposes of Sec. 21104, regardless of whether the individual installs, repairs, or maintains a signal system during the same duty tour as the individual operated the motor vehicle.

However, as clarification, individuals who do not perform installation, repair, or maintenance of signal systems do not become signal employees simply by virtue of operating a motor vehicle transporting a signal employee. For instance, a driver contracted by a railroad solely to transport signal employees would not be performing covered service while driving, because the driver is not operating the motor vehicle for the purpose of himself or herself installing, repairing, or maintaining signal systems. Although operating a motor vehicle is a frequent component of signal employee duties, it is, of course, not exclusive to such employees. FRA also notes that an individual's operation of any motor vehicle for the purpose of himself or herself installing, repairing, or maintaining signal systems constitutes signal-employee covered service; the interpretation is not limited only to instances where the motor vehicle is a ''commercial motor vehicle'' within the meaning of FMCSA's HS Regulations. This distinction is relevant only to the extent that FMCSA's HS Regulations ever apply to individuals who ordinarily perform the functions of signal employees. As explained above, however, Congress specifically excluded signal employees from the application of HS rules promulgated by FMCSA, which would include FMCSA distinctions between motor vehicles.

FRA is aware that signal employees may sometimes drive themselves to outlying work sites and engage in activities that are not classified as signal-employee covered service prior to performing signal-employee covered service. Two examples follow that illustrate the application of FRA's new interim interpretation of ''signal employee.''

Example 10

Facts: An individual drives himself or herself to, and attends, a rules class at the outlying work site during one duty tour, and then performs signal-employee covered service at the same outlying work site during the next duty tour.

Effect of law: Despite the intervening rules class, the individual's drive to the outlying work site facilitated his or her subsequent performance of signal-employee covered service, and accordingly the driving time is time on duty subject to the FRA-administered HS laws rather than FMCSA's HS Regulations.

However, because the definition of ''signal employee'' is functional, there must be some connection, even if attenuated by intervening other activities or time off duty, between the time spent driving and the driver's performance of other signal employee functions in order for the time spent driving to be covered service and subject to the HS laws rather than FMCSA's HS Regulations. Only when the employee is driving a motor vehicle with no plausible connection to his or her future service installing, repairing, or maintaining signal systems is the driving time not time on duty as a signal employee. FRA recognizes the need for clarity in terms of what time spent in such driving is, and is not, considered time on duty; ambiguous travel time is time on duty, whereas travel time that is clearly and definitively not connected with proximate performance of signal employee functions is not signal-employee covered service.

Example 11

Facts: An individual drives from his or her headquarters at Location A to a rules class at Location B, attends the rules class, and then drives from Location B to Location C, where he or she repairs signal systems at Location C.

[43] 49 CFR 395.2, ''On-duty time.''

[44] See, e.g., *Johnson* v. *U.S.,* 130 S.Ct. 1265, 1271 (2010) (noting that Congress's choice of the words ''violent felony'' is relevant to interpreting the meaning of the definition of ''violent felony'' provided by Congress).

[45] FRA's 1977 Signal Interim Interpretations, 42 FR at 4464.

Effect of law: The time spent driving from the employee's headquarters to the rules class is not signal-employee covered service, unless it commingled with the eventual signal-employee covered service (i.e., the drive from Location B to Location C and the repair of the signal system at Location C), because the travel to the rules class location is not clearly connected to the performance of signal-employee covered service, since the employee is required to travel from the rules class location to another location in order for the employee to perform the covered service. In other words, assuming that neither the drive from Location B to Location C nor the signal-employee covered service at Location C was in the same duty tour as the rules class at Location A, the time that the employee spent driving to the rules class is not covered by the HS laws and is not covered by FMCSA's HS Regulations.

FRA acknowledges this gap in coverage for such drive times referenced in Example 12, but believes such instances are rare. FRA seeks comment on this aspect of its interim interpretation as well as on all other aspects of its interim interpretation.

C. Reiteration of FRA's Longstanding Interpretations of Travel Time Involving Signal Employees

As a result of this interim interpretation, the treatment of the time that signal employees spend operating motor vehicles is changing, but, as noted above, many of the other applications of the HS laws with respect to travel time for signal employees remain unchanged in the statutory text and in FRA interpretations. For the sake of clarity, FRA is briefly reiterating the agency's (and the statute's) prior and continuing treatment of these travel times as they apply to the new interpretation and providing any applicable supporting statutory references.

Travel on an on-track vehicle: Any time spent in transportation on an on-track vehicle, including any other type of travel time discussed below, is categorically time on duty as provided by Sec. 21104(b)(6).

Commuting time: FRA's longstanding interpretation, which remains unchanged, has been that normal commuting between the individual's residence and his or her regular reporting point or headquarters connected with the regular workday is not time on duty. Because employees choose where to reside with respect to their regular reporting point or headquarters, time spent commuting from the residence to that location is not service for a railroad. Note, however, that when an employee instead travels directly from his or her residence to a location other than his or her regular reporting point or headquarters, the travel time, minus the normal length of the individual's commuting time to the regular reporting point or headquarters, is service and, therefore, time on duty.

Travel time following the end of scheduled duty hours: As provided by Sec. 21104(b)(4) and (b)(5), travel time that begins either at the end of scheduled duty hours, or when the employee is released prior to the end of scheduled duty hours in order to comply with the HS laws, is neither time on duty nor time off duty, regardless of whether the employee returns to his or her headquarters or directly to his or her residence, and regardless of whether the employee operates a motor vehicle as part of such transportation. However, if the employee returns to duty less than 30 minutes after the completion of travel, the travel time is instead considered travel time during a duty tour governed by Sec. 21104(b)(7), as discussed below.

Travel time returning from a trouble call: As provided by Sec. 21104(b)(3), travel time returning from a trouble call is neither time on duty nor time off duty, regardless of whether the employee returns to his or her headquarters or directly to his or her residence, and regardless of whether the employee operates a motor vehicle as part of such transportation. However, if the employee returns to duty less than 30 minutes after the completion of travel, the travel time is instead considered travel time during a duty tour as provided by Sec. 21104(b)(7).

Other travel time: As discussed above, under FRA's new interim interpretation, any time spent by an individual operating a motor vehicle in order for the individual to engage in installing, repairing, or maintaining a signal system is time on duty, regardless of whether the period of time operating the motor vehicle is connected with the individual's duty tour. Any other travel time, such as time spent by an individual riding in a motor vehicle operated by someone else, during the individual's duty tour, is potentially commingling service, consistent with FRA's preexisting interpretation. This time spent by an individual riding in the motor vehicle commingles with time on duty that the individual accrued within the same duty tour and becomes time on duty. If there is no time on duty with which the travel time can commingle, such travel time instead becomes neither time on duty nor time off duty.

Joseph C. Szabo,

Administrator.

Appendix A

Appendix A: Brief Summary of Major Federal Hours of Service (HS) Requirements With Respect to Employees Who Perform One or More Types of Covered Service: Freight Train Employees, Passenger Train Employees, Signal Employees, and Dispatching Service Employees

	Freight train employees	Passenger train employees	Signal employees	Dispatching service employees
Citation	49 U.S.C. 21103	49 CFR part 228, subpart F	49 U.S.C. 21104	49 U.S.C. 21105.
Individuals Protected by the Federal HS Requirements because of the Type of Covered Service They Perform.	Train employees (individuals engaged in or connected with the movement of a train, including hostlers), except for train employees who are engaged in commuter or intercity rail passenger transportation, as defined in 49 CFR part 228, subpart F, who are instead subject to that regulation. See 49 U.S.C. 21102(c)(3).	Train employees who are engaged in commuter or intercity rail passenger transportation. (Includes a train employee who is engaged in commuter or intercity rail passenger transportation regardless of the nature of the entity by whom the employee is employed and any other train employee who is employed by a commuter railroad or an intercity passenger railroad. Excludes a train employee of another type of railroad who is engaged in work train service even though that work train service might be related to providing commuter or intercity rail passenger transportation, and a train employee of another type of railroad who serves as a pilot on a train operated by a commuter railroad or intercity passenger railroad.) See 49 CFR 228.403(c) and discussion under III.A of the Second Interim Interpretations.	Signal employees (individuals engaged in installing, repairing, or maintaining signal systems). See 49 U.S.C. 21101(4).	Dispatching service employees (operators, train dispatchers, or any other individual who by use of an electrical or mechanical device dispatches, reports, transmits, receives, or delivers orders related to or affecting train movements). See 49 U.S.C. 21101(2).
Limitations on Time on Duty in a Single Tour.	A railroad may not require or allow an individual to remain or go on duty as a freight train employee in excess of 12 hours or if the individual has not had at least 10 consecutive hours off duty during the prior 24 hours.	A railroad may not require or allow an individual to remain or go on duty as a passenger train employee in excess of 12 hours or if the individual has not had at least 8 consecutive hours off duty during the prior 24 hours, or 10 consecutive hours off duty during the prior 24 hours if the individual has been on duty for 12 consecutive hours.	A railroad may not require or allow an individual to remain or go on duty as a signal employee in excess of 12 hours or if the individual has not had at least 10 consecutive hours off duty during the prior 24 hours.	A railroad may not require or allow an individual to remain or go on duty as a dispatching service employee for more than 9 hours in a 24-hour period at a place at which at least 2 shifts are employed or for more than 12 hours in a 24-hour period at a place where only one shift is employed.
End of Duty Tour	Duty tour ends at beginning of statutory minimum off-duty period.	Duty tour ends at beginning of statutory minimum off-duty period.	Duty tour ends at beginning of statutory minimum off-duty period.	Not applicable; any service for the railroad within 24 hours of time on duty will commingle with that time on duty.
Duration and Any Other Conditions of Minimum Off-Duty Period Between Two Duty Tours.	10 consecutive hours, required to be uninterrupted by any communication by the railroad reasonably expected to disrupt the employee's rest. Additional time off duty is required when the total of time on duty and time waiting for deadhead transportation or in deadhead transportation from a duty assignment to the place of final release that is not time off duty exceeds 12 consecutive hours, which must also be uninterrupted.	8 consecutive hours; 10 consecutive hours if the employee has been on duty for 12 consecutive hours.	10 consecutive hours, required to be uninterrupted by any communication by the railroad reasonably expected to disrupt the employee's rest.	No express minimum.
Duration and Any Other Conditions of Minimum Off-Duty Period Within a Duty Tour.	At least 4 hours of time off duty at the individual's designated terminal, required to be uninterrupted by any communication by the railroad reasonably expected to disrupt the employee's rest.	At least 4 hours of time off duty at the individual's designated terminal.	At least 30 minutes of time off duty.	At least 1 hour of time off duty.

	Freight train employees	Passenger train employees	Signal employees	Dispatching service employees
Limitations on Consecutive Duty Tours and Requirements for Extended Rest.	A railroad may not require or allow an individual to remain or go on duty as a freight train employee after initiating an on-duty period on six consecutive days without receiving 48 consecutive hours off duty and free from any service for any railroad at the individual's home terminal. (See definition of ''day'' and explanation of ''consecutive day'' below.) Individuals are permitted to initiate an on-duty period as a freight train employee on a seventh consecutive day when the individual ends the sixth consecutive day at the away-from-home terminal, as part of a pilot project, or as part of a collectively bargained agreement entered into prior to April 16, 2010 that expressly provides for such a schedule. An individual performing service on this additional day must receive 72 consecutive hours free from any service for any railroad at his or her home terminal before going on duty again as a freight train employee.	A railroad may not require or allow an individual to remain or go on duty as a passenger train employee if the individual has initiated an on-duty period each day on 13 or more consecutive calendar days in the series of at most 14 consecutive calendar days until the individual has had at least two consecutive calendar days on which he or she does not initiate an on-duty period. May not remain or go on duty as a passenger train employee if the individual has initiated an on-duty period each day on six or more consecutive calendar days including one or more Type 2 assignments until the individual has had at least 24 consecutive hours of time off duty. For definition of ''Type 2 assignment,'' see 49 CFR 228.5 or footnote 32 of the Second Interim Interpretations. During this time off duty, the individual must be at his or her home terminal and unavailable for any service for any railroad. If the employee is not at his or her home terminal when this time off duty is required, the employee may either deadhead to the point of final release at the employee's home terminal or initiate an on-duty period in order to return to the employee's home terminal either on the same calendar day or the next consecutive calendar day after the completion of the duty tour triggering the rest requirement.	None	None.
Monthly Cumulative Limitations	A railroad may not require or allow an individual to remain or go on duty, wait for or be in deadhead transportation to the point of final release, or be in any other mandatory service for the carrier in any calendar month where the employee has spent a total of 276 hours on duty, waiting for or in deadhead transportation from a duty assignment to the place of final release, or in any other mandatory service for the carrier. A railroad may not require or allow an individual to exceed a total of 30 hours per calendar month spent waiting for or in deadhead transportation from a duty assignment to the place of final release following a period of 12 consecutive hours on duty that is neither time on duty nor time off duty, not including interim rest periods, except in the circumstances stated.	None	None	None.

	Freight train employees	Passenger train employees	Signal employees	Dispatching service employees
Definition of ''Time Neither On Duty nor Off Duty''.	Time spent in deadhead transportation from a duty assignment to the place of final release.	Time spent in deadhead transportation from a duty assignment to the place of final release.	Time spent returning from a trouble call, whether the individual goes directly to the employee's residence or by way of the employee's headquarters. Time after scheduled duty hours necessarily spent in completing the trip directly to the individual's residence or to the individual's headquarters, if the individual has not completed the trip from the final outlying worksite of the duty period at the end of scheduled duty hours, or if the individual is released from duty at an outlying worksite before the end of the individual's scheduled duty hours to comply with 49 U.S.C. 21104. However, time spent in transportation on an on-track vehicle is time on duty.	None.
Emergencies in General	A freight train employee on the crew of a wreck or relief train may be allowed to remain or go on duty for no more than 4 additional hours in any period of 24 consecutive hours when an emergency exists and the work of the crew is related to the emergency.	A passenger train employee on the crew of a wreck or relief train may be allowed to remain or go on duty for no more than 4 additional hours in any period of 24 consecutive hours when an emergency exists and the work of the crew is related to the emergency.	A signal employee may be allowed to remain or go on duty for no more than 4 additional hours in any period of 24 consecutive hours when an emergency exists and the work of that employee is related to the emergency. Routine repairs, routine maintenance, or routine inspection of signal systems is not an emergency that allows for additional time on duty.	A dispatching service employee may be allowed to remain or go on duty for no more than 4 additional hours during a period of 24 consecutive hours for no more than 3 days during a period of 7 consecutive days.
Explanation of the End of an Emergency.	The emergency ends when the track is cleared and the railroad line is open for traffic.	The emergency ends when the track is cleared and the railroad line is open for traffic.	The emergency ends when the signal system is restored to service.	None.
Definition of ''Day'' and ''Consecutive Day''.	24 consecutive hours; two initiations of an on-duty period are on consecutive days where they are separated by less than 24 hours of time off duty, measured from the time of the employee's final release from duty until the time that the employee next reports for duty.	Calendar days; two calendar days are consecutive if adjacent to one another.	Not Applicable	Not Applicable Except in Context of Emergency Provision.
Explicit Use of Fatigue Science	None	Passenger train employees' work schedules must be analyzed under an FRA-approved validated biomathematical fatigue model, with the exception of certain schedules deemed as categorically presenting an acceptable level of risk for fatigue that does not violate the defined fatigue threshold.	None	None.
Specific Rules for Nighttime Operations.	None	Schedules that include any time on duty between 8 p.m. and 4 a.m. must be analyzed using a validated biomathematical model of human performance and fatigue approved by FRA. Schedules with excess risk of fatigue must be mitigated or supported by a determination that mitigation is not possible and the schedule is operationally necessary and approved by FRA.	None	None.

	Freight train employees	Passenger train employees	Signal employees	Dispatching service employees
Specific Rules for Unscheduled Assignments.	None	The potential for fatigue presented by unscheduled work assignments must be mitigated as part of a railroad's FRA-approved fatigue mitigation plan. Plans must be submitted for FRA review and approval, along with the associated schedules requiring mitigation.	None	None.

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Federal Register

Vol. 78, No. 185

Tuesday, September 24, 2013

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FEDERAL REGISTER PAGES AND DATE, SEPTEMBER

54147–54372 3
54373–54560 4
54561–54734 5
54735–54958 6
54959–55168 9
55169–55628 10
55629–56126 11
56127–56582 12
56583–56810 13
56811–57032 16
57033–57226 17
57227–57466 18
57467–57782 19
57883–58152 20
58153–58448 23
58449–58854 24

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:
Notices:
Notice of September 10, 2013 56581
Notice of September 18, 2013 58151
Presidential Determinations:
No. 2013–8 of April 11, 2013 55169
No. 2013–13 of September 12, 2013 57225

Proclamations:
9005 54735
9006 54737
9007 54739
9008 54741
9009 54743
9010 54745
9011 54747
9012 54749
9013 56123
9014 56125
9015 56809
9016 57461
9017 57463
9018 57465
9019 57779
9020 57781

5 CFR

532 58153
1201 56811
1209 56811
1651 57783
1690 57783
7501 56127
Ch. LXXXII 55171

Proposed Rules:
300 54434
315 54434
335 54434
410 54434
537 54434
900 54434
1651 57807

6 CFR

Proposed Rules:
5 ..... 55657, 58254

7 CFR

27 54970
42 57033
205 56811
318 56129
319 ..... 57467, 58154
457 55171
955 56816
987 54147
1222 56817

Proposed Rules:
915 57099
984 57101
1222 57006

9 CFR

1 57227
2 57227

10 CFR

170 54959
712 56132
1046 55174

Proposed Rules:
32 56839
50 56174
51 ..... 54789, 56621, 56776, 57538
52 56174
431 ..... 54197, 55782, 55890

12 CFR

303 55340
308 55340
324 55340
327 55340
330 56583
333 55340
337 55340
347 55340
349 55340
360 ..... 54373, 55340
362 55340
363 55340
364 55340
365 55340
390 55340
391 55340
620 58449
701 57250

Proposed Rules:
43 57928
244 57928
336 54401
344 54403
373 57928
390 ..... 54401, 54403
703 57539
721 57539
1234 57928

14 CFR

16 56135
23 ..... 55629, 57470
39 ..... 54149, 54152, 54377, 54380, 54383, 54385, 54387, 54561, 54751, 56148, 56150, 56589, 56592, 56594, 56597, 56599, 56601, 57047, 57049, 57053, 57253, 57784, 57786
61 56822
71 ..... 54561, 57788, 57789,

58158, 58159
91 57790
95 57472
97 ....54562, 54564, 56829, 56830
Proposed Rules:
1 54790
21 54791
23 54790
25 54790
27 54790
29 54790
39 ....54594, 54596, 54792, 54794, 55660, 55662, 56182, 56622, 57104, 57542, 58256, 58487
61 54790
71 ....54412, 54413, 54415, 54795, 57545, 58489, 58490
91 54790
121 54790
125 54790
135 54790

15 CFR
748 54752
902 57534
Proposed Rules:
730 55664
740 55664
744 55664
756 55664
758 55664
762 55664

16 CFR
305 54566
Proposed Rules:
300 57808
312 ....56183, 57319
1031 57818
1240 58491

17 CFR
Proposed Rules:
Ch. 1 56542
246 57928

18 CFR
40 58449
Proposed Rules:
40 58492

19 CFR
12 56832
101 54755
351 57790

20 CFR
404 ....54756, 57257
418 57257

21 CFR
1 54568
16 58786
73 54758
520 57057
801 58786
803 58786
806 58786
810 58786
814 58786
820 58786
821 58786
822 58786
830 58786
Proposed Rules:
1 57320
16 57320
73 57105
1140 55671

23 CFR
Proposed Rules:
771 57587

24 CFR
5 57058
202 57058
Proposed Rules:
214 56625
267 57928
Ch. IX 54416

26 CFR
1 ....54156, 54391, 54568, 54758, 55202, 57686
48 54758
602 ....54156, 57686
Proposed Rules:
1 ....54598, 54796, 54971, 54986, 56841, 56842, 57547
301 ....54986, 54996

27 CFR
Proposed Rules:
9 58050
479 55014

28 CFR
26 58160
Proposed Rules:
16 56852

29 CFR
1601 54762
4022 56603
4044 56603
Proposed Rules:
1910 56274
1915 56274
1926 56274

30 CFR
938 55210
Proposed Rules:
7 58264
75 58264
250 54417

31 CFR
34 54801
Proposed Rules:
538 54199
560 54199

33 CFR
100 ....54168, 54569, 54571, 55214, 57061, 57063
117 ....55214, 55215, 56605, 56607, 56609, 56610, 58458
165 ....54171, 54392, 54574, 54576, 54578, 54581, 54583, 54585, 54587, 54588, 55216, 55219, 56151, 56611, 56833, 56834, 57261, 57480, 57482, 57485, 57796
Proposed Rules:
64 55230
140 55230
141 55230
142 55230
143 55230
144 55230
145 55230
146 55230
147 55230
165 ....54599, 57567, 57570
334 57323

34 CFR
Subtitle A 54588
75 57066
Ch. III 57264, 57266
371 57066
668 57798
Proposed Rules:
300 57324
Ch. VI 57571

36 CFR
220 56153

38 CFR
3 ....54763, 57486
17 57067
Proposed Rules:
9 58264
17 55671

40 CFR
9 55632
52 ....54173, 54177, 54394, 54396, 54960, 54962, 55221, 55225, 56164, 56168, 57073, 57267, 57270, 57273, 57487, 57496, 57501, 57503, 58154, 58186, 58459, 58460, 58462, 58465, 58468
60 ....54766, 58416
62 54766
81 ....54396, 56168, 57270, 57273, 58189, 58468
180 ....55635, 55641, 55644, 57276, 57280, 57285, 57289
271 54178
300 ....56611, 57799
721 55632
1037 56171
1039 56171
1042 56171
1068 56171
Proposed Rules:
52 ....54200, 54602, 54813, 54816, 54828, 54831, 55029, 55037, 55234, 56185, 56633, 56639, 57335, 57573
60 54606
63 54606
81 ....54831, 58266
98 55994
131 ....54518, 58500
152 54841
180 56185
271 54200

41 CFR
60-250 58614
60-300 58614
60-741 58682

42 CFR
6 58202
7 57293
88 57505
411 57800
447 57293
Proposed Rules:
84 54432
405 ....54842, 58386
410 54842
412 54842
416 54842
419 54842
475 54842
476 54842
486 54842
491 58386
493 58386
495 54842

44 CFR
64 ....54766, 54770, 57523, 57526

46 CFR
2 56612
24 56612
30 ....56612, 56837
70 56612
90 56612
91 56612
98 54775
150 56837
153 56837
188 56612

47 CFR
1 55648
20 55648
22 55648
24 55648
27 55648
54 54967
73 ....56170, 58470
90 55648
Proposed Rules:
54 56188
64 54201
79 54612

48 CFR
201 54968
206 54968

49 CFR
App. G to Subch. B 58470
228 58830
325 58470
350 58470
355 58470
365 58470
369 58470
370 58470
372 58470
375 58470
376 58470
380 58470
381 58470
382 58470
383 58470
384 58470
385 ....56618, 58470
386 58470
387 58470
389 58470
390 58470
391 58470
393 58470
395 58470

396 58470
397 58470
535 56171
571 55138
593 54182
821 57527
1121 54589
1150 54589
1180 54589

Proposed Rules:

26 57336
107 58501
109 58501
173 54849
174 54849
178 54849
179 54849
180 54849
380 57585
383 57585
384 57585
390 57822
396 54861
571 54209
622 57587
821 57602

50 CFR

17 ....55221, 55600, 55649, 56026, 56072, 57076, 57750
20 ....58124, 58204, 58233
300 58240
622 ....56171, 57313, 57534, 58248, 58249
635 54195
640 57534
648 ....54194, 54399
660 54548
679 ....54591, 54592, 55228, 56837, 57097, 57318, 57537

Proposed Rules:

17 ....54214, 54218, 54221, 54613, 54614, 55046, 56192, 56506, 57604, 58507
25 58754
32 58754
223 ....57611, 57835
224 ....57611, 57835
402 54437
622 ....57337, 57339
635 57340
648 ....54442, 57341
660 ....56641, 57348
679 57106

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**

Last List September 23, 2013

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