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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2009–0607; Directorate Identifier 2009–NM–024–AD; Amendment 39–17142; AD 2012–15–13]**

**RIN 2120–AA64**

## Airworthiness Directives; The Boeing Company Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** We are superseding an existing airworthiness directive (AD) for all Model 747–100B SUD, 747–300, 747–400, and 747–400D series airplanes; and Model 747–200B series airplanes having a stretched upper deck. The existing AD currently requires repetitively inspecting for cracking or discrepancies of the fasteners in the tension ties, shear webs, and frames at body stations 1120 through 1220; and related investigative and corrective actions if necessary. That AD requires modifying the frame-to-tension-tie joints at body stations 1120 through 1220 (including related investigative actions and corrective actions if necessary), which provides a terminating action for the repetitive inspections. That AD also requires new repetitive inspections after the modification, corrective actions if necessary, and additional modification requirements at a specified time after the first modification. That AD also removed certain airplanes from the applicability. That AD was prompted by reports of cracked and severed tension ties, broken fasteners, and cracks in the frame, shear web, and shear ties adjacent to tension ties for the upper deck. This AD revises the existing AD by adding repetitive open hole high frequency eddy current (HFEC) inspections for cracking in the forward and aft tension tie channels, and repair if necessary. For certain airplanes, this AD also requires a one-time angle inspection to determine if the angle is installed correctly, and re-installation if necessary; and a one-time open hole HFEC inspection at the fastener locations where the tension tie previously attached to the frame prior to certain modifications, and repair if necessary. This AD also, for the Stage 2 inspections, reduces the initial compliance times for those inspections. We are issuing this AD to detect and correct cracking of the tension ties, shear webs, and frames of the upper deck, which could result in rapid decompression and reduced structural integrity of the airplane.

**DATES:** This AD is effective September 12, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of September 12, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of November 28, 2007 (72 FR 65655, November 23, 2007).

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

### Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** Nathan Weigand, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 917–6428; fax (425) 917–6590; email: *nathan.p.weigand@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Discussion

We issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 to supersede AD 2007–23–18, Amendment 39–15266 (72 FR 65655, November 23, 2007). The SNPRM published in the **Federal Register** on February 2, 2012 (77 FR 5195). The SNPRM applied to all Boeing Model 747–100B SUD, 747–300, 747–400, and 747–400D series airplanes; and Model 747–200B series airplanes having a stretched upper deck. The original NPRM (74 FR 33377, July 13, 2009) proposed to supersede an existing AD that currently requires repetitively inspecting for cracking or discrepancies of the fasteners in the tension ties, shear webs, and frames at body stations 1120 through 1220; and related investigative and corrective actions if necessary. The original NPRM proposed to require modifying the frame-to-tension-tie joints at body stations (STA) 1120 through 1220 (including related investigative actions and corrective actions if necessary), which would provide a terminating action for the repetitive inspections. The original NPRM also proposed to require new repetitive inspections after the modification, corrective actions if necessary, and additional modification requirements at a specified time after the first modification. The original NPRM also proposed to remove certain airplanes from the applicability. The SNPRM proposed to add repetitive open hole high frequency eddy current (HFEC) inspections for cracking in the forward and aft tension tie channels, and repair if necessary. For certain airplanes, the SNPRM also proposed to require a one-time angle inspection to determine if the angle is installed correctly, and re-installation if necessary; and a one-time open-hole HFEC inspection at the fastener locations where the tension tie previously attached to the frame prior to certain modifications, and repair if

necessary. The SNPRM also, for the Stage 2 inspections, proposed to reduce the initial compliance times for those inspections.

**Comments**

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the SNPRM (77 FR 5195, February 2, 2012) and the FAA's response to each comment.

**Requests To Include Related Rulemaking**

Boeing asked that we include AD 2007–16–19, Amendment 39–15158 (72 FR 45151, August 13, 2007), in the SNPRM (77 FR 5195, February 2, 2012) as related rulemaking. Boeing stated that AD 2007–23–18, Amendment 39–15266 (72 FR 65655, November 23, 2007), is identified as being superseded by the actions proposed in the SNRPM, as specified in paragraph (b) of the SNPRM (titled ''Affected ADs''). Boeing noted that AD 2007–16–19 is also affected by those actions. Boeing added that AD 2007–16–19 has inspection requirements at the affected tension tie locations, and doing the modification in paragraph (m) of the SNPRM also ends the inspections required by AD 2007–16–19 for the modified locations. Boeing asked that we change paragraph (b) of the SNPRM to specify that the AD may modify the compliance requirements in AD 2007–16–19.

Boeing also asked that we change paragraph (m) of the SNPRM (77 FR 5195, February 2, 2012) because the modification identified in Boeing Service Bulletin 747–53A2559, Revision 1, dated August 4, 2011, eliminates the need for the inspection requirements in paragraphs (g), (j), (p), and (q) of AD 2007–16–19, Amendment 39–15158 (72 FR 45151, August 13, 2007). Boeing stated that the corresponding requirements, for body stations 1120 through 1220 only, terminate the inspections required by AD 2007–16–19, and all requirements for body stations 880 through 1100 still apply.

We acknowledge the commenter's requests and agree that AD 2007–16–19, Amendment 39–15158 (72 FR 45151, August 13, 2007), is affected by certain actions in the SNPRM (77 FR 5195, February 2, 2012). However, when Boeing Service Bulletin 747–53A2559, Revision 1, dated August 4, 2011, was issued it contained an alternative method of compliance (AMOC) approval for certain actions in AD 2007–16–19 for the tension tie locations that were modified using Boeing Service Bulletin 747–53A2559, Revision 1, dated August 4, 2011. AD 2007–16–19 also mandated inspections for tension ties between body stations 880 and 1100, which are not included in Boeing Service Bulletin 747–53A2559, Revision 1, dated August 4, 2011. We do not agree to include AD 2007–16–19 in the affected ADs section identified in paragraph (b) of this AD because paragraph (b) of this AD identifies ADs that are superseded, and we are not superseding that AD. In addition, we have not changed paragraph (m) of the SNPRM—(paragraph (p) of this AD) because the inspections of tension ties between body stations 880 and 1100 required by AD 2007–16–19 are not related to this AD. We have made no change to the AD in this regard.

**Requests To Change or Add AMOC Language**

Boeing asked that we change paragraph (n) of the SNPRM (77 FR 5195, February 2, 2012) to add a provision for airplanes that were modified per Boeing Drawing 144U0061, including any deviations during the modification and post-modification inspections that were previously approved as an AMOC to AD 2007–23–18, Amendment 39–15266 (72 FR 65655, November 23, 2007). The provision should specify that those actions are acceptable for compliance with the corresponding actions in the SNPRM.

We acknowledge and agree with the commenter's request. We have added a new paragraph (r)(5) to this AD to allow AMOCs approved previously in accordance with AD 2007–23–18, Amendment 39–15266 (72 FR 65655, November 23, 2007), as a terminating action, to be approved as AMOCs for the requirements of paragraph (p) of this AD.

Boeing also asked that we change paragraph (s)(3) of the SNPRM (77 FR 5195, February 2, 2012) to provide direction for obtaining an AMOC for any deviations that occur when doing the modification specified in Boeing Service Bulletin 747–53A2559, Revision 1, dated August 4, 2011.

We acknowledge the commenter's request; however, the reference to the Boeing Commercial Airplanes Organization Designation Authorization (ODA) specified in paragraph (s)(3) of this AD is our standard language. After the AD is published, we may empower certain authorized representatives of the Boeing ODA to approve AMOCs to deviations during the modification. We have made no change to the AD in this regard.

Boeing asked that we change paragraph (s)(4) of the SNPRM (77 FR 5195, February 2, 2012) to also refer to paragraph (j) of the AD, in addition to the paragraphs identified as corresponding requirements for AMOCs previously approved in accordance with AD 2007–23–18, Amendment 39–15266 (72 FR 65655, November 23, 2007). Boeing stated that paragraph (j) also contains inspection requirements, and previously accomplished repairs can be considered AMOCs for this paragraph.

We agree with the commenter's request for the reason provided. We have added a reference to paragraph (j) of the AD to the AMOC language specified in paragraph (r)(4) of this AD.

**Request To Include Credit for Supplemental Structural Inspection Document (SSID) Inspections Done per Boeing Alert Service Bulletin 747–53A2507**

Boeing asked that we change paragraph (b) of the SNPRM (77 FR 5195, February 2, 2012) to include credit for related SSID inspections. Boeing stated that AD 2007–23–18, Amendment 39–15266 (72 FR 65655, November 23, 2007), included language specifying that inspections done per Boeing Alert Service Bulletin 747–53A2507, Revision 1, dated January 14, 2010, meet the requirements of the SSID inspections in structurally significant item (SSI) F–19A.

We agree that the subject SSID inspections are related to this AD. When Boeing Alert Service Bulletin 747–53A2507, Revision 1, dated January 14, 2010; and Boeing Service Bulletin 747–53A2559, Revision 1, dated August 4, 2011; were issued, they contained AMOCs to those SSID inspections. Therefore, those inspections do meet the requirements of the SSID inspections in structurally significant item (SSI) F–19A, except as defined in those AMOCs. However, we do not agree to revise paragraph (b) of this AD as that paragraph only identifies ADs that are superseded. We have made no change to the AD in this regard.

**Request To Change Reporting Requirement**

Boeing asked that we change the reporting requirement in paragraph (l) of the SNPRM (77 FR 5195, February 2, 2012). Boeing stated that the supplemental structural inspections (SSIs) in the SSID are replaced by Stage 1, Stage 2, and post-modification inspections in the SSID. Boeing added that reporting findings from these three inspections is necessary to maintain the fleet monitoring aspects of the SSI program. Boeing asked that paragraph (l) of the SNPRM be changed to add all three inspections to the reporting

requirements in lieu of just the Stage 1 inspection currently identified.

We acknowledge the commenter's request and agree that reporting is necessary for maintaining the fleet monitoring aspect of the SSI program. However, maintaining the fleet monitoring of the SSI program is not what the requirements in this AD were meant to do. We have evaluated the need for continued reporting, as required by paragraph (l) of this AD, and have determined that it is no longer necessary. Therefore, we have removed paragraph (l) from this AD and reidentified subsequent paragraphs accordingly.

**Requests To Change Certain Compliance Times**

British Airways asked that we change the compliance time in paragraphs (p) and (q) of the SNPRM (77 FR 5195, February 2, 2012) to match the compliance time for the Stage 2 inspections. British Airways stated that this would reduce further disruption to the operator's heavy maintenance program.

UPS asked that the compliance time specified in paragraph (m)(1) of the SNPRM (77 FR 5195, February 2, 2012) be changed for the Boeing Special Freighter (BSF) and the Boeing Converted Freighter (BCF). UPS stated that since the modifications to the BSF and BCF configurations were done after original production, the compliance times in that paragraph are not appropriate for the replaced structure. UPS added that the remaining locations (stations 1140, 1180, and 1220) are not adjacent to each other. UPS believes that the risk of widespread fatigue damage has been greatly reduced at those locations. UPS stated that for airplanes that have been modified to the BSF or BCF configuration, the compliance time threshold should take into account the replaced structure.

We do not agree with the commenters' requests. In developing an appropriate compliance time for this action, we considered the urgency associated with the subject unsafe condition and the practical aspect of accomplishing the required actions within a period of time that corresponds to the normal scheduled maintenance for most affected operators. Further, we considered and agree with the compliance time recommended by the manufacturer in Boeing Alert Service Bulletin 747–53A2507, Revision 1, dated January 14, 2010. In addition, UPS provided no technical justification for changing the compliance time for the BSF and BCF airplanes. However, under the provisions of paragraph (r) of this AD, we will consider requests for approval of changing the compliance time if sufficient data are submitted to substantiate that the new compliance time would provide an acceptable level of safety. We have not changed the AD in this regard.

British Airways also asked that the modification threshold be increased from 17,000 total flight cycles to 20,000 total flight cycles. British Airways stated that an increased threshold would align with the Model 747–400 design service goal and the SSID inspection threshold of 20,000 total flight cycles.

We do not agree with the commenter's request. This request was already addressed in the comments section of the SNPRM (77 FR 5195, February 2, 2012) under ''Request to Extend the Modification Compliance Time.'' As stated in the SNPRM:

> Since the issuance of Boeing Alert Service Bulletin 747–53A2507, dated April 21, 2005, further cracking in the fleet has occurred resulting in thresholds being further reduced in Boeing Alert Service Bulletin 747–53A2507, Revision 1, dated January 14, 2010. The modification threshold and new inspection threshold are appropriate given the quantity and nature of cracks found on Model 747 airplanes, which are based on extensive analysis. Due in part to the reporting requirement of AD 2007–23–18, Amendment 39–15266 (72 FR 65655, November 23, 2007) the manufacturer received a significant number of inspection findings. The findings include numerous cases of single or dual tension tie failure and one airplane with three adjacent severed tension ties. Because the findings constituted multiple site damage, a damage tolerance analysis alone was no longer appropriate. Rather, a widespread fatigue damage analysis had to be employed to properly analyze the risk of cracked and severed tension ties, and to set inspection and modification thresholds appropriately. The manufacturer performed widespread fatigue analysis and the FAA accepted its findings.
>
> The analysis, combined with the empirical data, supported an inspection threshold of 10,000 total flight cycles, as reflected in Revision 1 of the Stage 2 inspection, and a modification threshold of 17,000 total flight cycles.
>
> Therefore, based upon crack reports received, material analysis completed, and widespread fatigue damage analysis performed, the inspection and modification thresholds contained in this AD are appropriate.

We have made no change to the AD in this regard.

**Request To Terminate Certain Inspections**

UPS asked that the inspections required by paragraphs (o) and (q) of the SNPRM (77 FR 5195, February 2, 2012) be terminated after the modification required by paragraph (m) of the SNPRM is accomplished. UPS stated that the structure replaced by the modification, which is the structure that would have been inspected, has been removed.

We agree with the commenter's request; if the structure has been removed the inspection is not possible. Therefore, we have changed paragraph (m) of the SNPRM (77 FR 5195, February 2, 2012) (paragraph (p) of this AD) to include a reference to paragraphs (o) and (q) of the SNPRM—(paragraphs (l) and (n) of this AD) in the terminating action language for the inspections. We have also included terminating action language in those paragraphs.

**Request for an Optional Modification**

British Airways asked that it be allowed to continue the Stage 1 and Stage 2 inspections with an option of doing the modification as terminating action for the inspections. British Airways added that the Stage 2 inspections provide an adequate level of safety, as the discrepant structure is repaired to a similar compliance standard as the original structure. British Airways noted that the substantial number of work-hours necessary to do the modification would be a significant financial burden.

This request was already addressed in the comments section of the SNPRM (77 FR 5195, February 2, 2012) under ''Request for an Optional Modification.'' As stated in the SNPRM, we do not agree with the request to make the required modification optional. The crack finding data and analysis performed support the inspection and modification actions in the SNPRM. Therefore, we have not changed the AD in this regard.

**Request To Use Substitute Fasteners**

UPS asked that paragraphs (g) and (j) of the SNPRM (77 FR 5195, February 2, 2012) be changed to specify that it is structurally acceptable to use substitute fasteners per Chapter 51, Sections 51–40–03 and 51–40–05, of the Model 747–400SF Structural Repair Manual (SRM). UPS stated that Boeing Alert Service Bulletin 747–53A2507, Revision 1, dated January 14, 2010, includes a General Note which specifies that it is acceptable to use the Model 747–400 SRM for repairs on airplanes modified to BCF configuration, until such time as the SRM is updated with tension tie and frame repairs. UPS noted that Boeing Alert Service Bulletin 747–53A2507, Revision 1, dated January 14, 2010, does not have any appropriate references for Model 747–400SF airplanes regarding fastener substitution, open-hole sizes, and installation.

We do not agree with the request. Boeing Alert Service Bulletin 747–53A2507, Revision 1, dated January 14, 2010, identifies procedures for fastener substitution in paragraph 3.A., Notes 4, 5, and 9 of the Accomplishment Instructions. Therefore, we have made no change to the AD in this regard.

**Requests To Clarify/Correct Paragraph Identifiers Within Certain Paragraphs in the SNPRM (77 FR 5195, February 2, 2012)**

Boeing asked that we provide clarification in paragraph (g) of the SNPRM (77 FR 5195, February 2, 2012) that the reference to paragraph (l) of this AD as the terminating action paragraph should instead be paragraph (m) of this AD. Boeing added that paragraph (m) mandates the modification in Boeing Service Bulletin 747–53A2559, Revision 1, dated August 4, 2011, which terminates the repetitive inspections required by paragraph (g) of the SNPRM.

We agree with the commenter. Paragraph (g) of the SNPRM (77 FR 5195, February 2, 2012) specifies that doing the modification required by paragraph (l) of the AD terminates the repetitive inspections; however, that is in error. The modification is specified in paragraph (m) of the SNPRM—(paragraph (p) of this AD). We have changed the paragraph reference in paragraph (g) of this AD accordingly.

Boeing and UPS asked that we correct the error in paragraph (i)(1) of the SNPRM (77 FR 5195, February 2, 2012) which refers to doing the next inspection in accordance with paragraph (j) of this AD, but should instead refer to paragraph (h) of this AD.

We partially agree with the commenters. Paragraph (i)(1) of the SNPRM (77 FR 5195, February 2, 2012) specifies doing the next inspection after the initial Stage 1 inspection done in accordance with paragraph (j) of this AD; however, that is in error because the initial Stage 1 inspection is in paragraph (g) of this AD (paragraph (h) only contains the compliance times for the initial inspection). We have changed the reference in paragraph (i)(1) of this AD accordingly.

Boeing and UPS asked that we correct the error in paragraph (j) of the SNPRM (77 FR 5195, February 2, 2012), which refers to paragraph (j) of this AD as the exception paragraph; however, the correct reference is paragraph (k) of this AD.

We agree with the commenters. Paragraph (k) of this AD contains the exception to corrective action instructions. We have corrected the reference in paragraph (j) of this AD accordingly.

Boeing and UPS asked that we correct the error in paragraph (k) of the SNPRM (77 FR 5195, February 2, 2012), which refers to discrepancies found during any inspection required by paragraph (g), (h), or (i) of the AD. Boeing asked that the reference to paragraph (j) of this AD be added to paragraph (k) of this AD. UPS asked that the reference to paragraphs (j), (o), (p), and (q) of this AD be added to the paragraphs referenced in paragraph (k) of this AD.

We partially agree with the commenters. We agree that paragraph (j) of this AD should be included in the corrective action paragraphs referred to in paragraph (k) of this AD because it is included in the existing requirements. We have changed paragraph (k) of this AD accordingly. However, paragraphs (o), (p), and (q) of the SNPRM (77 FR 5195, February 2, 2012)—(paragraphs (l), (m), and (n) of this AD) are part of the new requirements, and the corrective actions are contained within those paragraphs.

**Request To Clarify Undefined Requirement**

UPS stated that the actions specified in paragraph (m) of the SNPRM (77 FR 5195, February 2, 2012) also require an additional modification, which is currently undefined in Boeing Service Bulletin 747 53A2559, Revision 1, dated August 4, 2011. UPS understands that, at this time, Boeing does not believe this additional modification will cause an undue burden. UPS noted that Boeing should include such a requirement in that service information, given the age of the affected fleet and available resources, as opposed to adjusting the limit of validity of the 747 fleet. UPS added that based on its fleet age and current utilization, it does not believe it will be affected; however, UPS is concerned with the precedent of mandating undefined requirements.

We infer that UPS wants clarification of the subject undefined requirement. Boeing has elected not to design the additional modification since Boeing foresees few, if any, operators that would require this modification. For this reason, Boeing Service Bulletin 747 53A2559, Revision 1, dated August 4, 2011, specifies that operators contact Boeing for instructions. We have addressed this issue by requiring AMOC approval when operators are instructed to contact Boeing for instructions. We have made no change to the AD in this regard.

**Request To Change Cost Information**

UPS asked that the Costs of Compliance section in the SNPRM (77 FR 5195, February 2, 2012) be changed. UPS stated that the costs specified do not accurately reflect the actual costs. UPS added that, based on its review of the modification instructions and the experiences of other operators that have performed similar modifications, the actual modification work, not including incidental costs, may take at least 1,000 work-hours to accomplish. UPS stated that this is a substantial increase, and the cost section should be updated in the analysis of this rulemaking.

We do not agree with the commenter's request. This request was already addressed in the comments section of the SNPRM (77 FR 5195, February 2, 2012) under ''Request to Change Cost Information.'' As stated in the SNPRM:

> The cost information in this supplemental NPRM describes only the direct costs of the specific required actions. Based on the best data available, the manufacturer provided the number of work hours necessary to do the required actions. This number represents the time necessary to perform only the actions actually required by this supplemental NPRM. We recognize that, in doing the actions required by an AD, operators might incur incidental costs in addition to the direct costs. But the cost analysis in AD rulemaking actions typically does not include incidental costs such as the time necessary for planning, airplane down time, or time necessitated by other administrative actions. Those incidental costs, which might vary significantly among operators, are almost impossible to calculate.

We have not changed the AD in this regard.

**Conclusion**

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

- Are consistent with the intent that was proposed in the SNPRM (77 FR 5195, February 2, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the SNPRM (77 FR 5195, February 2, 2012)

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

**Costs of Compliance**

We estimate that this AD affects 67 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Stage 1 inspections (required by AD 2007–23–18, Amendment 39–15266 (72 FR 65655, November 23, 2007)). | 19 work-hours × $85 per hour = $1,615 | $0 | $1,615 per inspection cycle. | $108,205 per inspection cycle. |
| Stage 2 inspections (required by AD 2007–23–18, Amendment 39–15266 (72 FR 65655, November 23, 2007)). | 83 work-hours × $85 per hour = $7,055 | $0 | $7,055 per inspection cycle. | $472,685 per inspection cycle. |
| Modification (new action) | Between 257 and 263 work-hours, = between $21,845 and $22,355 | Between $341,334 and $345,490. | Between $363,179 and $367,845. | [1] Between $24,332,993 and $24,645,615. |
| Post-modification inspections (new action) | 6 work-hours × $85 per hour = $510 | $0 | $510 [per inspection cycle]. | $34,170 [per inspection cycle]. |

[1] Depending on airplane configuration.

## Authority for This Rulemaking

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

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

## Regulatory Findings

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

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

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

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

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

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

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2007–23–18, Amendment 39–15266 (72 FR 65655, November 23, 2007), and adding the following new AD:

**2012–15–13 The Boeing Company:** Amendment 39–17142; Docket No. FAA–2009–0607; Directorate Identifier 2009–NM–024–AD.

**(a) Effective Date**

This airworthiness directive (AD) is effective September 12, 2012.

**(b) Affected ADs**

This AD supersedes AD 2007–23–18, Amendment 39–15266 (72 FR 65655, November 23, 2007).

**(c) Applicability**

This AD applies to all The Boeing Company Model 747–100B SUD, 747–300, 747–400, and 747–400D series airplanes; and Model 747–200B series airplanes having a stretched upper deck; certificated in any category; excluding airplanes that have been converted to a large cargo freighter configuration.

**(d) Subject**

Air Transport Association (ATA) of America Code 53: Fuselage.

**(e) Unsafe Condition**

This AD results from reports of cracked and severed tension ties, broken fasteners, and cracks in the frame, shear web, and shear ties adjacent to tension ties for the upper deck. We are issuing this AD to detect and correct cracking of the tension ties, shear webs, and frames of the upper deck, which could result in rapid decompression and reduced structural integrity of the airplane.

**(f) Compliance**

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

**(g) Retained Repetitive Stage 1 Inspections With Reduced Repetitive Interval**

This paragraph restates the requirements of paragraph (f) of AD 2007–23–18, Amendment 39–15266 (72 FR 65655, November 23, 2007). For all airplanes: Do detailed inspections for cracking or discrepancies of the fasteners in the tension ties, shear webs, and frames at body stations 1120 through 1220, and related investigative and corrective actions as applicable, by doing all actions specified in and in accordance with ''Stage 1 Inspection'' of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2507, dated April 21, 2005, except as provided by paragraph (k) of this AD; or Boeing Alert Service Bulletin 747–53A2507, Revision 1, dated January 14, 2010. As of the effective date of this AD only Boeing Alert Service Bulletin 747–53A2507, Revision 1, dated January 14, 2010, may be used. Do the Stage 1 inspections at the applicable times specified in paragraphs (h) and (i) of this AD, except as provided by paragraphs (g)(1) and (g)(2) of this AD. Accomplishment of the initial Stage 2 inspection required by paragraph (j) of this AD terminates the requirements of this paragraph. Any applicable related investigative and corrective actions must be done before further flight. Doing the modification required by paragraph (q) of this AD terminates the repetitive inspection requirements of this paragraph.

(1) Where paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2507, dated April 21, 2005, specifies a compliance time relative to ''the original issue date on this service bulletin,'' this AD requires

compliance before the specified compliance time after April 26, 2006 (the effective date of AD 2006–06–11, Amendment 39–14520 (71 FR 14367, March 22, 2006)).

(2) For any airplane that reaches the applicable compliance time for the initial Stage 2 inspection (as specified in Table 1, Compliance Recommendations, under paragraph 1.E., of Boeing Alert Service Bulletin 747–53A2507, dated April 21, 2005) before reaching the applicable compliance time for the initial Stage 1 inspection: Accomplishment of the initial Stage 2 inspection eliminates the need to do the Stage 1 inspections.

**(h) Retained Compliance Time for Initial Stage 1 Inspection**

This paragraph restates the requirements of paragraph (g) of AD 2007–23–18, Amendment 39–15266 (72 FR 65655, November 23, 2007). Do the initial Stage 1 inspection at the earlier of the times specified in paragraphs (h)(1) and (h)(2) of this AD.

(1) At the earlier of the times specified in paragraphs (h)(1)(i) and (h)(1)(ii) of this AD.

(i) At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2507, dated April 21, 2005.

(ii) Before the accumulation of 10,000 total flight cycles, or within 250 flight cycles after November 28, 2007 (the effective date of AD 2007–23–18, Amendment 39–15266 (72 FR 65655, November 23, 2007), whichever occurs later.

(2) At the later of the times specified in paragraphs (h)(2)(i) and (h)(2)(ii) of this AD.

(i) Before the accumulation of 12,000 total flight cycles.

(ii) Within 50 flight cycles or 20 days, whichever occurs first, after November 28, 2007 (the effective date of AD 2007–23–18, Amendment 39–15266 (72 FR 65655, November 23, 2007).

**(i) Retained Compliance Times for Repetitive Stage 1 Inspections**

This paragraph restates the requirements of paragraph (h) of AD 2007–23–18, Amendment 39–15266 (72 FR 65655, November 23, 2007). Repeat the Stage 1 inspection specified in paragraph (g) of this AD at the time specified in paragraph (i)(1) or (i)(2) of this AD, as applicable. Repeat the inspection thereafter at intervals not to exceed 250 flight cycles, until the initial Stage 2 inspection required by paragraph (j) of this AD has been done.

(1) For airplanes on which the initial Stage 1 inspection has not been accomplished as of November 28, 2007 (the effective date of AD 2007–23–18, Amendment 39–15266 (72 FR 65655, November 23, 2007): Do the next inspection before the accumulation of 10,000 total flight cycles, or within 250 flight cycles after the initial Stage 1 inspection done in accordance with paragraph (g) of this AD, whichever occurs later.

(2) For airplanes on which the initial Stage 1 inspection has been accomplished as of November 28, 2007 (the effective date of AD 2007–23–18, Amendment 39–15266 (72 FR 65655, November 23, 2007): Do the next inspection at the applicable time specified in paragraph (i)(2)(i) or (i)(2)(ii) of this AD.

(i) For airplanes that have accumulated fewer than 12,000 total flight cycles as of November 28, 2007 (the effective date of AD 2007–23–18, Amendment 39–15266 (72 FR 65655, November 23, 2007): Do the next inspection before the accumulation of 10,000 total flight cycles, or within 250 flight cycles after November 28, 2007, whichever occurs later.

(ii) For airplanes that have accumulated 12,000 total flight cycles or more as of November 28, 2007 (the effective date of AD 2007–23–18, Amendment 39–15266 (72 FR 65655, November 23, 2007): Do the next inspection at the later of the times specified in paragraphs (i)(2)(ii)(A) and (i)(2)(ii)(B) of this AD.

(A) Within 250 flight cycles after accomplishment of the initial Stage 1 inspection.

(B) Within 50 flight cycles or 20 days, whichever occurs first, after November 28, 2007 (the effective date of AD 2007–23–18, Amendment 39–15266 (72 FR 65655, November 23, 2007).

**(j) Retained Repetitive Stage 2 Inspections With Reduced Initial Compliance Time**

This paragraph restates the requirements of paragraph (i) of AD 2007–23–18, Amendment 39–15266 (72 FR 65655, November 23, 2007). For all airplanes: Do detailed and high frequency eddy current inspections for cracking or discrepancies of the fasteners in the tension ties, shear webs, and frames at body stations 1120 through 1220, and related investigative and corrective actions as applicable, by doing all actions specified in and in accordance with ''Stage 2 Inspection'' of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2507, dated April 21, 2005; or Boeing Alert Service Bulletin 747–53A2507, Revision 1, dated January 14, 2010; except as provided by paragraph (k) of this AD. Do the initial inspections at the earlier of the times specified in paragraphs (j)(1) and (j)(2) of this AD. Repeat the Stage 2 inspection thereafter at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2507, dated April 21, 2005. As of the effective date of this AD only Boeing Alert Service Bulletin 747–53A2507, Revision 1, dated January 14, 2010, may be used. Any applicable related investigative and corrective actions must be done before further flight. Accomplishment of the initial Stage 2 inspection ends the repetitive Stage 1 inspections. Doing the modification required by paragraph (q) of this AD terminates the repetitive inspection requirements of this paragraph.

(1) Before the accumulation of 16,000 total flight cycles, or within 1,000 flight cycles after November 28, 2007 (the effective date of AD 2007–23–18, Amendment 39–15266 (72 FR 65655, November 23, 2007), whichever occurs later.

(2) Before the accumulation of 10,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later.

**(k) Retained Exception to Corrective Action Instructions**

This paragraph restates the requirements of paragraph (j) of AD 2007–23–18, Amendment 39–15266 (72 FR 65655, November 23, 2007). If any discrepancy including but not limited to any crack, broken fastener, loose fastener, or missing fastener is found during any inspection required by paragraph (g), (h), (i), or (j) of this AD, and Boeing Alert Service Bulletin 747–53A2507, dated April 21, 2005; or Boeing Alert Service Bulletin 747–53A2507, Revision 1, dated January 14, 2010; specifies to contact Boeing for appropriate action: Before further flight, repair the discrepancy using a method approved in accordance with the procedures specified in paragraph (r) of this AD.

**(l) New Stage 2 Inspection: Additional Work at STA 1140**

For all airplanes: Except as provided by paragraph (o) of this AD; at the time specified in paragraph 1.E, ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2507, Revision 1, dated January 14, 2010; do an open hole high frequency eddy current (HFEC) inspection for cracking in the forward and aft tension tie channels at 12 fastener locations inboard of the aluminum straps at STA 1140, and before further flight do all applicable repairs. Do all actions in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2507, Revision 1, dated January 14, 2010. Repeat the inspections thereafter at the time specified in paragraph 1.E., ''Compliance'' of Boeing Alert Service Bulletin 747–53A2507, Revision 1, dated January 14, 2010. Doing the modification required by paragraph (p) of this AD terminates the inspection requirements in this paragraph.

**(m) New One-time Inspection for Mis-located Angles**

For Group 1, Configuration 1, airplanes as identified in Boeing Alert Service Bulletin 747–53A2507, Revision 1, dated January 14, 2010: Except as provided by paragraph (o) of this AD, at the time specified in paragraph 1.E, ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2507, Revision 1, dated January 14, 2010, do a detailed inspection to determine if the angle is installed correctly, and before further flight re-install all angles that were installed incorrectly. Do all actions in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2507, Revision 1, dated January 14, 2010.

**(n) New One-time Inspection for Cracks in Frames at Previous Tension Tie Locations**

For Group 1, Configuration 2, airplanes; and Group 2 and 3 airplanes; as identified in Boeing Alert Service Bulletin 747–53A2507, Revision 1, dated January 14, 2010: Except as provided by paragraph (o) of this AD, at the time specified in paragraph 1.E, ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2507, Revision 1, dated January 14, 2010, do an open hole HFEC inspection for cracks at the fastener locations (STA 1120, 1160, 1200, and 1220) where the tension tie previously attached to the frame prior to modification to the Boeing special freighter or Boeing Converted Freighter configuration, and before further flight do all applicable repairs. Do all actions in accordance with the Accomplishment

Instructions of Boeing Alert Service Bulletin 747–53A2507, Revision 1, dated January 14, 2010. Doing the modification required by paragraph (p) of this AD terminates the one-time inspection requirements in this paragraph.

**(o) New Exception to Boeing Alert Service Bulletin 747–53A2507, Revision 1, Dated January 14, 2010**

Where paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2507, Revision 1, dated January 14, 2010, specifies a compliance time relative to ''the Revision 1 date of this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

**(p) New Modification**

Except as provided by paragraphs (p)(1) and (p)(2) of this AD: At the applicable times specified in paragraph 1.E, ''Compliance,'' of Boeing Service Bulletin 747–53A2559, Revision 1, dated August 4, 2011, modify the frame-to-tension-tie joints at body stations (STA) 1120 through 1220; do all related investigative and applicable corrective actions; do the repetitive post-modification detailed inspections for cracking of the tension tie and frame structure and all applicable corrective actions; and do the additional modification. Do all actions in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–53A2559, Revision 1, dated August 4, 2011. Modifying the frame-to-tension-tie joints at body stations 1120 through 1220 terminates the repetitive inspection requirements of paragraphs (g) and (j) of this AD, the inspection requirements of paragraph (l) of this AD, and the one-time inspection requirements of paragraph (n) of this AD.

(1) Where paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 747–53A2559, Revision 1, dated August 4, 2011, specifies a compliance time relative to ''the original issue date of this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) Where Boeing Service Bulletin 747–53A2559, Revision 1, dated August 4, 2011, specifies to contact Boeing for repair instructions or additional modification requirements: Before further flight, repair the cracking or do the additional actions using a method approved in accordance with the procedures specified in paragraph (r) of this AD.

**(q) New Credit for Previous Actions**

This paragraph provides credit for the corresponding actions required by this AD, if those actions were done before the effective date of this AD using Boeing Alert Service Bulletin 747–53A2559, dated January 8, 2009.

**(r) 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) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

(4) AMOCs approved previously in accordance with AD 2007–23–18, Amendment 39–15266 (72 FR 65655, November 23, 2007), are approved as AMOCs for the corresponding requirements of paragraphs (g), (h), (i), and (j) of this AD.

(5) AMOCs approved previously in accordance with AD 2007–23–18, Amendment 39–15266 (72 FR 65655, November 23, 2007), as a terminating action, are approved as AMOCs for the requirements of paragraph (p) of this AD.

**(s) Related Information**

(1) For more information about this AD, contact Nathan Weigand, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: (425) 917–6428; fax: (425) 917–6590; email: *nathan.p.weigand@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, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.*

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

**(t) Material Incorporated by Reference**

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

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

(i) Boeing Alert Service Bulletin 747–53A2507, Revision 1, dated January 14, 2010.

(ii) Boeing Service Bulletin 747–53A2559, Revision 1, dated August 4, 2011.

(3) The following service information was approved for IBR on November 28, 2007 (72 FR 65655, November 23, 2007):

(i) Boeing Alert Service Bulletin 747–53A2507, dated April 21, 2005.

(ii) Reserved.

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

(3) 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.

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

Issued in Renton, Washington, on July 23, 2012.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2012–18627 Filed 8–7–12; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2012–0264; Directorate Identifier 2011–NM–179–AD; Amendment 39–17147; AD 2012–15–17]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for all Airbus Model A300 B4–603, B4–605R, and B4–622R airplanes; Model A300 C4–605R Variant F airplanes; and Model A300 F4–600R series airplanes. This AD was prompted by a report that chafing was detected between the autopilot electrical wiring conduit and the wing bottom skin. This AD requires modifying the wiring installation on the right-hand wing. We are issuing this AD to prevent sparking due to electrical chafing when flammable vapors are present in the area, which could cause an uncontrolled fire.

**DATES:** This AD becomes effective September 12, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 12, 2012.

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

**FOR FURTHER INFORMATION CONTACT:** Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

## Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on March 15, 2012 (77 FR 15291). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> During a scheduled general visual inspection in a zone adjacent to a fuel tank (zone 675) chafing was detected between the autopilot electrical wiring conduit and the wing bottom skin.
>
> This condition, in the scope of published FAA SFAR88 [Special Federal Aviation Regulation] and JAA [Joint Aviation Authority] Internal Policy INT/POL/25/12, is considered on ground to be a potential source of explosive condition due to the risk of a spark with electrical wire chafing when flammable vapours are present in the area. If left uncorrected, this condition could lead to an uncontrolled fire.
>
> For the reasons described above, this [EASA] AD requires modification of the wiring installation to improve the routing and the protection of the harnesses in the zone 675/Rib 6 of the Right Hand wing.

You may obtain further information by examining the MCAI in the AD docket.

## Comments

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

## Request To Extend the Compliance Time

UPS requested that we extend the proposed compliance time. The NPRM (77 FR 15291, March 15, 2012) proposed a compliance time of ''within 30 months or 4,500 flight hours after the effective date of this AD,'' for modifying the wiring in zone 675 of the right-hand wing. UPS stated that extending the compliance time to ''within 40 months or 4,500 flight hours after the effective date of this AD,'' would allow it to accomplish the required actions at its heavy maintenance facility during C-check visits. UPS stated that the line maintenance environment is not conducive to this type of work due to the required ground time, labor, and other resources, which are available at its major maintenance facility. UPS stated that its current maintenance program is based on a 30-month C-check interval. UPS also stated that in order to accommodate this modification at C-check in its major maintenance facility, it will need an additional 10 months to allow for planning and preparations, including developing engineering orders, prototyping, obtaining necessary management and finance approvals, parts acquisition, and parts lead-time.

We do not agree to extend the compliance time specified in this final rule. In developing an appropriate compliance time for this action, we considered the urgency associated with the subject unsafe condition, the manufacturer's recommendations, the availability of required parts, and the practical aspect of accomplishing the required modification within a period of time that corresponds to the normal scheduled maintenance for most affected operators. Under the provisions of paragraph (h)(1) of the final rule, we will consider requests for approval of an extension of the compliance time if sufficient data are submitted to substantiate that the new compliance time would provide an acceptable level of safety. We have not changed the AD in this regard.

## Conclusion

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD as proposed.

## Costs of Compliance

We estimate that this AD will affect 132 products of U.S. registry. We also estimate that it will take about 7 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $1,720 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $305,580, or $2,315 per product.

## Authority for This Rulemaking

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

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

## Regulatory Findings

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

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

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

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

## Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (77 FR 15291, March 15, 2012), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES**

section. Comments will be available in the AD docket shortly after receipt.

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2012–15–17 Airbus:** Amendment 39–17147. Docket No. FAA–2012–0264; Directorate Identifier 2011–NM–179–AD.

**(a) Effective Date**

This airworthiness directive (AD) becomes effective September 12, 2012.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Airbus Model A300 B4–603, B4–605R, and B4–622R airplanes; Model A300 C4–605R Variant F airplanes; and Model A300 F4–605R and F4–622R airplanes; certificated in any category; all serial numbers.

**(d) Subject**

Air Transport Association (ATA) of America Code 92.

**(e) Reason**

This AD was prompted by a report that chafing was detected between the autopilot electrical wiring conduit and the wing bottom skin. We are issuing this AD to prevent sparking due to electrical chafing when flammable vapors are present in the area, which could cause an uncontrollable fire.

**(f) Compliance**

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

**(g) Modification**

Within 30 months or 4,500 flight hours after the effective date of this AD, whichever occurs first: Modify the wiring in zone 675 of the right-hand wing, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–24–6109, dated July 4, 2011.

**(h) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC–REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

**(i) Related Information**

Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2011–0161, dated August 26, 2011; and Airbus Mandatory Service Bulletin A300–24–6109, dated July 4, 2011; for related information.

**(j) Material Incorporated by Reference**

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

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

(i) Airbus Mandatory Service Bulletin A300–24–6109, dated July 4, 2011.

(3) For service information identified in this AD, contact Airbus SAS—EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.*

(4) You may review copies of the 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.

(5) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on July 25, 2012.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2012–18884 Filed 8–7–12; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2012–0598; Directorate Identifier 2012–CE–017–AD; Amendment; 39–17150; AD 2012–16–03]**

**RIN 2120–AA64**

## Airworthiness Directives; HPH s. r.o. Sailplanes

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for all HPH s. r.o. Models 304C, 304CZ, and 304CZ–17 sailplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as the lack of a drain hole in the elevator control rod, which may allow water to accumulate in the control rod and lead to possible corrosion. This condition could cause the elevator control rod to fail, which could result in loss of control of the sailplane. We are issuing this AD to require actions to address the unsafe condition on these products.

**DATES:** This AD is effective September 12, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of September 12, 2012.

**ADDRESSES:** You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

For service information identified in this AD, contact HPH spol. s. r.o., Čáslavská 126, P.O. Box 112, 284 01 Kutná Hora, Czech Republic; phone: +420 327 512 633; fax: +420 327 513 441; email: *hph@hph.cz;* Internet: *www.hph.cz.* You may review copies of

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

**FOR FURTHER INFORMATION CONTACT:**

Taylor Martin, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; phone: (816) 329–4138; fax: (816) 329–4090; email: *taylor.martin@faa.gov*.

**SUPPLEMENTARY INFORMATION:**

## Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on June 5, 2012 (77 FR 33127). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> A broken elevator control rod in the vertical fin on a Kestrel sailplane has been reported.
>
> The technical investigation revealed that water had soaked into the elevator control rod through a control bore hole and resulted in corrosion damage. The investigation concluded that the corrosion cannot be detected from outside the elevator control rod.
>
> This condition, if not detected and corrected, could lead to failure of the elevator control rod, possibly resulting in loss of control of the sailplane.
>
> To address this unsafe condition, HPH spol. s.r.o. published Service Bulletins (SB): G304CZ–06a), G304CZ17–06a), G304C–06a), providing instructions for elevator control rod inspection and replacement.
>
> For the reasons described above, this AD requires accomplishment of a one-time inspection of the elevator control rod in the vertical fin and replacement with an improved control rod if control rod without drainage hole is used.

You may obtain further information by examining the MCAI in the AD docket.

## Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (77 FR 33127, June 5, 2012) or on the determination of the cost to the public.

## Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (77 FR 33127, June 5, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 33127, June 5, 2012).

## Costs of Compliance

We estimate that this AD will affect 10 products of U.S. registry. We also estimate that it will take about 6 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $233 per product.

Based on these figures, we estimate the cost of this AD on U.S. operators to be $7,430, or $743 per product.

## Authority for This Rulemaking

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

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

## Regulatory Findings

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

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

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

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

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

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

## 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 the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

# PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2012–16–03 HPH s. r.o. Sailplanes:** Amendment 39–17150; Docket No. FAA–2012–0598; Directorate Identifier 2012–CE–017–AD.

**(a) Effective Date**

This airworthiness directive (AD) becomes effective September 12, 2012.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to HPH s. r.o. Models 304C, 304CZ, and 304CZ–17 sailplanes, all serial numbers, certificated in any category.

**(d) Subject**

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

**(e) Reason**

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as the lack of a drain hole in the elevator control rod, which may allow water to accumulate in the control rod and lead to possible corrosion. We are issuing this AD to prevent failure of the elevator control rod, which could result in loss of control of the sailplane.

**(f) Actions and Compliance**

Unless already done, do the following actions in accordance with HPH spol. s. r.o. Service Bulletin No.: G304CZ—06 a)_R01, G304C—06 a)_R01, G304CZ17—06 a)_R01, dated April 23, 2012:

(1) Within 30 days after September 12, 2012 (the effective date of this AD), inspect the elevator control rod in the vertical fin.

(2) If you find any deficiency during the inspection required by paragraph (f)(1) of this AD, before further flight, replace the elevator control rod with an elevator control rod that has a drain hole.

(3) Within 9 months after September 12, 2012 (the effective date of this AD), unless already done as required by paragraph (f)(2) of this AD, replace the elevator control rod in the vertical fin with an elevator control rod that has a drain hole.

(4) As of September 12, 2012 (the effective date of this AD), do not install an elevator control rod without a drainage hole.

**(g) Material Incorporated by Reference**

(1) You must use HPH spol. s. r.o. Service Bulletin No.: G304CZ—06 a)_R01, G304C—06 a)_R01, G304CZ17—06 a)_R01, dated April 23, 2012, to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact HPH spol. s. r.o., Čáslavská 126, P.O. Box 112, 284 01 Kutná Hora, Czech Republic, telephone: +420 327 512 633; fax: +420 327 513 441; email: *hph@hph.cz;* Internet: *www.hph.cz.*

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

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

Issued in Kansas City, Missouri, on July 30, 2012.

**Earl Lawrence,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2012–19094 Filed 8–7–12; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2012–0422; Directorate Identifier 2011–NM–177–AD; Amendment 39–17146; AD 2012–15–16]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier, Inc. Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model DHC–8 series airplanes. This AD was prompted by reports that various pushrods had been manufactured with tubes having the incorrect heat treatment. This AD requires replacing the affected pushrod assembly. We are issuing this AD to prevent loss of rudder control, reduced directional control of the airplane on the ground, or a jammed nose landing gear (NLG) door that could prevent the NLG from retracting or extending.

**DATES:** This AD becomes effective September 12, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 12, 2012.

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

**FOR FURTHER INFORMATION CONTACT:** Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7318; fax (516) 794–5531.

**SUPPLEMENTARY INFORMATION:**

### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on May 1, 2012 (77 FR 25642). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> It was discovered that various pushrods installed on the DHC–8 Series 100/200/300/400 aeroplanes had been manufactured with tubes having the incorrect heat treatment, using 6061–T4 instead of 6061–T6. The incorrect heat treatment appreciably degrades the strength of these affected pushrods. Failure of these affected pushrods could result in a loss of rudder control, reduced directional control of the aeroplane on the ground or a jammed nose landing gear (NLG) door that could prevent the NLG from retracting or extending.
>
> This [Transport Canada Civil Aviation (TCCA)] directive mandates the replacement of the affected pushrod assembly.

You may obtain further information by examining the MCAI in the AD docket.

### Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (77 FR 25642, May 1, 2012) or on the determination of the cost to the public.

### Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed—except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (77 FR 25642, May 1, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 25642, May 1, 2012).

### Costs of Compliance

We estimate that this AD will affect about 171 products of U.S. registry. We also estimate that it will take about 28 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $6,504 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $1,519,164, or $8,884 per product.

### Authority for This Rulemaking

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

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

## Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

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

## Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (77 FR 25642, May 1, 2012), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2012–15–16 Bombardier, Inc.:** Amendment 39–17146. Docket No. FAA–2012–0422; Directorate Identifier 2011–NM–177–AD.

**(a) Effective Date**

This airworthiness directive (AD) becomes effective September 12, 2012.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to the Bombardier, Inc. airplanes, certificated in any category, as identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes, serial numbers 413, 443, 450 through 452 inclusive, 456, 458, 462 through 465 inclusive, 467 through 470 inclusive, and 473 through 588 inclusive.

(2) Model DHC–8–400, –401, and –402 airplanes, serial numbers 4001, 4003 through 4006 inclusive, and 4008 through 4197 inclusive.

**(d) Subject**

Air Transport Association (ATA) of America Code 27: Flight controls; and Code 32: Landing gear.

**(e) Reason**

This AD was prompted by reports that various pushrods had been manufactured with tubes having the incorrect heat treatment. We are issuing this AD to prevent loss of rudder control, reduced directional control of the airplane on the ground, or a jammed nose landing gear (NLG) door that could prevent the NLG from retracting or extending.

**(f) Compliance**

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

**(g) Replace Brake Rudder Control Pushrod—Model DHC–8–100, –200, –300**

For Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes, serial numbers 464, 508, 511 through 513 inclusive, and 515 through 588 inclusive: Within 3,000 flight hours after the effective date of this AD, replace the affected brake rudder control pushrod, part number (P/N) 82710274–001, by incorporating Modsum 8Q101334, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–27–100, Revision A, dated March 22, 2011.

**(h) Replace NLG Door Pushrod—Model DHC–8–200, –300**

For Model DHC–8–201, –202, –301, –311, and –315 airplanes, serial numbers 552 through 588 inclusive: Within 6,000 flight hours after the effective date of this AD, replace nose landing gear door pushrod, P/N 83232012–001, by incorporating Modsum 8Q101335, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–32–156, dated February 26, 2010.

**(i) Replace NLG Door Pushrod—Model DHC–8–400**

For Model DHC–8–400, –401, and –402 airplanes, serial numbers 4003 through 4005 inclusive, 4009 through 4011 inclusive, 4016, 4017, and 4024 through 4072 inclusive: Within 6,000 flight hours after the effective date of this AD, replace nose landing gear door pushrod, P/N 83232012–001, by incorporating Modsum 4–113457, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–32–28, dated November 27, 2008.

**(j) Replace Brake Rudder Control and Rudder Control Pushrods—Model DHC–8–400**

For Model DHC–8–400, –401, and –402 airplanes, serial numbers 4001, 4003 through 4006 inclusive, and 4008 through 4072 inclusive: Within 3,000 flight hours after the effective date of this AD, replace brake rudder control pushrod, P/N 82710274–001, and rudder control pushrod, P/N 82710028–003, by incorporating Modsum 4–113455, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–27–21, Revision A, dated March 22, 2011.

**(k) Replace Rudder Control Pushrod—Model DHC–8–100, –200, –300**

For Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes, serial numbers 413, 443, 450 through 452 inclusive, 456, 458, 462 through 465 inclusive, 467 through 470 inclusive, and 473 through 588 inclusive: Within 3,000 flight hours after the effective date of this AD, replace rudder control pushrod, P/N 82710028–003, by incorporating Modsum 8Q101333, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–27–99, dated October 10, 2008.

**(l) Inspect/Replace NLG Landing Gear Door Pushrod**

For Model DHC–8–400, –401, and –402 airplanes, serial numbers 4006, 4008, 4012 through 4015 inclusive, 4018 through 4023 inclusive, and 4073 through 4197 inclusive: Within 6,000 flight hours after the effective date of this AD, inspect the lot number of the pushrod, P/N 83232012–001, for the nose landing gear door mechanism, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–32–75, dated June 1, 2010.

(1) If the lot number of the pushrod does not match any of those listed in the table in paragraph 3.B.(2) of Bombardier Service Bulletin 84–32–75, dated June 1, 2010, no further action is required by this paragraph.

(2) If the lot number of the pushrod matches any of those listed in the table in paragraph 3.B.(2) of Bombardier Service Bulletin 84–32–75, dated June 1, 2010, before further flight, replace the pushrod, in accordance with paragraph 3.B., Rectification, of the Accomplishment Instructions of Bombardier Service Bulletin 84–32–75, dated June 1, 2010.

**(m) Parts Installation Prohibition**

For Model DHC–8–400, –401, and –402 airplanes, serial numbers 4006, 4008, 4012 through 4015 inclusive, 4018 through 4023 inclusive, and 4073 through 4197 inclusive: As of the effective date of this AD, no person may install a pushrod, P/N 83232012–001, with the lot number listed in the table in paragraph 3.B.(2) of Bombardier Service Bulletin 84–32–75, dated June 1, 2010, on any airplane.

**(n) Credit for Previous Actions**

This paragraph provides credit for the actions required by paragraphs (g) and (j) of this AD, if those actions were performed before the effective date of this AD using the service bulletins identified in paragraph (n)(1) or (n)(2) of this AD.

(1) Bombardier Service Bulletin 8–27–100, dated October 10, 2008 (for paragraph (g) of this AD).

(2) Bombardier Service Bulletin 84–27–21, dated October 10, 2008 (for paragraph (j) of this AD).

**(o) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

**(p) Related Information**

Refer to MCAI Canadian AD CF–2011–31, dated August 15, 2011, and the Bombardier service bulletins identified in paragraphs (p)(1) through (p)(6) of this AD, for related information.

(1) Bombardier Service Bulletin 8–27–99, dated October 10, 2008.

(2) Bombardier Service Bulletin 8–27–100, Revision A, dated March 22, 2011.

(3) Bombardier Service Bulletin 8–32–156, dated February 26, 2010.

(4) Bombardier Service Bulletin 84–27–21, Revision A, dated March 22, 2011.

(5) Bombardier Service Bulletin 84–32–28, dated November 27, 2008.

(6) Bombardier Service Bulletin 84–32–75, dated June 1, 2010.

**(q) Material Incorporated by Reference**

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

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

(i) Bombardier Service Bulletin 8–27–99, dated October 10, 2008.

(ii) Bombardier Service Bulletin 8–27–100, Revision A, dated March 22, 2011.

(iii) Bombardier Service Bulletin 8–32–156, dated February 26, 2010.

(iv) Bombardier Service Bulletin 84–27–21, Revision A, dated March 22, 2011.

(v) Bombardier Service Bulletin 84–32–28, dated November 27, 2008.

(vi) Bombardier Service Bulletin 84–32–75, dated June 1, 2010.

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

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

(5) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on July 24, 2012.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2012–18886 Filed 8–7–12; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 100

**[Docket Number USCG–2012–0264]**

**RIN 1625–AA08**

## Special Local Regulations for Marine Events, Patuxent River; Solomons, MD

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing special local regulations during the ''Chesapeake Challenge'' power boat races, a marine event to be held on the waters of the Patuxent River, near Solomons, MD on September 15 and 16, 2012. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to temporarily restrict vessel traffic in a portion of the Patuxent River during the event.

**DATES:** This rule is effective on September 15 and 16, 2012.

**ADDRESSES:** Documents mentioned in this preamble are part of docket [USCG–2012–0264]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Mr. Ronald Houck, Sector Baltimore Waterways Management Division, U.S. Coast Guard; telephone 410–576–2674, email *Ronald.L.Houck@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

### Table of Acronyms

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

### A. Regulatory History and Information

On May 1, 2012, we published a notice of proposed rulemaking (NPRM)

entitled ''Special Local Regulations for Marine Events; Patuxent River, Solomons, MD'' in the **Federal Register** (77 FR 25649). We received no comments on the proposed rule. No public meeting was requested, and none was held.

**B. Basis and Purpose**

On September 15 and 16, 2012, the Chesapeake Bay Power Boat Association will sponsor power boat races on the Patuxent River near Solomons, MD. The event consists of offshore power boats racing in a counter-clockwise direction on an irregularly-shaped course located between the Governor Thomas Johnson Memorial (SR–4) Bridge and the U.S. Naval Air Station Patuxent River, MD. The start and finish lines will be located near the Solomons Pier. A large spectator fleet is expected during the event. Due to the need for vessel control during the event, the Coast Guard will temporarily restrict vessel traffic in the event area to provide for the safety of participants, spectators and other transiting vessels.

**C. Discussion of Comments, Changes and the Final Rule**

The Coast Guard received no comments in response to the NPRM. No public meeting was requested and none was held.

**D. Regulatory Analyses**

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

*1. Regulatory Planning and Review*

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. Although this regulation will prevent traffic from transiting a portion of the Patuxent River during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners and marine information broadcasts, so mariners can adjust their plans accordingly. Additionally, the regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety determined to be necessary.

*2. Impact on Small Entities*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in the effected portions of the Patuxent River during the event.

Although this regulation prevents traffic from transiting a portion of the Patuxent River at Solomons, MD during the event, this rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would be in effect for only a limited period. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

*3. Assistance for Small Entities*

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

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

*4. Collection of Information*

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

*5. Federalism*

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

*6. Protest Activities*

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

*7. Unfunded Mandates Reform Act*

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

*8. Taking of Private Property*

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

*9. Civil Justice Reform*

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

*10. Protection of Children*

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

Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

*11. Indian Tribal Governments*

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

*12. Energy Effects*

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

*13. Technical Standards*

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

*14. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves implementation of regulations within 33 CFR Part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area. The category of water activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, canoe and sail board racing. This rule is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 100**

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

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

## PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

**Authority:** 33 U.S.C. 1233.

■ 2. Add a temporary section, § 100.35T05–0264 to read as follows:

### § 100.35T05–0264 Special Local Regulations for Marine Events; Patuxent River, Solomons, MD.

(a) *Regulated area.* The following location is a regulated area: All waters of the Patuxent River, within lines connecting the following positions: From latitude 38°19′45″ N, longitude 076°28′06″ W, thence to latitude 38°19′24″ N, longitude 076°28′30″ W, thence to latitude 38°18′32″ N, longitude 076°28′14″ W; and from latitude 38°17′38″ N, longitude 076°27′26″ W, thence to latitude 38°18′00″ N, longitude 076°26′41″ W, thence to latitude 38°18′59″ N, longitude 076°27′20″ W, located at Solomons, Maryland. All coordinates reference Datum NAD 1983.

(b) *Definitions:* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Baltimore.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* means all vessels participating in the Chesapeake Challenge under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Baltimore.

(4) *Spectator* means all persons and vessels not registered with the event sponsor as participants or official patrol.

(c) *Special local regulations:* (1) The Coast Guard Patrol Commander may forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel in the regulated area shall immediately comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(2) The Coast Guard Patrol Commander may terminate the event, or the operation of any vessel participating in the event, at any time it is deemed necessary for the protection of life or property.

(3) All Coast Guard vessels enforcing this regulated area can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz).

(5) Only participants and official patrol are allowed to enter the race course area.

(6) Spectators are allowed inside the regulated area only if they remain within the designated spectator area. Spectators will be permitted to anchor within the designated spectator area. No vessel may anchor within the regulated area outside the designated spectator area. Spectators may contact the Coast Guard Patrol Commander to request permission to pass through the regulated area. If permission is granted, spectators must pass directly through the regulated area outside the race course and spectator areas at a safe speed and without loitering.

(7) Designated Spectator Fleet Area. The spectator fleet area is located within a line connecting the following positions: Latitude 38°19′00″ N, longitude 076°28′22″ W, thence to latitude 38°19′07″ N, longitude 076°28′12″ W, thence to latitude 38°18′53″ N, longitude 076°27′55″ W, thence to latitude 38°18′30″ N, longitude 076°27′45″ W, thence to latitude 38°18′00″ N, longitude 076°27′11″ W, thence to latitude 38°17′54″ N, longitude 076°27′20″ W, thence to the point of origin at latitude 38°19′00″ N, longitude 076°28′22″ W. All coordinates reference datum NAD 1983.

(8) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue marine information broadcast on VHF–FM marine band radio announcing specific event date and times.

(d) Enforcement periods: This section will be enforced from 10 a.m. until 6 p.m. on September 15, 2012, and from 10 a.m. until 6 p.m. on September 16, 2012.

Dated: July 23, 2012.

**Kevin C. Kiefer,**

*Captain, U.S. Coast Guard, Captain of the Port Baltimore.*

[FR Doc. 2012–19373 Filed 8–7–12; 8:45 am]

BILLING CODE 9110–04–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 117

**[Docket No. USCG–2012–0708]**

### Drawbridge Operation Regulation; Lewis and Clark River, Astoria, OR

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs the Lewis and Clark Bridge which crosses the Lewis and Clark River, mile 1.0, at Astoria, OR. This deviation is necessary to accommodate major roadway maintenance on the bridge. This deviation allows the bridge to remain in the closed position to allow milling and repaving of the roadway surface on the lift span.

**DATES:** This deviation is effective from 7 a.m. on August 29, 2012 through 5 p.m. August 30, 2012.

**ADDRESSES:** Documents mentioned in this preamble as being available in the docket are part of docket USCG–2012–0708 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0708 in the ''Keyword'' box and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email the Bridge Administrator, Coast Guard Thirteenth District; telephone 206–220–7282 email *randall.d.overton@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:** The Oregon Department of Transportation has requested that the Lewis and Clark Drawbridge, mile 1.0, remain closed to vessel traffic to facilitate the milling and repaving of the roadway surface on the lift span. The bridge provides a vertical clearance of 25 feet above mean high water when in the closed position. Vessels that do not require a bridge opening to safely pass beneath the bridge may continue to do so during this closure period. Under normal operations this bridge opens on signal with advance notification as required by 33 CFR 117.899(c). This deviation allows the Lewis and Clark Drawbridge across the Lewis and Clark River in Astoria, OR to remain in the closed position and need not open for maritime traffic from 7 a.m. August 29, 2012 through 5 p.m. on August 30, 2012. The bridge shall operate in accordance to 33 CFR 117.899(c) at all other times. Waterway usage on the Lewis and Clark River is primarily recreational boaters. Mariners will be notified and kept informed of the bridge's operational status via the Coast Guard Notice to Mariners publication and Broadcast Notice to Mariners as appropriate. The draw span will be required to open, if needed, for vessels engaged in emergency response operations during this closure period.

In accordance with 33 CFR 117.35(e), the drawbridge 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: July 27, 2012.

**Randall D. Overton,**

*Bridge Administrator.*

[FR Doc. 2012–19393 Filed 8–7–12; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket No. USCG–2012–0688]**

**RIN 1625–AA00**

### Safety Zone; Milwaukee Air and Water Show, Lake Michigan, Milwaukee, WI

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is making a temporary deviation to the established Milwaukee Air and Water Show safety zone on Lake Michigan near Milwaukee Wisconsin. This action is necessary to more accurately reflect the size requirements for this safety zone during this year's air show. This safety zone is intended to restrict vessels from a portion of Lake Michigan during the Milwaukee Air and Water Show. This safety zone is necessary to protect spectators and vessels from the hazards associated with an air show over water.

**DATES:** This rule will be effective from 8:00 a.m. on August 10, 2012, until 4:00 p.m. on August 12, 2012.

**ADDRESSES:** Documents mentioned in this preamble are part of docket [USCG–2012–0688]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box, and click ''Search.'' You may visit the Docket Management Facility, Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or email CWO Jon Grob, U.S. Coast Guard Sector Lake Michigan; telephone 414–747–7188, email *Jon.K.Grob@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

### Table of Acronyms

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

### A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. The final details for this year's event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be both impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect spectators and vessels from the hazards associated with an air show and associated pyrotechnics, which are discussed further below.

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

discussed in the preceding paragraph, waiting for a 30 day notice period to run would be impracticable and contrary to the public interest.

**B. Basis and Purpose**

Between 8:00 a.m. until 4:00 p.m. each day on Friday, Saturday, and Sunday of the second weekend of August 2012, an air show will be held over Lake Michigan in Milwaukee, WI. The Captain of the Port, Sector Lake Michigan, has determined that an air show with associated acrobatic maneuvers proximate to a gathering of watercraft and personnel pose a significant risk to public safety and property. Such hazards include aircraft malfunctions and subsequent crash and falling or burning debris. This temporary rule makes a temporary deviation to the Milwaukee Air and Water Show safety zone, which is established at 33 CFR 165.929(43).

**C. Discussion of Rule**

Changes have been made to the boundaries and times previously codified for this event; these changes were necessary to provide the public with the most up to date information as received from the sponsoring organization. With the aforementioned hazards in mind, the Captain of the Port, Sector Lake Michigan, has determined that this temporary deviation of the size of this safety zone is necessary to ensure the safety of spectators and vessels during the air show. This zone will be enforced from 8:00 a.m. until 4:00 p.m. on Friday, Saturday, and Sunday of the second weekend of August 2012. The safety zone will encompass all waters and adjacent shoreline of Lake Michigan and Bradford Beach located within a 4000-yard by 1000-yard rectangle. The rectangle will be bounded by the points beginning at 43°02′42″ N, 087°52′14″ W; then northeast to 43°04′25″ N, 087°50′53″ W; then northwest to 43°04′40″ N, 087°51′29″ W; then southwest to 43°02′57″ N, 087°52′50″ W; then southeast returning to the point of origin (NAD 83). Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

**D. Regulatory Analyses**

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

*1. Regulatory Planning and Review*

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

*2. Impact on Small Entities*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of Lake Michigan, Milwaukee, WI on Friday, Saturday, and Sunday of the second weekend of August, 2012.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone would be activated, and thus subject to enforcement, for only eight hours on these days. Traffic may be allowed to pass through the zone with the permission of the Captain of the Port. The Captain of the Port can be reached via VHF channel 16. Before the activation of the zone, we would issue local Broadcast Notice to Mariners.

*3. Assistance for Small Entities*

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

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

*4. Collection of Information*

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

*5. Federalism*

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

*6. Protest Activities*

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

*7. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of

their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*8. Taking of Private Property*

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

*9. Civil Justice Reform*

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

*10. Protection of Children*

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

*11. Indian Tribal Governments*

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

*12. Energy Effects*

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

*13. Technical Standards*

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

*14. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone and, therefore it is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0688 to read as follows:

**§ 165.T09–0688 Safety Zone; Milwaukee Air and Water Show, Lake Michigan, Milwaukee, WI.**

(a) *Location.* The safety zone will encompass all waters and adjacent shoreline of Lake Michigan and Bradford Beach located within a 4000-yard by 1000-yard rectangle. The rectangle will be bounded by the points beginning at 43°02′42″ N, 087°52′14″ W; then northeast to 43°04′25″ N, 087°50′53″ W; then northwest to 43°04′40″ N, 087°51′29″ W; then southwest to 43°02′57″ N, 087°52′50″ W; then southeast returning to the point of origin (NAD 83).

(b) *Enforcement Period.* This regulation will be enforced on Friday, Saturday, and Sunday of the second weekend of August, 2012 from 8:00 a.m. until 4:00 p.m. each day.

(c) *Regulations.*

(1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port, Sector Lake Michigan or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port, Sector Lake Michigan is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Sector Lake Michigan to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port, Sector Lake Michigan or his on-scene representative to obtain permission to do so. The Captain of the Port, Sector Lake Michigan or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port, Sector Lake Michigan, or his on-scene representative.

Dated: July 20, 2012.

**M. W. Sibley,**

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

[FR Doc. 2012–19344 Filed 8–7–12; 8:45 am]

**BILLING CODE 9110–04–P**

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2012–0709]**

**RIN 1625–AA00**

## Safety Zone; Dredge Arthur J, Lake Huron, Lakeport, MI

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on lower Lake Huron, Lakeport, MI. This safety zone is intended to restrict vessels from a portion of Lake Huron during the preparation for and salvage operations of the Arthur J. dredge vessel. This temporary safety zone is necessary to protect people, vessels and the environment from the hazards associated with a salvage operation.

**DATES:** This rule is effective with actual notice from 11:00 a.m. on July 28, 2012 until August 8, 2012. This rule is effective in the **Federal Register** from

August 8, 2012 until 11:00 a.m. on August 25, 2012.

**ADDRESSES:** Documents mentioned in this preamble are part of docket [USCG–2012–0709]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box, and click ''Search.'' You may visit the Docket Management Facility, Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

**SUPPLEMENTARY INFORMATION:**

## Table of Acronyms

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

## A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. The emergency sinking of the dredge vessel Arthur J. precluded the Coast Guard from having sufficient time to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be both impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect people vessels and the environment from the hazards associated with a vessel salvage operation, which are discussed further below.

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

## B. Basis and Purpose

As suggested above, salvage operations will continue in lower Lake Huron, MI. The Coast Guard expects these salvage operations to continue until approximately 11:00 a.m. on August 25, 2012. The Captain of the Port Detroit has determined that this continuing vessel salvage operation poses a significant risk to public safety and property. Such hazards include accidental vessel collisions, potential fuel spills, and potential diving operations.

In relation to the salvage operation associated with this Temporary Final Rule (TFR), the Coast Guard has already published and enforced two TFRs. Each of those TFRs established a safety zone centered on the same coordinate as the safety zone created herein. Although the center point of each of these three safety zones is identical, the radius of the first safety zone was only 100 yards, while the radius of this safety zone and the second safety zone is 500 yards. The first safety zone was effective and enforced from July 19, 2012 until July 21, 2012. The second safety zone was effective and enforced from July 21, 2012 until July 28, 2012. To date, the Coast Guard knows of no negative impacts on the public as a result of the enforcement of these two prior safety zones.

## C. Discussion of Rule

With the aforementioned hazards in mind, the Captain of the Port Detroit has determined that a temporary safety zone is necessary to ensure the safety of people and vessels during the continued Arthur J. dredge vessel salvage operations. As discussed above, two safety zones in response to this sunken vessel were previously established, running consecutively from July 19 to the morning of July 28, 2012. However, the Captain of the Port, Sector Detroit has determined that the safety zone needs to be established for a longer period of time in order to better mitigate the risks to public safety and property from this continued operation.

This safety zone will be effective and enforced from 11:00 a.m. on July 28, 2012 until 11:00 a.m. on August 25, 2012. This zone will encompass all waters of lower lake Huron, in the vicinity of Lake Port, MI within a 500 yards radius of position 43°06′06″ N, 082°27′03″ W (NAD 83).

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

## D. Regulatory Analyses

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

### *1. Regulatory Planning and Review*

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

### *2. Impact on Small Entities*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small

entities: The owners or operators of vessels intending to transit or anchor in a portion of lower Lake Huron from 11:00 a.m. on July 28, 2012 until 11:00 a.m. on August 25, 2012.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone would be activated, and thus subject to enforcement, for a relatively short time, and if salvage operations are completed before August 25, 2012, the enforcement of the safety zone will be terminated early. Traffic will be allowed to pass around the zone with the coordination of the Captain of the Port. The Captain of the Port can be reached via VHF channel 16. Before the enforcement of the zone, we would issue local Broadcast Notice to Mariners.

*3. Assistance for Small Entities*

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

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

*4. Collection of Information*

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

*5. Federalism*

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

*6. Protest Activities*

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

*7. Unfunded Mandates Reform Act*

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

*8. Taking of Private Property*

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

*9. Civil Justice Reform*

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

*10. Protection of Children*

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

*11. Indian Tribal Governments*

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

*12. Energy Effects*

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

*13. Technical Standards*

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

*14. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone, and therefore, it is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0709B to read as follows:

**§ 165.T09–0709B Safety Zone; Dredge Arthur J., Lake Huron, Lakeport, MI**

*(a) Location.* The safety zone will encompass all waters of lower lake Huron, in the vicinity of Lakeport, MI

within a 500 yards radius of position 43° 06′06″ N, 082° 27′03″ W (NAD 83).

*(b) Effective and Enforcement Period.* This regulation is effective and enforced from 11:00 a.m. on July 28, 2012 until 11:00 a.m. on August 25, 2012.

*(c) Regulations.*

(1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Detroit or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port Detroit is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Detroit to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Detroit or his on-scene representative to obtain permission to do so. The Captain of the Port Detroit or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Detroit, or his on-scene representative.

Dated: July 27, 2012.

**J.E. Ogden,**

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

[FR Doc. 2012–19347 Filed 8–7–12; 8:45 am]

BILLING CODE 9110–04–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 174

[EPA–HQ–OPP–2012–0109; FRL–9357–4]

### Bacillus thuringiensis eCry3.1Ab Protein in Corn; Exemption From the Requirement of a Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes an exemption from the requirement of a tolerance for residues of the plant-incorporated protectant (PIP), Bacillus thuringiensis eCry3.1Ab protein in corn, in or on the food and feed commodities of corn; corn, field; corn, sweet; and corn, pop. Syngenta Seeds, Inc., Field Crops NAFTA submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of Bacillus thuringiensis eCry3.1Ab protein in corn.

**DATES:** This regulation is effective August 8, 2012. Objections and requests for hearings must be received on or before October 9, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2012–0109, is available either electronically through *http://www.regulations.gov* or in hard copy at the OPP Docket in the Environmental Protection Agency Docket Center (EPA/DC), located in EPA West, Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

**FOR FURTHER INFORMATION CONTACT:** Mike Mendelsohn, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8715; email address: *mendelsohn.mike@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. General Information

*A. Does this action apply to me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How can I get electronic access to other related information?*

You may access a frequently updated electronic version of 40 CFR part 174 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

*C. How can I file an objection or hearing request?*

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2012–0109 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before October 9, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2012–0109, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), Mail Code: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

• *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

## II. Background and Statutory Findings

In the **Federal Register** of April 4, 2012 (77 FR 20337) (FRL–9340–4), EPA issued a notice pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 1F7857) by Syngenta Seeds, Inc., Field Crops NAFTA, P.O. Box 12257, 3054 E. Cornwallis Road, Research Triangle Park, NC 27709–2257. The petition requested that 40 CFR 174.532 be amended by establishing a permanent exemption from the requirement of a tolerance for residues of Bacillus thuringiensis eCry3.1Ab protein in corn, in or on the food and feed commodities of corn; corn, field; corn, sweet; and corn, pop. This notice referenced a summary of the petition prepared by the petitioner Syngenta Seeds, Inc., Field Crops NAFTA, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to FFDCA section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in FFDCA section 408(b)(2)(C), which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue * * *.'' Additionally, FFDCA section 408(b)(2)(D) requires that the Agency consider ''available information concerning the cumulative effects of a particular pesticide's residues'' and ''other substances that have a common mechanism of toxicity.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

## III. Toxicological Profile

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability, and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

### *A. Product Characterization*

Based on amino acid sequence homology and crystal structures, known Cry proteins have a similar three-dimensional structure comprised of three domains, Domain I, II, and III (Refs. 1, 2, 3, and 4). The toxin portions of Cry proteins are characterized by having five conserved blocks (CB) across their amino acid sequence. These are numbered CB1 to CB5 from the N-terminus to the C-terminus (Ref. 5). The sequences preceding and following these conserved blocks are highly variable and are designated as variable regions V1 to V6. Because Cry proteins share structural similarities, chimeric cry genes can be engineered via the exchange of domains that are homologous between different cry genes.

eCry3.1Ab is an engineered chimera protein, composed of portions of modified Cry3A (mCry3A) protein, a protein derived from the native Cry3A protein from *Bt* subsp. *tenebrionis,* and of the Cry1Ab protein from *Bt thuringiensis* subsp. *kurstaki* HD–1. The ecry3.1Ab gene (Entrez Accession Number GU327680 NCBI, 2011) (Walters *et al.* 2010) consists of a fusion between the N-terminus (Domain I, Domain II, and a portion of Domain III) of a mcry3A gene and the C-terminus (a portion of Domain III and Variable Region 6) of a cry1Ab gene (Ref. 5). The eCry3.1Ab protein is 654 amino acid residues in size and is approximately 74.8 kilodaltons.

### *B. Mammalian Toxicity Assessment*

Syngenta has submitted acute oral toxicity data demonstrating the lack of mammalian toxicity at high levels of exposure to the pure eCry3.1Ab protein. These data demonstrate the safety of the product at a level well above maximum possible exposure levels that are reasonably anticipated in the crop. Basing this conclusion on acute oral toxicity data without requiring further toxicity testing and residue data is similar to the Agency position regarding toxicity testing and the requirement of residue data for the microbial *Bacillus thuringiensis* products from which this plant-incorporated protectant was derived (see 40 CFR 158.2130(d)(1)(i) and 158.2140(d)(7)). For microbial products, further toxicity testing and residue data are triggered by significant adverse acute effects in studies, such as the mouse oral toxicity study, to verify and quantify the observed adverse effects and clarify the source of these effects (Tiers II & III).

An acute oral toxicity study in mice (MRID No. 477539–01) indicated that eCry3.1Ab is non-toxic. Two groups of 10 male and 10 female mice were orally dosed (via gavage) with 2,000 milligrams/kilograms bodyweight (eCry3.1Ab protein mg/kg bwt) of the eCry3.1AB–0208 test substance, a biochemically and functionally equivalent microbially-produced eCry3.1Ab protein. All treated animals gained weight and had no test material-related clinical signs and no test material-related findings at necropsy. Since there were no significant differences between the test and control groups related to the oral administration of the eCry3.1AB–0208 test material, the eCry3.1Ab protein does not appear to cause any significant adverse effects at an exposure level of up to 2000 mg/kg bwt, which supports the finding that the eCry3.1Ab protein would be non-toxic to mammals.

When proteins are toxic, they are known to act via acute mechanisms and at very low dose levels (Ref. 6). Therefore, since no acute effects were shown to be caused by eCry3.1Ab, even at relatively high dose levels, the eCry3.1Ab protein is not considered toxic. Further, amino acid sequence comparisons showed no similarities between the eCry3.1Ab protein and known toxic proteins in protein databases that would raise a safety concern.

### *C. Allergenicity Assessment*

Since eCry3.1Ab is a protein, allergenic sensitivities were considered. Currently, no definitive tests exist for

determining the allergenic potential of novel proteins. Therefore, EPA uses a ''weight-of-the evidence'' approach where the following factors are considered: source of the trait; amino acid sequence similarity with known allergens; prevalence in food; and biochemical properties of the protein, including *in vitro* digestibility in simulated gastric fluid (SGF), and glycosylation (as recommended by CAC, 2003) (Ref. 7). Current scientific knowledge suggests that common food allergens tend to be resistant to degradation by acid and proteases; may be glycosylated; and may be present at high concentrations in the food.

1. *Source of the trait. Bacillus thuringiensis* is not considered to be a source of allergenic proteins.

2. *Amino acid sequence.* A comparison of the amino acid sequence of eCry3.1Ab with known allergens showed no significant overall sequence similarity or identity at the level of eight contiguous amino acid residues. This is the appropriate level of sensitivity to detect possible IgE epitopes without high false positive rates.

3. *Prevalence in food.* Expression level analysis of eCry.1Ab protein demonstrates that it is present at relatively low levels. The expression has been shown to be in the parts per million range. Thus, dietary exposure is expected to be correspondingly low.

4. *Digestibility.* The eCry3.1Ab protein was rapidly digested in less than 30 seconds in simulated mammalian gastric fluid containing pepsin (pH 1.2) after incubation at 37 °C.

5. *Glycosylation.* The eCry3.1Ab protein expressed in corn was shown not to be glycosylated.

6. *Conclusion.* Considering all of the available information, EPA has concluded that the potential for eCry3.1Ab to be a food allergen is minimal.

## IV. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

The Agency has considered available information on the aggregate exposure levels of consumers (and major identifiable subgroups of consumers) to the pesticide chemical residue and to other related substances. First, with respect to other related substances, the eCry3.1Ab protein is a chimeric *Bacillus thuringiensis* protein, composed of portions of Cry1Ab and mCry3A proteins, both of which are registered PIPs that were previously assessed as having a lack of mammalian toxicity at high levels of exposure. Exemptions from the requirement of a tolerance already have been established for Cry1Ab in food and mCry3A in maize, see 40 CFR 174.505 and 40 CFR 174.511, respectively. Second, and specific to the eCry3.1Ab protein, EPA has considered dietary exposure under the tolerance exemption and all other tolerances or exemptions in effect for the plant-incorporated protectant chemical residue and exposure from non-occupational sources. Exposure via the skin or inhalation is not likely since the plant-incorporated protectant is contained within plant cells, which essentially eliminates these exposure routes or reduces these exposure routes to negligible. The amino acid similarity assessment included similarity to known aeroallergens. It has been demonstrated that there is no evidence of occupationally related respiratory symptoms, based on a health survey on migrant workers after exposure to *Bt* pesticides (Ref. 8). Exposure via residential or lawn use to infants and children is also not expected because the use sites for the eCry3.1Ab protein are all agricultural for control of insects. Oral exposure, at very low levels, may occur from ingestion of processed corn products and, potentially, drinking water.

However, oral toxicity testing done at a dose of 2 gm/kg showed no adverse effects. Furthermore, the expected dietary exposure from corn is several orders of magnitude lower than the amounts of eCry3.1Ab protein shown to have no toxicity. Therefore, even if negligible aggregate exposure should occur, the Agency concludes that such exposure would present no harm due to the lack of mammalian toxicity and the rapid digestibility demonstrated for the eCry3.1Ab protein.

## V. Cumulative Effects From Substances With a Common Mechanism of Toxicity

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Since eCry3.1Ab is not considered toxic, EPA has not found eCry3.1Ab to share a common mechanism of toxicity with any other substances, and eCry3.1Ab does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that eCry3.1Ab does not have a common mechanism of toxicity with other substances. Following from this, therefore, EPA concludes that there are no cumulative effects associated with eCry3.1Ab that need be considered. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

## VI. Determination of Safety for U.S. Population, Infants and Children

The data submitted and cited regarding potential health effects for the eCry3.1Ab protein include the characterization of the expressed eCry3.1Ab protein in corn, as well as the acute oral toxicity, heat stability, and *in vitro* digestibility of the proteins. The results of these studies were used to evaluate human risk, and the validity, completeness, and reliability of the available data from the studies were also considered.

As discussed more fully in Unit III. B. above, the acute oral toxicity data submitted supports the prediction that the eCry3.1Ab protein would be nontoxic to humans. Moreover, eCry3.1Ab showed no sequence similarity to any known toxin. Because of this lack of demonstrated mammalian toxicity, no protein residue chemistry data for eCry3.1Ab were required for a human health effects assessment. Even so, preliminary expression level analysis showed eCry3.1Ab protein is present at relatively low levels. Dietary exposure is expected to be correspondingly low.

Since eCry3.1Ab is a protein, its potential allergenicity is also considered as part of the toxicity assessment. Data considered as part of the allergenicity assessment include that the eCry3.1Ab protein came from *Bacillus thuringiensis* which is not a known allergenic source, showed no sequence similarity to known allergens, was readily degraded by pepsin, and was not glycosylated when expressed in the plant. Therefore, there is a reasonable certainty that eCry3.1Ab protein will not be an allergen.

Considered together, the lack of mammalian toxicity at high levels of exposure to the eCry3.1Ab protein and the minimal potential for that protein to be a food allergen demonstrate the safety of the product at levels well

above possible maximum exposure levels anticipated in the crop.

Finally, and specifically in regards to infants and children, FFDCA section 408(b)(2)(C) provides that EPA shall assess the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues, and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity. In addition, FFDCA section 408(b)(2)(C) provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base, unless EPA determines that a different margin of safety will be safe for infants and children.

Based on its review and consideration of all the available information, as discussed in more detail above, the Agency concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of the eCry3.1Ab protein and the genetic material necessary for its production in corn. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has also concluded, again for the reasons discussed in more detail above, that there are no threshold effects of concern and, as a result, that an additional margin of safety for infants and children is unnecessary in this instance.

## VII. Other Considerations

### *A. Analytical Enforcement Methodology*

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation. Nonetheless, Syngenta has submitted validation method studies on two qualitative lateral flow strip kits for the analytical detection of eCry3.1Ab protein in corn grain, leaf and seed corn matrices. Results showed the test kits are able to detect eCry3.1Ab protein residues in corn with sufficient accuracy, precision, and sensitivity.

### *B. International Residue Limits*

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for establishing a difference tolerance.

The Codex has not established a MRL for *Bacillus thuringiensis* eCry3.1Ab protein in corn.

## VIII. Conclusions

For all the reasons summarized above, EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of the plant incorporated protectant (PIP) *Bacillus thuringiensis* eCry3.1Ab protein in corn and the genetic material necessary for its production. Therefore, the current temporary exemption for residues of *Bacillus thuringiensis* eCry3.1Ab protein in corn, in or on the food or feed commodities of corn; corn, field; corn, sweet; and corn, pop, when used as a plant-incorporated protectant is amended in order to remove its expiration date and make it a permanent exemption.

## IX. References


1. Nakamura K, Oshie K, Shimizu M, Takada Y, Oeda K, Ohkawa H. 1990. Construction of Chimeric Insecticidal Proteins Between the 130-kDa and 135-kDa Proteins of *Bacillus thuringiensis* subsp. *aizawai* for Analysis of Structure-Function Relationship. *Agricultural Biological Chemistry.* 54: 715–724.
2. Li J, Carroll J, Ellar DJ. 1991. Crystal Structure of Insecticidal delta-Endotoxin from *Bacillus thuringiensis* at 2.5 A resolution. *Nature.* 353: 815–821.
3. Ge A, Rivers D, Milne R, Dean DH. 1991. Functional Domains of *Bacillus thuringiensis* Insecticidal Crystal Proteins. Refinement of *Heliothis virescens* and *Trichoplusiani* Specificity Domains on Cry1A(c). *Journal of Biological Chemistry.* 266: 17954–17958.
4. Honee G, Convents D, Van Rie J, Jansens S, Peferoen M, Visser B. 1991. The C-Terminal Domain of the Toxic Fragment of a *Bacillus thuringiensis* Crystal Protein Determines Receptor Binding. *Molecular Microbiology.* 5: 2799–2806.
5. Hofte H, Whitley HR. 1989. Insecticidal Crystal Proteins of *Bacillus thuringiensis*. *Microbiology Review.* 53: 242–255.
6. Sjoblad RD, McClintock JT, Engler R. 1992. Toxicological Considerations for Protein Components of Biological Pesticide Products. *Regulatory Toxicology and Pharmacology.* 15(1): 3–9.
7. CAC. 2003. Alinorm 03/34: Joint FAO/WHO Food Standard Programme. Codex Alimentarius Commission, Twenty-Fifth Session, 30 July 2003. Rome, Italy. Appendix III: Guideline for Conduct of Food Safety Assessments of Foods Derived from Recombinant-DNA Plants; Appendix IV: Annex on Assessment of Possible Allergenicity. Codex Alimentarius Commission, 47–60.
8. Bernstein IL, Bernstein JA, Miller M, Tierzieva S, Bernstein DI., Lummus Z, Selgrade MK, Doerfler DL, Seligy VL. 1999. Immune responses in farm workers after exposure to *Bacillus thuringiensis* pesticides. *Environmental Health Perspectives.* 107(7):575–82.


## X. Statutory and Executive Order Reviews

This final rule establishes a tolerance exemption under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by

Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

### XI. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report 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 this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

### List of Subjects in 40 CFR Part 174

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 30, 2012.

**Steven Bradbury,**

*Director, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 174—[AMENDED]

■ 1. The authority citation for part 174 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 174.532 is revised to read as follows:

**§ 174.532 Bacillus thuringiensis eCry3.1Ab protein in corn; exemption from the requirement of a tolerance.**

Residues of *Bacillus thuringiensis* eCry3.1Ab protein in corn, in or on the food and feed commodities of corn; corn, field; corn, sweet; and corn, pop are exempt from the requirement of a tolerance when *Bacillus thuringiensis* eCry3.1Ab protein in corn is used as a plant-incorporated protectant.

[FR Doc. 2012–19319 Filed 8–7–12; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[EPA–HQ–OPP–2011–0139; FRL–9356–6]**

## Residues of Didecyl Dimethyl Ammonium Chloride; Exemption From the Requirement of a Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes an exemption from the requirement of a tolerance for residues of Didecyl dimethyl ammonium chloride (DDAC) in or on broccoli grown from treated seeds when applied by immersion. Pace Chemicals Ltd. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA) requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of DDAC in or on broccoli seed.

**DATES:** This regulation is effective August 8, 2012. Objections and requests for hearings must be received on or before October 9, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2011–0139, is available either electronically through *http://www.regulations.gov* or in hard copy at the OPP Docket in the Environmental Protection Agency Docket Center (EPA/DC), located in EPA West, Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

**FOR FURTHER INFORMATION CONTACT:** Tracy Lantz, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–6415; email address: *lantz.tracy@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How can I get electronic access to other related information?*

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

*C. How can I file an objection or hearing request?*

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–

OPP–2011–0139 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before October 9, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2011–0139, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), Mail Code: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

## II. Background and Statutory Findings

In the **Federal Register** of September 7, 2011 (76 FR 55329) (FRL–8886–7), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP) 0F7747 by Pace Chemicals Ltd., 8321 Willard Street, Burnaby, British Columbia, V3N 2X3. The petition requested that 40 CFR part 180 subpart D be amended by establishing an exemption from the requirement of a tolerance for residues of Didecyl dimethyl ammonium chloride on broccoli grown from treated seeds when applied by immersion. This notice referenced a summary of the petition prepared by the petitioner Pace Chemicals Ltd which is available in the docket, *http://www.regulations.gov.* A comment was received on the notice of filing. EPA's response to these comments is discussed in Unit VII.C.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to section 408(c)(2)(B) of FFDCA, in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C) of FFDCA, which requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue * * *.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

## III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by Didecyl dimethyl ammonium chloride, part of the Aliphatic Alkyl Quaternary group of compounds, are discussed in this unit.

The Aliphatic Alkyl Quaternaries are corrosive and highly irritating to the eye and skin, with moderate acute toxicity by oral, dermal, and inhalation routes of exposure. These chemicals are classified as ''not likely'' to be human carcinogens based on negative carcinogenicity in rat and mouse feeding studies using doses above the limit dose. There is no evidence of these chemicals being associated with increased susceptibility of infants and children based on two developmental toxicity studies and a 2-generation reproductive toxicity study. Lastly, they are negative for mutagenicity and neurotoxicity. Specific information on the studies received and the nature of the toxic effects from the toxicity studies can be found at *http://www.regulations.gov.* Docket ID Number EPA–HQ–OPP–2006–0338 Toxicology Disciplinary Chapter for the Reregistration Eligibility Decision (RED) for Didecyl Dimethyl Ammonium Chloride (DDAC).

Toxic Endpoints—For hazards that have a threshold below which there is no appreciable risk, the dose at which no adverse effects are observed (NOAEL) from the toxicology study identified as appropriate for the risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in variations in sensitivity among members of the human population as well as other unknowns. A detailed discussion of EPA's conclusions regarding the toxic endpoints for the Aliphatic Alkyl Quaternaries can be found at 73 FR 37852 (July 2, 2008).

## IV. Aggregate Exposures

In examining aggregate exposure, section 408 of FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other sources, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other non-occupational exposures).

### *A. Dietary Exposure*

1. *Food.* Studies have not been submitted measuring residues of Didecyl dimethyl ammonium chloride (DDAC) in broccoli resulting from treatment of broccoli seed. Instead, EPA estimated the DDAC residue concentration that could theoretically result in broccoli heads from the proposed seed treatment use. The number of broccoli seed/pound (lb) is about 144,000 (Oregon State University, Commercial Vegetable Production Guides. Broccoli. *Brassica oleracea* (Italica Group). Last revised August 6, 2004). The proposed treatment rate is 1,200 milligram (mg) DDAC/100 g seed.

Seed are to be soaked for 10 minutes and then dried.

The highest seeding rate for broccoli is 1.5 pound per acre (lb/A) (680 g/acre). The lower end of yield in a major broccoli-producing state is 13,000 lb/A in AZ (USDA/NASS; 2003–08). If 680 g seed are treated with 1,200 mg DDAC/100 g, a total of 8.2 g DDAC would be applied to the seed. If all the DDAC is retained by the seed and the 680 g of seed/acre are planted, the equivalent application rate would be 0.0181 lb DDAC/acre. If all the DDAC were absorbed and translocated to the 13,000 lb of harvested broccoli, the maximum theoretical residue level in broccoli would be 1.4 parts per million (ppm).

The intent of the proposed DDAC seed treatment, however, is to control pathogens on the surface of the broccoli seed which is the major way a number of serious diseases of crucifers are spread and not to control pathogens in soil. Therefore, draining and triple rinsing are conducted to reduce DDAC residues on the seed and there is no intended adsorption (binding) of the DDAC to the seed because the registrant is not claiming residual protection of seed from pathogens in the soil. However, while not intended, it is likely that traces of DDAC would have adsorbed to the seed coat during the 10-minute soaking time.

Taking the draining and rinsing of seed into account, EPA has made a conservative estimate of how much of the theoretical estimate of 1.4 ppm of DDAC on broccoli could actually be present. After seed are soaked in the DDAC solution for 10 min, the solution is drained. EPA estimates that at least 90% of the solution volume will drain off, leaving 10%. This would reduce the theoretical value of 1.4 ppm DDAC in harvested broccoli to 0.14 ppm. This is considered to be reasonable because the treatment solution volume is typically 2 liter (L) for each 100 g of seed and most of the DDAC will be eliminated by draining because of DDAC's solubility in water. Virtually no absorption of solution into the seeds is expected within the 10-minute soaking time. Also, if more than traces of solution were absorbed by seed, this would be detrimental to the seed treatment process because metabolic processes would be activated which would reduce seed viability and increase rotting. Another 90% of the DDAC from the drained seed is expected to be removed by the three water rinses which would reduce the calculated value of 0.14 ppm to 0.014 ppm. This is reasonable because most of the DDAC is in solution in the film of water between the drained seed and, due to its water solubility; the three rinses are expected to remove any free DDAC remaining.

Although there is no known plant uptake and metabolism studies available for Aliphatic Alkyl Quaternaries similar to DDAC, there are data indicating that DDAC is stable to hydrolysis and will bind tightly to soil. Thus, EPA expects traces of DDAC to be adsorbed (bound) to both the seed coat and the soil surrounding each seed. Considering its immobility, there is little likelihood that DDAC would be absorbed through the seed coat, translocated through the seed and developing shoot, and ultimately concentrated in the harvested broccoli head. This issue was addressed in an earlier EPA decision (K. Leifer, P. Wagner, OPP, RD, 8/1/06 *http://www.epa.gov/opprd001/inerts/dialkyl.pdf*) reassessing the safety of three tolerance exemptions for DDAC when used as an inert ingredient (preservative) in pesticide formulations applied: To growing crops (40 CFR 180.920), postharvest to crops (40 CFR 180.910), or to livestock (40 CFR 180.930). In that decision, EPA concluded that soil application of DDAC to growing crops under 40 CFR 180.920 would not result in systemic uptake by plants because the DDAC would be bound to soil and, therefore, unavailable for plant uptake. Due to the strong binding of DDAC to the seed coat, cellulose, lignin, organic matter, and clay particles, EPA believes that the calculated concentration of 0.014 ppm DDAC in harvested broccoli heads/side shoots is a great overestimate. Given that the calculated concentration for DDAC in broccoli is both very small (0.014 ppm) and considered to be a large overestimate, dietary exposures to DDAC from use in treatment of broccoli seed are expected to be negligible.

2. *Drinking water exposure.* Contamination of drinking water with Didecyl dimethyl ammonium chloride residues is expected to be negligible as the treatment rate is very low (8.2 g/acre or 0.0181 lb/acre) and the use is expected to be minor. Crucifer seed production is carried out in only a few small areas of the country. In addition, based on data indicating that DDAC is stable to hydrolysis and binds tightly to soil, these residues are expected to be immobilized by components of the soil and sediments. DDAC is classified as a surfactant possessing a charged moiety ($N^+$) and components that are nonpolar/lipophilic (the two 10-carbon alkyl groups). These components provide DDAC with properties allowing it to adsorb both to clay particles (via cation exchange) and organic matter (via hydrophobic attraction of the two alkyl groups). It adsorbs rapidly to soil and sediments but is not readily desorbed. It also binds to cellulose and lignin (organic matter) thus permitting its use as a wood preservative.

The only other Aliphatic Alkyl Quaternaries outdoor uses in addition to growing crops are as algaecides in decorative/swimming pools, antisapstain wood preservative treatment, once-through cooling tower treatment, and oil field uses. The pond and oil field uses are considered to be contained. The other uses are not expected to significantly contaminate drinking water sources. Therefore, the Aliphatic Alkyl Quaternaries contributions to drinking water exposure are considered to be negligible and are not quantified.

It should be noted that the Agency estimated water concentrations resulting from the antisapstain and cooling tower uses to which aquatic animals may be exposed. These levels were not considered appropriate for use in the drinking water assessment due to the very conservative nature of the models used, that the model estimates runoff/point source concentrations and not water body concentrations, and the fact that the models do not account for dilution.

Specific information on the dietary and drinking water exposure assessments for Aliphatic Alkyl Quaternaries can be found at *http://www.regulations.gov*. Docket ID Number EPA–HQ–OPP–2006–0338 Dietary Risk Assessment on DDAC and Tier 1 Drinking Water Assessment for Alkyl Dimethyl Benzyl Ammonium Chloride (ADBAC) & Didecyl Dimethyl Ammonium Chloride (DDAC).

*B. Other Non-Occupational Exposure*

No residential exposure to DDAC residues is expected from this proposed seed treatment use.

In general, residential exposure assessment considers all potential non-occupational pesticide exposure, other than exposure due to residues in food or in drinking water. Exposures may occur during and after application as a hard surfaces disinfectant (e.g., walls, floors, tables, fixtures), to textiles (e.g., clothing, diapers) to swimming pools and to carpets. Each route of exposure (oral, dermal, inhalation) is assessed, where appropriate, and risk is expressed as a Margin of Exposure (MOE), which is the ratio of estimated exposure to an appropriate NOAEL.

Residential exposure may occur during the application of Aliphatic Alkyl Quaternaries to indoor hard surfaces (e.g., mopping, wiping, trigger pump sprays), carpets, swimming pools, wood as a preservative, textiles (e.g.,

diaper treated during washing and clothes treated with fabric spray), and humidifiers. The residential handler scenarios were assessed to determine dermal and inhalation exposures. Surrogate dermal and inhalation unit exposure values were estimated using Pesticide Handler Exposure Database (PHED) data and the Chemical Manufacturers Association Antimicrobial Exposure Assessment Study (USEPA, 1999), and the SWIMODEL 3.0 was utilized to conduct exposure assessments of pesticides found in swimming pools and spas (Versar, 2003). Note that for this assessment, EPA assumed that residential users complete all elements of an application (mix/load/apply) without the use of personal protective equipment.

The duration for most residential exposures is believed to be best represented by the short-term duration (1 to 30 days). The short-term duration was chosen for this assessment because the residential handler and postapplication scenarios are assumed to be performed on an episodic, not daily basis.

Based on toxicological criteria and the potential for exposure, the Agency has conducted dermal and inhalation exposure assessments for Aliphatic Alkyl Quaternaries residential use. Specific information on the residential exposure assessment for Aliphatic Alkyl Quaternaries can be found at *http://www.regulations.gov*. Docket ID Number EPA–HQ–OPP–2006–0338 Didecyl Dimethyl Ammonium Chloride (DDAC) Occupational and Residential Exposure Assessment.

*C. Safety Factor for Infants and Children*

1. *In general.* Section 408 of FFDCA provides that EPA shall apply an additional tenfold (''10X'') margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act safety factor (FQPA SF). In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional FQPA SF value based on the use of traditional uncertainty/safety factors and/or special FQPA SFs, as appropriate.

2. *Prenatal and postnatal sensitivity.* There is no evidence that Aliphatic Alkyl Quaternaries result in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

3. *Conclusion.* EPA has determined that reliable data show that it would be safe for infants and children to reduce the FQPA SF to 1X except for assessments addressing inhalation exposure. For inhalation exposure assessments the 10X FQPA SF is retained. Those decisions are based on the following findings:

i. The toxicity database for Aliphatic Alkyl Quaternaries is complete except for a 90-day inhalation toxicity study in the rat which was requested in the Aliphatic Alkyl Quaternary Reregistration Eligibility Document. Due to the absence of the 90-day inhalation toxicity study, a FQPA SF of 10x has been applied to the oral endpoint to calculate inhalation risks in order to be protective of any uncertainties associated with route-to-route extrapolation.

ii. There is no indication that Aliphatic Alkyl Quaternaries are neurotoxic chemicals and there is no need for a developmental neurotoxicity study or additional uncertainty factors to account for neurotoxicity.

iii. There is no evidence that Aliphatic Alkyl Quaternaries result in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental toxicity studies or in young rats in the two-generation reproductive toxicity study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessment was performed based on 10% transfer rate and tolerance-level residues. Similarly conservative Residential SOPs were used to assess post-application exposure to children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by Aliphatic Alkyl Quaternaries.

## V. Cumulative Effects From Substances With a Common Mechanism of Toxicity

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

The Aliphatic Alkyl Quaternaries are a group (Group I cluster from PR Notice 88–2) of structurally similar quaternary ammonium compounds that are characterized by having a positively charged nitrogen covalently bonded to two alkyl group substituent's (at least one $C_8$ or longer) and two methyl substituent's. In finished form, these quaternary ammonium compounds are salts with the positively charged nitrogen (cation) balanced by a negatively charged ion (anion). The anion for the quaternary ammonium compounds in this cluster is chloride or bromide. Dimethyl Didecyl ammonium chloride, or DDAC, was chosen as the representative chemical for the Group I Cluster in PR notice 88–2. On that basis, the toxicology database for DDAC is accepted as representative of the hazard for this class of quaternary ammonium compounds.

EPA's risk assessment for the Group I Cluster is based on an assessment of the exposure to all aliphatic alkyl quaternary compounds. Although grouped in 1988 based on structural similarity, a formal determination of common mechanism has not been conducted. The individual exposure scenarios in the DDAC assessments (as well as the aggregate assessment in the RED) were developed by assuming that a DDAC compound was used on 100 percent of the food contact surfaces authorized on the label that could result in human exposure. Thus, the risk assessment for DDAC accounts for exposures to all of the Aliphatic Alkyl Quaternary compounds. The Agency has not identified any other substances as sharing a common mechanism of toxicity with Didecyl dimethyl ammonium chloride.

Didecyl dimethyl ammonium chloride does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that DDAC does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative*.

## VI. Determination of Safety for U.S. Population, Infants and Children

Conservative estimates indicate that there is no reasonable expectation that anything greater than negligible residues of DDAC will be present in broccoli as a result of the proposed seed treatment use. EPA has previously. *http://www.regulations.gov,* Docket ID Number EPA–HQ–OPP–2006–0572 determined that risks from aggregate exposure are safe, 72 FR 51180 (September 6, 2007); 73 FR 37852 (July 2, 2008) this proposed

seed treatment use adds essentially zero additional exposure so the prior aggregate risk conclusion remains applicable. The only change in this assessment is the retention of the FQPA 10X safety factor for inhalation risks which makes the level of concern MOEs of 1000 or below. The MOEs for residential handler inhalation risks were all ≥3400 and thus are not of concern. Adult and child inhalation risks were found to be of concern in the Reregistration Eligibility Document as a result of breathing mist from treated humidifier water; this was the only child's inhalation scenario. To eliminate this risk, Didecyl dimethyl ammonium chloride has been restricted to use in evaporative humidifiers. Evaporative humidifiers, unlike other types of humidifiers, do not generate and expel treated droplets or mist. The Didecyl dimethyl ammonium chloride will volatilize in, at most, negligible amounts from treated water in evaporative humidifiers. Aliphatic Alkyl Quaternaries are salts that are very soluble in water and have a negligible vapor pressure; as a result, they have a very low Henry's Law Constant which means they have a negligible tendency to volatilize from an aqueous solution such as that in treated humidifier water.

Accordingly, in reliance on the previous safety finding, and the determinations made in that rulemaking document and this document, EPA finds that there is a reasonable certainty that no harm will result to the general population or to infants and children from aggregate exposure to Didecyl dimethyl ammonium chloride residues. Further, EPA concludes that the proposed use will not pose a risk under reasonable foreseeable circumstances. Therefore, EPA finds that exempting DDAC from the requirement of a tolerance when used as a broccoli seed treatment will be safe.

## VII. Other Considerations

### *A. Analytical Enforcement Methodology*

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

### *B. International Residue Limits*

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for Didecyl dimethyl ammonium chloride in broccoli.

### *C. Response to Comments*

The Agency received one comment in response to the notice of filing for this petition. The commenter stated that they did not approve of the toxic chemical ''dimethyl (mercury) ammnia chloride'' being approved by the Agency.

In response to this comment, the Agency notes that mercury is not a component or degradate of Didecyl dimethyl ammonium chloride. EPA comprehensively evaluated the safety of DDAC in the *http://www.regulations.gov,* Docket ID Number EPA–HQ–OPP–2006–0572. The commenter has provided no basis for EPA to vary from its prior evaluation of the risk posed by DDAC.

## VIII. Conclusion

Therefore, an exemption from the requirements of a tolerance is established for residues of Didecyl dimethyl ammonium chloride in or on broccoli grown from treated seeds when applied by immersion.

## IX. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

## X. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report 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 this final rule in the

**Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 23, 2012.

**Joan Harrigan Farrelly,**

*Director, Antimicrobials Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.1317 is added to subpart D to read as follows:

**§ 180.1317 Pesticide chemicals; exemption from the requirements of a tolerance.**

An exemption from the requirement of a tolerance is established for residues of Didecyl dimethyl ammonium chloride in or on broccoli resulting from the use of Didecyl dimethyl ammonium chloride as a seed treatment at a treatment concentration of 1200 ppm prior to planting by immersion.

[FR Doc. 2012–19399 Filed 8–7–12; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[EPA–HQ–OPP–2010–0875; FRL–9348–8]**

## Flutriafol; Pesticide Tolerances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes and amends tolerances for residues of Flutriafol [((±)-α-(2-fluorophenyl)-α-(4-fluorophenyl)-1*H*-1,2,4-triazole-1-ethanol], including its metabolites and degradates in or on multiple commodities which are identified and discussed later in this document. Cheminova A/S, c/o Cheminova, Inc. requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective August 8, 2012. Objections and requests for hearings must be received on or before October 9, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2010–0875, is available either electronically through *http://www.regulations.gov* or in hard copy at the OPP Docket in the Environmental Protection Agency Docket Center (EPA/DC), located in EPA West, Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

**FOR FURTHER INFORMATION CONTACT:** Tamue L. Gibson, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–9096; email address: *gibson.tamue@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How can I get electronic access to other related information?*

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

*C. How can I file an objection or hearing request?*

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2010–0875 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before October 9, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2010–0875, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), Mail Code: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

## II. Summary of Petitioned-for Tolerance

In the **Federal Register** of December 15, 2010 (75 FR 78240) (FRL–8853–1), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0F7771) by Cheminova A/S, c/o Cheminova, Inc. 1600 Wilson Blvd., Arlington, VA 22209. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the fungicide flutriafol, including its metabolites and degradates, in or on corn, field, forage at 4.0 ppm; corn, field, stover at 6.0 ppm; corn, field, grain at 0.01 ppm; corn, field, flour at 0.03 ppm; corn, field, oil at 0.07 ppm; corn, field, meal at 0.03 ppm; corn, pop, stover at 6.0 ppm; corn, pop, grain at 0.01 ppm; grape at 1.1 ppm; grape, raisin at 2.5 ppm; peanut at 0.08 ppm; peanut, hay at 18 ppm; fruit, pome (Crop Group 11) at 0.60 ppm; fruit, stone (Crop Group 12) at 0.80 ppm; beet, sugar, root at 1.5 ppm; beet, sugar, tops at 2.5 ppm; beet, sugar, refined at 0.70 ppm; beet, sugar, molasses at 1.0 ppm; beet, sugar, dried pulp at 1.0 ppm; wheat, forage at 25 ppm; wheat, hay at 9.0 ppm; wheat, straw at 6.0 ppm; wheat, grain at 0.15 ppm; wheat, grain, bran at 0.20 ppm; wheat, grain, germ at 0.20 ppm; barley, hay at 9.0 ppm; barley, straw at 6.0 ppm; barley, grain at 0.15 ppm; barley, grain, bran at 0.20 ppm; buckwheat, grain at 0.15 ppm; oats, forage at 25 ppm; oats, hay at 9.0 ppm; oats, straw at 6.0 ppm; oats, grain at 0.15 ppm; oats, grain, bran at 0.20 ppm; rye, forage at 25 ppm; rye, straw at 6.0 ppm; rye, grain at 0.15 ppm; cattle, liver at 0.12 ppm; goat, liver at 0.12 ppm; horse, liver at 0.12 ppm; sheep, liver at 0.12 ppm; and milk at 0.02 ppm. The proposed tolerance for fruit, pome which is based on new field trial data for pears and previously submitted data for apples, will replace the current tolerance for apples at 0.20 ppm. That notice referenced a summary of the petition prepared by Cheminova A/S, c/o Cheminova, Inc, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, tolerances for corn, field, forage; corn, field, stover; corn, field, refined oil; and corn, pop, stover were lowered. Tolerances for corn, field, flour and corn, field, meal were not required. Established tolerances for apple; cattle, liver; goat, liver; hog, liver; horse, liver; and sheep, liver and established rotational crop tolerances for corn, field, forage; corn, field, stover; corn, field, grain; corn, field, refined oil; corn, pop; and corn, pop, stover are removed. The proposed tolerances for wheat, forage; wheat, hay; wheat, straw; wheat, grain; wheat, grain, bran; wheat, grain, germ; barley, hay; barley, straw; barley, grain; barley, grain, bran; buckwheat, grain; oat, forage; oat, hay; oat, straw; oat, grain; oat, grain, bran; rye, forage; rye, straw; and rye, grain were withdrawn by the petitioner. Tolerances were previously established on November 9, 2011 for banana, grape, raisin; pome and stone fruit, sugar beets and for the rotational corn crops—sweet, field, and popcorn, and cotton. The reasons for these changes are explained in Unit IV.C.

## III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue * * *.''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for flutriafol including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with flutriafol follows.

### *A. Toxicological Profile*

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Flutriafol has high oral acute toxicity in the mouse. It has low acute toxicity via the oral, dermal and inhalation routes in rats. Flutriafol is minimally irritating to the eyes and is not a dermal irritant. Flutriafol was not shown to be a skin sensitizer when tested in guinea pigs.

Short-term, subchronic, and chronic toxicity studies in rats, mice, and dogs identified the liver as the primary target organ of flutriafol. Hepatotoxicity was first evident in the subchronic studies (rats and dogs) in the form of increases in liver enzyme release (alkaline phosphatase), liver weights, and histopathology findings ranging from hepatocyte vacuolization to centrilobular hypertrophy and slight increases in hemosiderin-laden Kupffer cells. It is noteworthy that with chronic exposures, there are no indications of progression of liver toxicity in any of the species tested. After over 1 year of exposure, hepatotoxicity in rats, dogs, and mice took the form of minimal to severe fatty changes; bile duct proliferation/cholangiolarfibrosis; hemosiderin accumulation in Kupffer cells; centrilobular hypertrophy, and increases in alkaline phosphatase release. Slight indications of effects in the hematopoietic system are sporadically seen in the database. These effects were manifested in the form of slight anemia (rats and dogs) and increased platelet, white blood cell, neutrophil, and lymphocyte counts (mice). These effects, however, were minimal in severity.

Flutriafol is considered to be ''Not likely to be Carcinogenic to Humans'' based on the results of the carcinogenicity studies in rats and mice. The results of the rat chronic toxicity/carcinogenicity study and the mouse carcinogenicity study are negative for carcinogenicity. All genotoxicity studies on flutriafol showed no evidence of clastogenicity or mutagenicity.

Specific information on the studies received and the nature of the adverse effects caused by flutriafol as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document ''Flutriafol: Human Health Risk Assessment for Proposed Uses on Corn, Grapes, Peanuts, Pome Fruit (Crop Group 11), Stone Fruit (Crop Group 12), Sugar Beets, Wheat, Barley, Triticale, Buckwheat, Oats, Rye, Teosinte, and Imported Bananas,'' at p. 40 in docket ID number EPA–HQ–OPP–2010–0875.

*B. Toxicological Points of Departure/ Levels of Concern*

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/ safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

A summary of the toxicological endpoints for flutriafol used for human risk assessment is shown in the following table.

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR FLUTRIAFOL FOR USE IN HUMAN HEALTH RISK ASSESSMENT

| Exposure/ Scenario | Point of departure and uncertainty/Safety factors | RfD, PAD, LOC for risk assessment | Study and toxicological effects |
|---|---|---|---|
| Acute dietary (Females 13–49 years of age). | NOAEL = 7.5 mg/kg/day .....<br>$UF_A$ = 10x<br>$UF_H$ = 10x<br>FQPA SF = 1x | Acute RfD = 0.075 mg/kg/day<br>aPAD = 0.075 mg/kg/day. | Developmental study-rabbit LOAEL = 15 mg/kg/day based on decreased number of live fetuses, complete litter resorptions and increased post-implantation loss. |
| Acute dietary (General population including infants and children). | NOAEL = 250 mg/kg/day .....<br>$UF_A$ = 10x<br>$UF_H$ = 10x<br>FQPA SF = 1x | Acute RfD = 2.5 mg/kg/day<br>aPAD = 2.5 mg/kg/day. | Neurotoxicity screening battery-rat<br>LOAEL = 750 mg/kg/day based on decreased body weight, body-weight gain, absolute and relative food consumption, and clinical signs of toxicity in both sexes: Dehydration, urine-stained abdominal fur, ungroomed coat, ptosis, decreased motor activity, prostration, limp muscle tone, muscle flaccidity, hypothermia, hunched posture, impaired or lost righting reflex, scant feces; in males: Red or tan perioral substance, chromodacryorrhea, chromorhinorrhea and labored breathing, and in females: piloerection and bradypnea. |
| Chronic dietary (All populations) | NOAEL= 5 mg/kg/day .....<br>$UF_A$ = 10x<br>$UF_H$ = 10x<br>FQPA SF = 1x | Chronic RfD = 0.05 mg/kg/day<br>cPAD = 0.05 mg/kg/day. | Chronic toxicity-dog LOAEL = 20 mg/kg/day based on adverse liver findings (increased liver weights, increased centrilobular hepatocyte lipid in the liver, and increases in alkaline phosphatase, albumin, and triglycerides), increased adrenal cortical vacuolation of the zona fasciculata, and marked hemosiderin pigmentation in the liver and spleen in both sexes; mild anemia (characterized by decreased hemoglobin, hematocrit, and red blood cell count) in the males; and initial body-weight losses, decreased cumulative body-weight gains, and increased adrenal weights in the females. |
| Cancer (Oral, dermal, inhalation). | Classification: "Not likely to be Carcinogenic to Humans" based on the carcinogenicity studies in rats and mice. | | |

$UF_A$ = extrapolation from animal to human (interspecies). $UF_H$ = potential variation in sensitivity among members of the human population (intraspecies). FQPA SF = Food Quality Protection Act Safety Factor. PAD = population-adjusted dose (a = acute, c = chronic). RfD = reference dose. mg/kg/day = milligrams/kilogram/day.

*C. Exposure Assessment*

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to flutriafol, EPA considered exposure under the petitioned-for tolerances as well as all existing flutriafol tolerances in 40 CFR 180.629. EPA assessed dietary exposures from flutriafol in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

Such effects were identified for flutriafol. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide

Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA made the following assumptions for the acute exposure assessment: tolerance-level residues or tolerance-level residues adjusted to account for the residues of concern for risk assessment, 100 percent crop treated (PCT), and Dietary Exposure Evaluation Model (DEEM™) version 7.81 default processing factors were used.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA made the following assumptions for the chronic exposure assessment: tolerance-level residues or tolerance-level residues adjusted to account for the residues of concern for risk assessment, 100 PCT, and DEEM™ version 7.81 default processing factors were used.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that flutriafol does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and PCT information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for flutriafol. Tolerance level residues or tolerance-level residues adjusted upward to account for the residues of concern for risk assessment and 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the flutriafol dietary exposure analysis and risk assessment. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of flutriafol. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the Food Quality Protection Act (FQPA) Food Index Reservoir Screening Tool (FIRST), and Pesticide Root Zone Model/Ground Water (PRZM/GW), the estimated drinking water concentrations (EDWCs) of flutriafol for acute exposures are estimated to be 48.8 parts per billion (ppb) for surface water and 310 ppb for ground water.

For chronic exposures for non-cancer assessments the EDWC's are estimated to be 5.70 ppb for surface water and 202 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 310 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Flutriafol is not registered for any specific use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Flutriafol is a member of the conazole (triazole) class of pesticides. Although conazoles act similarly in plants (fungi) by inhibiting ergosterol biosynthesis, there is not necessarily a relationship between their pesticidal activity and their mechanism of toxicity in mammals. Structural similarities do not constitute a common mechanism of toxicity. Evidence is needed to establish that the chemicals operate by the same, or essentially the same, sequence of major biochemical events (EPA, 2002). In conazoles, however, a variable pattern of toxicological responses is found; some are hepatotoxic and hepatocarcinogenic in mice. Some induce thyroid tumors in rats. Some induce developmental, reproductive, and neurological effects in rodents. Furthermore, the conazoles produce a diverse range of biochemical events including altered cholesterol levels, stress responses, and altered DNA methylation. It is not clearly understood whether these biochemical events are directly connected to their toxicological outcomes. Thus, there is currently no evidence to indicate that conazoles share common mechanisms of toxicity and EPA is not following a cumulative risk approach based on a common mechanism of toxicity for the conazoles. For information regarding EPA's procedures for cumulating effects from substances found to have a common mechanism of toxicity, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

Triazole-derived pesticides can form the metabolite 1,2,4-triazole (T) and several conjugated triazole metabolites. To support existing tolerances and to establish new tolerances for triazole-derivative pesticides, EPA conducted an initial human-health risk assessment for exposure to T and the conjugated triazole metabolites resulting from the use of all current and pending uses of any triazole-derived fungicide as of September 1, 2005. The risk assessment was a highly conservative, screening-level evaluation in terms of hazards associated with common metabolites (e.g., use of a maximum combination of uncertainty factors) and potential dietary and non-dietary exposures (i.e., high-end estimates of both dietary and non-dietary exposures). In addition, the Agency retained the additional 10X FQPA SF for the protection of infants and children. The assessment included evaluations of risks for various subgroups, including those comprised of infants and children. The Agency's complete risk assessment can be found in the propiconazole reregistration docket at *http://www.regulations.gov,* Docket Identification (ID) Number EPA–HQ–OPP–2005–0497 and an updated assessment may be found in docket ID EPA–HQ–OPP–2011–0120 in the document entitled ''Common Triazole Metabolites: Updated Dietary (Food + Water) Exposure and Risk Assessment to Address the Amended metconazole Section 3 Registration to Add uses on Tuberous and Corm Vegetables (Group 1C) and Bushberry Subgroup 13–07B.'' The Agency has determined that the proposed application to field and popcorn will not result in residues of 1,2,4-triazole (T), triazolylalanine (TA), and triazolylacetic acid (TAA) greater than the estimates incorporated in the most recent assessment. Therefore, a revised triazole metabolite assessment is not needed.

### *D. Safety Factor for Infants and Children*

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* The potential impact of *in utero* and perinatal flutriafol exposure was investigated in three developmental toxicity studies (two in rats, one in rabbits) and two multigenerational reproduction toxicity studies in rats. In the first of two rat developmental toxicity studies, a quantitative susceptibility was observed (delayed ossification or non-ossification of the skeleton in the fetuses) at a lower dose than maternal effects. In the second rat developmental study, a qualitative susceptibility was noted. Although developmental toxicity occurred at the same dose level that elicited maternal toxicity, the developmental effects (external, visceral, and skeletal malformations; embryo lethality; skeletal variations; a generalized delay in fetal development; and fewer live fetuses) were more severe than the decreased food consumption and body-weight gains observed in the dams. For rabbits, intrauterine deaths occurred at a dose level that also caused adverse effects in maternal animals. In the 2-generation reproduction studies, a qualitative susceptibility was also seen. Effects in the offspring—decreased litter size and percentage of live births (increased pup mortality) and liver toxicity—can be attributed to the systemic toxicity of the parental animals (decreased body weight and food consumption and liver toxicity).

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for flutriafol is complete.

ii. There is no concern for neurotoxicity with flutriafol. Signs of neurotoxicity were reported in the acute and subchronic neurotoxicity studies at the highest dose only; however, these effects were primarily seen in animals that were agonal (at the point of death) and thus, are not indicative of neurotoxicity. In addition, there was no evidence of neurotoxicity in any additional short-term studies in rats, mice, and dogs, or in the long-term toxicity studies in rats, mice, and dogs. A developmental neurotoxicity study (DNT) is not required given these results.

iii. There are no residual uncertainties for pre- and/or post-natal toxicity. Though there is evidence for increased susceptibility in the prenatal studies in rats and rabbits and the 2-generation reproduction study in rats, there are no concerns for the offspring toxicity observed in the developmental and reproductive toxicity studies for the following reasons:

a. Clear NOAELs and LOAELs were established in the fetuses/offspring;

b. The dose-response for these effects are well defined and characterized;

c. Developmental endpoints are used for assessing acute dietary risks to the most sensitive population (females 13–49) as well as all other short- and intermediate-term exposure scenarios; and

d. The chronic reference dose is greater than 300-fold lower than the dose at which the offspring effects were observed in the 2-generation reproduction studies.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level (or higher) residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to flutriafol in drinking water. These assessments will not underestimate the exposure and risks posed by flutriafol.

### *E. Aggregate Risks and Determination of Safety*

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to flutriafol will occupy 24% of the aPAD for females 13–49 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to flutriafol from food and water will utilize 42% of the cPAD for all infants less than 1 year old the population group receiving the greatest exposure. There are no residential uses for flutriafol. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of flutriafol is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Flutriafol is not registered for any use patterns that would result in short-term residential exposure. Therefore, the short-term aggregate risk is the sum of the risk from exposure to flutriafol through food and water and will not be greater than the chronic aggregate risk.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Flutriafol is not registered for any use patterns that would result in intermediate-term residential exposure. Therefore, the intermediate-term aggregate risk is the sum of the risk from exposure to flutriafol through food and water, which has already been addressed, and will not be greater than the chronic aggregate risk.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, flutriafol is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to flutriafol residues.

## IV. Other Considerations

### *A. Analytical Enforcement Methodology*

Adequate enforcement methodology (Gas Chromatography/Nitrogen/Phosphorus detector (GS/NPD) method for proposed tolerances and method ICIA AM00306 for ruminant liver) are available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

### *B. International Residue Limits*

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture

Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level. The Codex has not established a MRLs for flutriafol; therefore, harmonization is not an issue.

*C. Revisions to Petitioned-for Tolerances*

Based on the analysis of the residue trial data and Organization for Economic Cooperation and Development (OECD) tolerance calculation procedures, tolerances for corn, field, forage; corn, pop, stover; and corn, field, stover were lowered. Established rotational crop tolerances for corn, field forage; corn, field, stover; corn, field, grain; corn, field, refined oil; corn, pop; and corn, pop, stover are removed as they are superseded by tolerances for direct application to the growing crop. The established tolerance for apple is removed and superseded by the previously established higher tolerance for fruit, pome, group 11–09. The established tolerances for cattle; liver; goat, liver; hog, liver; horse, liver; and sheep, liver are replaced by tolerances for meat byproducts of cattle, goat, hog, horse, and sheep. Based on the results from the field corn processing study, tolerances for corn, field, flour and corn, field, meal are not needed. Tolerances for wheat, forage; wheat, hay; wheat, straw; wheat, grain; wheat, bran; wheat, germ; barley, hay; barley, straw; barley, grain; barley, grain, bran; buckwheat, grain; oat, forage; oat, hay; oat, straw; oat, grain; oat, grain, bran; rye, forage; rye, straw; rye, grain were withdrawn by the petitioner. Tolerances were previously established on November 9, 2011 for banana; grape; grape, raisin; pome and stone fruit; sugar beets and for the rotational crops, field and popcorn, and cotton.

## V. Conclusion

Therefore, tolerances are established for residues of flutriafol, [((±)-α-(2-fluorophenyl)-α-(4-fluorophenyl)-1*H*-1,2,4-triazole-1-ethanol], including its metabolites and degradates, in or on corn, field, forage at 0.75 ppm; corn, field, stover at 1.5 ppm; corn, field, grain at 0.01 ppm; corn, field, refined oil at 0.02 ppm; corn, pop at 0.01 ppm; corn, pop, stover at 1.5 ppm; cattle, meat byproducts at 0.07 ppm; goat, meat byproducts at 0.07 ppm; hog, meat byproducts at 0.02 ppm; horse, meat byproducts at 0.07 ppm and sheep, meat byproducts at 0.07 ppm. This final rule deletes established tolerances for apple; cattle; liver; goat, liver; hog, liver; horse, liver; and sheep, liver. This final rule also deletes established rotational crop tolerances for corn, field, forage; corn, field, stover; corn, field, grain; corn, field, refined oil; corn, pop; and corn, pop, stover.

## VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

## VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report 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 this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

## List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 27, 2012.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.629 is amended as follows:

■ i. Remove the entries for ''Apple''; ''Cattle, liver''; ''Goat, liver''; ''Hog, liver''; ''Horse, liver''; and ''Sheep, liver'' from the table to paragraph (a).

■ ii. Add alphabetically the entries for ''Cattle, meat byproducts''; ''Corn, field, forage''; ''Corn, field, grain''; ''Corn, field, refined oil''; ''Corn, field, stover'';

''Corn, pop''; ''Corn, pop, stover''; ''Goat meat byproducts''; ''Hog, meat byproducts''; ''Horse meat byproducts''; and ''Sheep meat byproducts'' to the table in paragraph (a).

■ iii. Remove the entries for ''Corn, field, forage''; ''Corn, field, grain''; ''Corn, field, refined oil''; ''Corn, field, stover''; ''Corn, pop''; and ''Corn, pop, stover'' from the table in paragraph (d).

The added entries read as follows:

**§ 180.629 Flutriafol; tolerances for residues.**

(a) * * *

| Commodity | Parts per million |
|---|---|
| * * * * * | |
| Cattle, meat byproducts | 0.07 |
| Corn, field, forage | 0.75 |
| Corn, field, grain | 0.01 |
| Corn, field, refined oil | 0.02 |
| Corn, field, stover | 1.5 |
| Corn, pop | 0.01 |
| Corn, pop, stover | 1.5 |
| * * * * * | |
| Goat, meat byproducts | 0.07 |
| * * * * * | |
| Hog, meat byproducts | 0.02 |
| Horse, meat byproducts | 0.07 |
| * * * * * | |
| Sheep, meat byproducts | 0.07 |
| * * * * * | |

* * * * *

[FR Doc. 2012–19317 Filed 8–7–12; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

**[EPA–R08–RCRA–2010–0933; FRL–9712–3]**

## South Dakota: Final Authorization of State Hazardous Waste Management Program Revisions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The EPA is granting final authorization of the changes to the hazardous waste program revisions submitted by South Dakota. The Agency published a Proposed Rule on December 27, 2010, and provided for public comment. No comments were received on the Resource Conservation and Recovery Act (RCRA) program issues. There was one comment from the South Dakota State Deputy Attorney General regarding Indian country language. No further opportunity for comment will be provided.

**DATES:** This final rule is effective on August 8, 2012.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–R08–RCRA–2010–0933. All documents in the docket are listed on the Federal eRulemaking Portal: *http://www.regulations.gov.* Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at: EPA Region 8, from 8 a.m. to 3 p.m., 1595 Wynkoop Street, Denver, Colorado 80202, contact: Moye Lin, phone number (303) 312–6667, email address: *lin.moye@epa.gov,* or SDDENR, from 9 a.m. to 5 p.m., Joe Foss Building, 523 E. Capitol, Pierre, South Dakota 57501, contact: Carrie Jacobson, phone number (605) 773–3153.

**FOR FURTHER INFORMATION CONTACT:** Moye Lin, 303–312–6667, *lin.moye@epa.gov* or Carrie Jacobson, phone number (605) 773–3153, *Carrie.Jacobson@state.sd.us.*

**SUPPLEMENTARY INFORMATION:**

### I. Authorization of Revisions to South Dakota's Hazardous Waste Program

On April 1, 2010, South Dakota submitted a final complete program revision application seeking authorization of their changes in accordance with 40 CFR 271.21. We now make a Final decision that South Dakota's hazardous waste program revisions satisfy all of the requirements necessary to qualify for Final authorization. For a list of rules that become effective with this Final Rule please see the Proposed Rule published in the December 27, 2010 **Federal Register** at 75 FR 81187.

*Response to Comments:* The EPA proposed to authorize South Dakota's State Hazardous waste management Program revisions published in the December 27, 2010 **Federal Register** at 75 FR 81187. The EPA received only one comment from the state of South Dakota objecting to the EPA's definition of Indian country, where the state is not authorized to administer its program. Specifically, the state disagreed that all ''trust land'' in South Dakota is Indian country. With this Final Rule the EPA is clarifying that Indian country lands within the exterior boundary of the Yankton Reservation are excluded from the state's authorized program. Further explanation of this interpretation of Indian country can be found at 67 FR 45684 through 45686 (July 10, 2002).

### II. Statutory and Executive Order Reviews

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

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the

National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This action will be effective August 8, 2012.

### List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Hazardous waste, Indian lands, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: July 2, 2012.

**James B. Martin,**

*Regional Administrator, Region 8.*

[FR Doc. 2012–19324 Filed 8–7–12; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 635

[Docket No. 110208116–2233–02]

RIN 0648–BA75

## Atlantic Highly Migratory Species; Electronic Dealer Reporting Requirements

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

**ACTION:** Final rule.

**SUMMARY:** This final rule will require that Federal Atlantic swordfish, shark, and tuna dealers report receipt of Atlantic sharks, swordfish, and bigeye, albacore, skipjack, and yellowfin (BAYS) tunas to NMFS through an electronic reporting system on a weekly basis. At this time, Atlantic Highly Migratory Species (HMS) dealers will not be required to report bluefin tuna through this electronic reporting system, as a separate reporting system is currently in place for this species. This final rule changes the current definition of who is considered an Atlantic HMS dealer and will require Atlantic HMS dealers to submit dealer reports to NMFS in a timely manner in order to be able to purchase commercially-harvested Atlantic sharks, swordfish, and BAYS tunas. Any delinquent reports will need to be submitted by the dealer and received by NMFS before a dealer can purchase commercially-harvested Atlantic sharks, swordfish, and BAYS tunas from a fishing vessel. These measures are necessary to ensure timely and accurate reporting, which is critical for quota monitoring and management of these species.

**DATES:** Effective January 1, 2013.

**ADDRESSES:** Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910. Copies of the supporting documents, including a Regulatory Impact Review (RIR), Final Regulatory Flexibility Analysis (FRFA), and small entity compliance guide, are available online at the HMS Management Division Web site at *http://www.nmfs.noaa.gov/sfa/hms/.* Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to Delisse Ortiz with the Atlantic Highly Migratory Species Management Division and by email to *OIRA_Submission@omb.eop.gov* or fax to 202–395–7285.

**FOR FURTHER INFORMATION CONTACT:** Delisse Ortiz or Karyl Brewster-Geisz at 301–427–8541, or Jackie Wilson at 240–338–3936.

**SUPPLEMENTARY INFORMATION:**

Atlantic HMS are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1801 *et seq.,* and the Atlantic Tunas Convention Act (ATCA), 16 U.S.C. 971 *et seq.* Under the MSA, NMFS must ensure consistency with the National Standards and manage fisheries to maintain optimum yield, rebuild overfished fisheries, and prevent overfishing. Under the ATCA, the Secretary of Commerce is required to promulgate regulations, as may be necessary and appropriate, to implement the recommendations adopted by the International Commission for the Conservation of Atlantic Tunas (ICCAT). The authority to issue regulations under MSA and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA). The implementing regulations for Atlantic HMS are at 50 CFR part 635.

### Background

On June 28, 2011 (76 FR 37750), NMFS published a proposed rule in the **Federal Register** to require that Federal Atlantic swordfish, shark, and tunas dealers report receipts of Atlantic sharks, swordfish, and BAYS tunas to NMFS through an electronic reporting system. The proposed rule also included flexible reporting regimes, which would allow NMFS to collect more frequent dealer reports when key Atlantic shark fisheries are open or as quotas become filled in the Atlantic swordfish and BAYS tunas fisheries, and addressed two additional topics: the definition of an Atlantic HMS dealer and the timely submission of Atlantic HMS dealer reports. The proposed rule contained additional details regarding the impacts of the alternatives considered and a brief summary of the recent management history. Those details are not repeated here.

This final rule implements the requirement of electronic HMS dealer reporting, and is necessary to ensure timely and accurate reporting, which is critical for quota monitoring and management of these species. As described below, based in part on public comment, in this final rule, NMFS is changing several aspects of the proposed rule.

In the proposed rule, NMFS considered and analyzed four

alternatives. In the preferred alternative in the proposed rule, NMFS proposed to increase the frequency of both positive and negative dealer reporting for Atlantic sharks, swordfish, and BAYS tunas to better facilitate timely quota monitoring. Specifically, NMFS proposed to change the reporting frequency depending on the available quota, length of fishing season, and species/species complexes when certain triggers were met by the different fisheries, as described in the proposed rule. In addition, the rule also proposed that all first receivers of Atlantic sharks, swordfish, and BAYS tunas harvested by federally-permitted U.S. vessels, including entities that only shipped HMS product, must obtain a corresponding Federal Atlantic swordfish, shark, and/or tunas dealer permit and report such receipts to NMFS through the electronic reporting system so that NMFS can receive more species- and vessel-specific information. Finally, NMFS proposed that dealers must submit reports by the required deadline in order to be able to receive Atlantic swordfish, sharks, or BAYS tunas. Any delinquent reports would need to be submitted by the dealer and received by NMFS before a Federal Atlantic HMS dealer could purchase commercially-harvested Atlantic swordfish, sharks, and BAYS tunas from a fishing vessel.

In this final rule, NMFS implements a requirement that dealers submit reports on a weekly basis in order to be able to purchase commercially-harvested Atlantic swordfish, sharks, and BAYS tunas from a fishing vessel. NMFS recognizes that daily reporting requirements for sharks, as proposed under alternative A3 in the proposed rule, would not allow dealers sufficient time to gather accurate price information for sharks and could have resulted in a large reporting burden on dealers. At the same time, NMFS acknowledges that unlike some shark fisheries, Atlantic swordfish and BAYS tunas fisheries are currently not quota limited and may not require more frequent reporting than the current biweekly reporting. However, NMFS notes that other Federal dealer permits currently require weekly reporting, including all Northeast Regional Office (NERO)-issued dealer permits. Many HMS dealers also possess NERO-issued permits and, therefore, are already reporting on a weekly basis. Additionally, many fisheries managed by SERO are moving to weekly dealer reporting and many HMS dealers also possess permits for these fisheries. Therefore, NMFS believes that weekly reporting balances the need for more timely landings data and maintains consistency in reporting requirements for different dealer permits. In addition, NMFS is integrating the HMS electronic reporting requirements into existing electronic reporting programs mainly to ease the overall burden on dealers.

Thus, to better facilitate timely quota monitoring, NMFS will implement weekly reporting requirements for both positive and negative dealer reporting of Atlantic sharks, swordfish, and BAYS tunas. Positive reports of all species on a Federal dealer report through the NMFS-approved electronic reporting systems will fulfill reporting requirements for BAYS tunas, swordfish, and sharks purchased within the required reporting timeframe as required under § 635.5(b)(ii). A negative report by the required deadline indicates no receipt or purchase of any species required to be reported. NMFS may consider changing the reporting frequency in a future rulemaking as needed for management of Atlantic BAYS tunas, sharks, and swordfish fisheries.

In addition, during the comment period, NMFS heard that requiring first receivers to obtain dealer permits for receiving Atlantic swordfish and BAYS tunas would result in major disruptions to HMS dealers, and their business practices, especially in the Northeast. NMFS also heard that transporters of HMS product do not have the knowledge, training, or necessary equipment, such as scales for weighing product, to act as dealers. NMFS heard that Atlantic swordfish and BAYS tunas dealers have fewer species to identify compared to Atlantic shark dealers and price differences between Atlantic swordfish and BAYS tunas are greater so that species-specific reporting is more easily achieved for those fisheries. NMFS also heard that although the current definition of first receiver for Atlantic sharks potentially includes entities taking possession other than by purchasing trading or bartering, that has not been the practice in the industry. Furthermore, because many first receivers receive sharks, BAYS tunas, and swordfish, NMFS believe it is important to have one consistent definition of first receiver across all species. This one definition would simplify the regulations and maintain consistency with respect to who is considered a first receiver across species. Thus, NMFS will change the definition of first receiver with regard to which entity is required to have a dealer permit for receiving Atlantic tunas, sharks, and swordfish to make it more consistent with current industry practice and to simplify the regulations. That is, a person who takes possession for commercial purposes, any BAYS tunas, swordfish, or shark or parts of those species by purchasing, trading, or bartering once it is offloaded from the vessel owner or operator of a fishing vessel will be required to obtain the corresponding federal HMS dealer permit.

NMFS proposed a range of alternatives for the implementation date of the electronic dealer reporting requirements and associated regulations, ranging from implementation beginning within 30 days of the final rule to a delayed implementation of three months. NMFS received unanimous support for delaying the implementation of the final regulations to allow dealers additional time to adjust their business practices, receive training for the new reporting system, and obtain capital for computer equipment and internet service. As such, this final rule will delay implementation of the new electronic dealer requirements until 2013, when the reporting system will be available and training workshops will have occurred. The purpose of the training workshops and webinars is to introduce and train dealers in using the new system in order to help ease the transition from the paper format to the new electronic reporting system. NMFS intends to hold several training workshops in appropriate locations along the east coast and Gulf of Mexico. During final implementation, NMFS will provide all permitted dealers with instructions on how to access the system, information on the web browser requirements, and instructions on how to obtain login and password information. This information will also be provided for individuals applying for a new dealer permit.

During the comment period, NMFS also received some comments from dealers who were concerned about what would happen if they lost power, such as during a hurricane, or if the system went down. Specifically, these dealers did not want to be penalized for not reporting on time in such a situation. NMFS has designed the regulations to provide some Agency discretion, in responding to reporting delays caused by natural disasters or other non-preventable events. The system itself has backups and is not expected, in the course of normal business operations, to be down for long periods of time.

**Response to Comments**

During the proposed rule stage, NMFS received nine written comments from non-governmental organizations,

fishermen, dealers, and other interested parties. NMFS also heard numerous comments from constituents in attendance at eight public hearings and while conducting outreach during phone calls. A summary of the major comments received for each proposed measure (electronic dealer reporting, frequency of reporting, timely dealer reporting and IRFA Alternatives) on the proposed rule during the public comment period is shown below with NMFS' responses. NMFS also received comments on exempted fishing/display permits, weak hooks, re-opening of closed areas, the size of existing quotas, and the stock status of sharks. However, these comments were not considered in the summary below as they were outside the scope of this rulemaking. All written comments submitted during the comment period can be found at *http://www.regulations.gov/* by searching for RIN 0648–BA75.

*Electronic Dealer Reporting*

*Comment 1:* NMFS should set up a workshop to sit down with Agency and industry representatives to design the electronic reporting system so that NMFS can receive feedback on the practical aspects of how a dealer's business works.

*Response:* NMFS agrees. NMFS began designing and building an electronic reporting system when NMFS began working on the proposed rule. The system is based on similar systems such as the Standard Atlantic Fisheries Information System (SAFIS) and the Southeast electronic Trip Ticket reporting system. During this time, NMFS asked some HMS dealers to test the system and provide feedback. This feedback resulted in many changes and improvements to the system. NMFS also had early versions of the system available at the April 2011, September 2011, and March 2012 HMS Advisory Panel meetings for review and comment. In addition, as originally proposed, the Agency will delay implementation of the electronic dealer reporting system until 2013 in order to provide sufficient time for dealers to adjust to implementation of the new system and the additional requirements. During this time, NMFS will conduct outreach with industry representatives and dealers as well as provide additional outreach materials (e.g., System User Guide and Compliance Guides) to improve understanding and use of the new system. These outreach materials will be free and available through the new system and HMS Web site (*http://www.nmfs.noaa.gov/sfa/hms/index.htm*).

*Comment 2:* NMFS received several comments regarding the change to electronic reporting, including: support for the change to electronic reporting; questions about why NMFS is considering electronic reporting; support for NMFS requiring paper or electronic reporting, but not a mixture of both; and concern that more timely and efficient data collection is needed for management as the lack of real-time data is costing jobs. The Atlantic States Marine Fisheries Commission (ASMFC) also commented that electronic reporting does not require specialized equipment and dealers should be able to comply.

*Response:* The current regulations and infrastructure of the Atlantic HMS quota-monitoring systems result in a delay of several weeks to almost a month before NMFS receives dealer data. Once NMFS receives dealer data in a paper format, the data need to be transferred into the data systems and quality checked before it is available for use. This delay in the availability of dealer data effects the management and monitoring of small Atlantic HMS quotas and short fishing seasons, particularly for many of the shark fisheries. As such, NMFS is requiring all Federal Atlantic HMS dealers (except for dealers reporting Atlantic bluefin tuna) to report receipt of Atlantic sharks, swordfish, and BAYS tunas to NMFS through one centralized electronic reporting system. The new electronic reporting system will be integrated within existing SAFIS and Trip Tickets electronic reporting programs, thus reducing the number of places that dealers need to report. Under this new system, dealers will submit HMS data electronically instead of in a paper format and include additional information that is necessary for management of HMS (e.g., vessel and logbook information). The electronic submission of data will eliminate the delay associated with mailing in reports to NMFS and transferring reported data into electronic systems. In this manner, HMS landings data will be submitted on a more real-time basis, allowing for timely and efficient collection and use of data for management of Atlantic HMS. Once the system is fully operating, NMFS could consider altering the 80-percent trigger limit for closing the shark fishery to allow fishermen to more fully utilize the available quota.

*Comment 3:* NMFS received comments in opposition to mandatory electronic dealer reporting as some dealers do not currently own a computer and reporting on paper is easier than getting the electronic system up and running, which is often time-consuming.

*Response:* While NMFS recognizes that, in the short-term, the implementation of an HMS electronic dealer reporting system will change business practices for dealers and, for some, may result in some additional costs associated with purchasing a computer and internet service. In the short-term, electronic reporting can lead to more efficient fisheries and business practices that could be more economical in the long term (e.g., fishing seasons being open longer, easier negative reporting, etc.). As explained in the response to Comment 2, the existing regulations and infrastructure regarding dealer reporting have created issues for effective management and monitoring of small Atlantic HMS quotas and short fishing seasons. For instance, currently there is a delay of 10 to 25 days in the receipt of landings data received through dealer reports in a paper format. To reduce this delay, the Agency is requiring all federally-permitted HMS dealers to report receipt of swordfish, sharks, and BAYS tunas on a weekly basis to NMFS through the new HMS electronic reporting system. However, as previously mentioned in Comment 1, the Agency will delay the implementation of the new HMS electronic reporting system for all federally-permitted HMS dealers until 2013 to allow dealers more time to adjust their business practices, train in the new reporting system, and obtain necessary equipment (e.g., computer and internet service). NMFS is also holding training workshops to assist dealers in learning to use the new system. Anyone who would like to request a training workshop may contact Delisse Ortiz or Karyl Brewster Geisz at 301–427–8503.

*Comment 4:* NMFS received a comment questioning whether or not the electronic dealer reporting system would require a high-speed internet connection. Some dealers also stated that NMFS will need to help dealers in getting the electronic reporting system set up on their computers as well as conduct outreach to inform dealers how to use the new system.

*Response:* NMFS' new HMS electronic reporting system requires the most basic internet connection to support the new system. The electronic reporting system will be available through SAFIS, which requires data entry through a Web site. The system will also be available through Trip Tickets, which is a program that is downloaded to the dealer's computer. In the Trip Tickets system, dealers can enter data as time allows, and then

connect to the internet and send the data to NMFS, thereby eliminating the need for a constant internet connection during data entry, as is needed for data entry into SAFIS. As mentioned in Comment 1, in order to give sufficient time for dealers to adjust to implementation of the new system and the additional requirements, NMFS will also delay implementation of the new HMS electronic reporting system for all federally-permitted HMS dealers until 2013. In addition, NMFS will conduct workshops to help dealers learn how to use the new system and easily transition from the current paper format to the new HMS electronic reporting system.

*Comment 5:* NMFS needs to streamline and simplify the reporting requirements, especially between state and Federal reporting requirements, and ensure that the new electronic dealer reporting requirements prevent duplicative reporting. It is good that NMFS is incorporating the electronic reporting program into existing systems, such as SAFIS and Trip Tickets; the SAFIS program is a promising model for this single reporting entity to meet Federal and state requirements. NMFS needs to make reporting as easy as possible as the reporting requirements are complex and confusing.

*Response:* NMFS is working with state agencies to streamline data collection to the extent possible to try to avoid duplicative reporting. Such coordination will also make the reporting process as simple and straightforward as possible. In addition, by incorporating electronic HMS dealer reporting requirements within SAFIS and Trip Tickets, NMFS is ensuring that in most cases dealers will only have to report to one system instead of multiple systems to meet their Federal and state reporting requirements. However, as mentioned below in Comment 40, some states require separate reporting as established by state law. NMFS also recognizes that the terms of the Federal permits may result in additional mandatory Federal reporting requirements beyond those required by states. NMFS will continue to coordinate with states to reduce duplicative reporting, to the extent possible.

*Comment 6:* NMFS received a comment questioning how NMFS monitors shark landings from the state of Louisiana as shark fishing from this state is a large problem.

*Response:* NMFS recognizes that Louisiana state fishermen, and state fishermen from other states, are major participants in the shark fisheries. The regulations implemented under this rulemaking will not change how shark landings are counted for quota monitoring. Currently, NMFS receives landings from all states and compares those landings with the landings reported by Federal dealers. Under the electronic system, this comparison could be easier depending on the extent that state and Federal requirements match, but the general concept for monitoring shark landings from all state and Federal fishermen will not change.

*Comment 7:* Dealers and first receivers should not have to report information where vessels fish as NMFS already receives vessel monitoring system (VMS) reports and daily logbooks from the fishing vessels. NMFS should use logbooks for quota monitoring as they have more detailed information than dealer reports.

*Response:* Logbooks, VMS, and dealer reports provide the Agency with different types of information, which are all necessary for management. The logbooks, which are required by most HMS commercial fishermen, provide information on fishing effort as well as amount of catch and location of fishing. Logbooks are submitted after each trip but, because of the amount of data and number of vessels involved, the data is not available for use on a real-time basis. VMS provides real-time information to inform enforcement on how and where a particular vessel is fishing as well as where it is fishing, but is not required on all HMS commercial vessels. Dealer reports provide information on landings as well as price information, which is not available in the logbook data or through VMS. In addition, under the new HMS electronic reporting system, NMFS will require dealers to provide information on where fish were caught to ensure proper quota management, for example by distinguishing between Atlantic and Gulf of Mexico non-sandbar LCS. In the past, the geographical information used in management of such quotas has been based on the physical location of the dealer, not where the sharks were actually caught. Therefore, the Agency requires different entities to submit different types of reports to NMFS in order to collect the necessary information for management (i.e., information on fishing effort, location of fishing, catch and landings information, and price information).

*Comment 8:* NMFS needs to make sure there is a way dealers can print a copy of their report as dealers need to keep a copy of submitted reports for their files. Dealers need a way to verify they submitted their reports electronically.

*Response:* NMFS agrees. The new HMS electronic reporting system will allow all Federal HMS dealers to print out a copy of each dealer report that is electronically submitted and received by NMFS. In addition, the new HMS electronic reporting system will provide dealers with a confirmation number once the reports have been submitted and received by NMFS, allowing dealers to verify submission of their dealer reports to NMFS.

*Comment 9:* NMFS should allow dealers to report bluefin tuna through the new electronic dealer reporting system under daily reporting requirements and get rid of the paper and fax reporting system currently in place. This change would allow electronic reporting for all HMS.

*Response:* Due to the complexity of the current Atlantic bluefin tuna reporting system, Federal HMS dealers reporting Atlantic bluefin tuna will continue to follow the current reporting requirements for this species at this time. However, in the future, NMFS could consider including Atlantic bluefin tuna in the HMS electronic dealer reporting system.

*Comment 10:* NMFS needs to develop a backup plan, such as reporting via fax or paper, for when the internet is down so that dealers are not forced to be out of compliance. This may be especially important for dealers in the Caribbean if there is a storm and the internet and power are down for a long period of time.

*Response:* The Agency recognizes that there may be interruptions in electrical power or internet service that are out of the control of Federal HMS dealers, but will impact dealers' abilities to submit reports to NMFS through the new HMS electronic reporting system. Further, given the changes to the reporting timeframe from the proposed to the final rule (i.e., from daily to weekly reporting), NMFS does not expect late reporting due to system disruptions to be as much of an issue. NMFS encourages dealers to contact the system administrator for the HMS electronic dealer reporting system when they experience any type of interruption for an extended period of time, and expects dealers to resume reporting as soon as possible once the disruption ends.

*Comment 11:* Many fishermen and dealers do not encounter sharks and tunas in Puerto Rico, therefore the proposed changes would not affect them. However, many of the dealers speak Spanish and are not familiar with computers, so they would need a second person to help them submit reports.

*Response:* Due to limits on Agency funding at this time, the new electronic dealer reports will be available only in English. The Agency may consider a

Spanish or Vietnamese version in the future. We have, however, translated notices and outreach documents into Spanish and will translate these notices and documents in Vietnamese as well. We have and will continue to conduct workshops in Spanish. In addition, the new electronic reporting system will be tailored to include the landing ports and vessels specific to all regions, including the Caribbean. This tailoring should allow non-English speaking dealers from any region to more easily utilize the new system once they are familiar with it. For those non-English speaking dealers who need additional assistance, NMFS will establish a dedicated phone number (301–427–8590) and email address (*HMS.DealerReports@noaa.gov*) to provide assistance in completing reports. Finally, as previously mentioned in Comment 1, the Agency is delaying the implementation of the new HMS electronic reporting system until 2013 to allow dealers more time to adjust their business practices, obtain the necessary equipment (e.g., computer and internet service), and to allow NMFS to conduct workshops in areas like the Caribbean, which have not experienced electronic reporting to date.

*Frequency of Reporting*

*Comment 12:* NMFS received several comments stating that dealers operating small businesses would have difficulty reporting electronically on a more frequent basis because they lack the staff to support the current biweekly reporting requirements; the reporting requirements are complex and confusing; and the increased reporting frequency will result in a larger reporting burden. Small businesses would benefit from less frequent reporting, and more frequent reporting may result in dealers being late in their submission, which could potentially keep their permits from being renewed. The proposed electronic dealer reporting requirements are burdensome, and dealers are becoming frustrated with the increasing number of regulations, which ultimately take time away from ensuring product quality. NMFS also received specific comments regarding the reporting frequency for tunas and swordfish, including: dealers should report as soon as they receive product; dealers should submit weekly reports; dealers feel electronic reporting of BAYS tunas and swordfish on a 21-day to monthly timeframe would suffice; dealers support the status quo or biweekly reporting for BAYS tunas and swordfish; and dealers support biweekly reporting with reporting frequency reflecting the average landing rate when 80 percent of the quota is filled. NMFS also received comments that dealers were opposed to daily or weekly reporting for pelagic non-porbeagle sharks, BAYS tunas, or swordfish as these fisheries are not in any danger of experiencing overharvests. Daily reporting for swordfish would be a burden.

*Response:* Based on public comment, NMFS will change the reporting frequency that was originally proposed for Atlantic swordfish, BAYS tunas, and shark dealers in the proposed rule published on June 28, 2011 (76 FR 37750) to simplify reporting requirements as well as balance the need for timely landings data while avoiding excessive reporting burdens on dealers. NMFS recognizes that daily reporting requirements for sharks as proposed in the proposed rule would not allow dealers sufficient time to gather accurate price information for sharks and could have resulted in a large reporting burden on dealers. At the same time, NMFS acknowledges that unlike some shark fisheries, Atlantic swordfish and BAYS tunas fisheries are currently not quota limited and may not require more frequent reporting than the currently biweekly reporting. However, NMFS notes that some other Federal dealer permits, such as all NERO-issued dealer permits, require weekly reporting. Many HMS dealers also possess these NERO-issued permits and, therefore, are already reporting on a weekly basis. Additionally, many fisheries managed by the SERO are moving to weekly reporting and many HMS dealers also possess permits for these fisheries. NMFS believes that weekly reporting balances the need for more timely landings data and maintains consistency in reporting requirements for different dealer permits. In addition, NMFS is integrating the HMS electronic reporting requirements into existing electronic reporting programs, easing the overall burden on dealers.

*Comment 13:* NMFS received several comments regarding negative reports, including: dealers do not understand why they have to submit negative reports to NMFS; submitting negative reports should be as simple as replying to an email that reminds the dealer of a reporting deadline; NMFS should not require negative reports to be submitted on a daily basis; negative reports should be done on a biweekly or a monthly basis; submitting negative reports more than once a month is unnecessary busy work; and the submission of negative reports should not be required. NMFS also heard that there should be a way dealers can indicate a block of time when they will not be receiving product, as some fisheries are seasonal in nature.

*Response:* Negative reports submitted by HMS dealers are an essential part of quota monitoring. By submitting negative reports, dealers inform NMFS that they did not receive HMS product during that reporting time period. These reports allow NMFS to distinguish between dealers who have not received product during a reporting period and dealers who have simply not reported to NMFS during a given reporting period. By being able to identify dealers who have not reported versus those who have not received product, and by knowing the landings data historically reported by particular dealers, NMFS can better determine the potential status of different quotas as well as which dealers may have failed to report. Without negative reports, NMFS runs a greater risk keeping fisheries open when, in fact, they should be closed to prevent overharvest of the quota.

Negative reports must occur with the same frequency as positive reports in order to inform NMFS about which dealers did not receive product during a specific reporting period versus which dealers have not reported. Receiving negative reports on a less frequent reporting basis than positive reports will not allow NMFS to determine which dealers have received product during a given reporting period as described above.

Finally, the electronic reporting system will allow dealers to indicate time periods when they will not be accepting product for up to 90 days. This should lessen the negative reporting burden on dealers.

*Comment 14:* NMFS received a comment stating that because most fish are sold on consignment, with dealers often having to wait 21 days for actual price information, the proposed weekly reporting frequency would result in dealers having to submit and modify every report, creating an unnecessary burden on dealers. Therefore, NMFS should consider a reporting frequency of at least 21 days, so that dealers do not have to enter data in multiple times for a single transaction.

*Response:* Currently, the reporting frequency for all HMS dealers is biweekly. As outlined in the response to Comment 12, based on public comment, NMFS will require weekly reporting for Atlantic swordfish, sharks, and BAYS tunas dealers.

Dealers will be able to update price information on a past submitted report for up to 30 days from the submission of that report in order to provide NMFS with the most accurate price information available. This balances the

need for timely landings data with the need for additional time to provide NMFS with accurate price information.

*Comment 15:* Changing the reporting frequency for swordfish from weekly to daily when the quota reaches 80 percent makes it seem like there is a problem with the swordfish quota when the United States will most likely not fill its swordfish quota.

*Response:* As outlined in the response to Comment 12, in this final rule, NMFS has reconsidered the proposed reporting frequencies for Atlantic HMS dealers to simplify reporting requirements and balance the need for timely landings data while avoiding an excessive reporting burden on dealers. NMFS will require weekly reporting for Atlantic swordfish, sharks, and BAYS tunas dealers. NMFS may consider changing the reporting frequency in a future rulemaking as needed for management of Atlantic BAYS tunas, sharks, and swordfish fisheries. Allowing flexibility in the required reporting frequency for HMS dealers will allow NMFS to require more frequent dealer reporting if the swordfish fishery were to begin achieving its allocated quota in the future. It is not meant to indicate there are any problems with the swordfish fishery, rather, it will allow for more timely reporting and quota monitoring if the fishery were to ever become quota limited in the future.

*Comment 16:* NMFS received several comments regarding the reporting frequency for sharks, including: support for the proposed daily submission of shark dealer reports as sharks are hard to identify and are quota limited; NMFS should require weekly reporting when the shark season is open for non-sandbar LCS, non-blacknose SCS, blacknose sharks, increase the reporting frequency to daily when the quota reaches 50 percent, and then decrease the reporting frequency when the seasons for these fisheries close; NMFS should consider biweekly reporting for sharks when non-sandbar LCS, non-blacknose SCS, and blacknose shark fisheries are closed. NMFS also heard that daily reporting of sharks is not practical; closing the fishing season early is a better alternative to daily reporting; and NMFS should consider keeping the current biweekly reporting for sharks or consider monthly reporting; and NMFS should only consider daily reporting once the shark quota reaches 80-percent.

*Response:* As outlined in the response to Comment 12, based on public comment, NMFS has reconsidered the proposed reporting frequency for Atlantic shark dealers and will require Atlantic shark dealers to report on a weekly basis. This will simplify reporting requirements, as well as balance the need for timely shark landings with more time for dealers to report shark product unless NMFS determines more frequent reporting is required in the future. NMFS feels monthly reporting of shark landings will not provide timely enough data for monitoring small quotas, and will increase the probability of overharvests. In addition, NMFS considered changing the shark dealer reporting frequency as the shark quotas filled (*i.e.,* increasing the reporting frequency to daily when the quota reaches 50 percent, and then decreasing the reporting frequency when the seasons for these fisheries close), but felt such a reporting regime may be difficult for dealers to keep track of and may hamper compliance with the reporting requirements. Thus, NMFS is trying to simplify the reporting requirements while balancing the need for more frequent data without over burdening dealers or adding additional complexity to the reporting requirements for dealers.

*Comment 17:* NMFS should require weekly electronic reporting of BAYS tunas, swordfish and sharks so that all HMS species have the same reporting frequency; it is overly burdensome for dealers to keep track of different reporting frequencies for different species, especially if those frequencies change over time.

*Response:* NMFS agrees. The Agency appreciates that it may be difficult for dealers to keep track of different reporting requirements for different HMS. Therefore, to minimize the reporting burden on dealers, NMFS changed the proposed flexible reporting requirements in the proposed rule and is requiring Atlantic HMS swordfish, sharks, and BAYS tunas dealers to report on a weekly basis. NMFS believes that weekly reporting balances the need for more timely landings data and maintains consistency in reporting requirements for different dealer permits. In addition, NMFS is integrating the HMS electronic reporting requirements into existing electronic reporting programs, easing the overall burden on dealers. The system will accept reports more frequently if dealers need to report HMS on a more frequent basis.

*Comment 18:* The daily or weekly reporting frequency would be difficult given the time it takes for some dealers to receive product that is being transported from a fishing vessel or the time it takes to process product when a dealer is busy. In addition, some fish are sold to different dealers before the vessel is even offloaded, therefore, dealers would not be able to report on a daily or weekly basis as the fishing trips are longer than required reporting frequency.

*Response:* The timeframe associated with dealer reporting requirements applies once a dealer first receives HMS product (i.e., it does not apply while the fishing vessel is still at sea before the product is offloaded). As outlined in the response to Comment 12, NMFS will maintain weekly reporting for Atlantic swordfish, sharks, and BAYS tunas dealers as it satisfies the need for more timely landings data while maintaining consistency in reporting requirements for different dealer permits.

*Comment 19:* Dealers in the U.S. Virgin Islands may be able to comply with electronic dealer reporting; however, due to frequent power and internet outages, reporting more frequently (i.e., daily or weekly) would be an issue. Additionally, most fishermen sell their HMS catch directly to the public. If these individuals obtained dealer permits in the future, as most of them currently do not have HMS dealer permits, they most likely would not have access to computers for electronic reporting. Therefore, NMFS should obtain landings information from the territorial trip tickets and not through separate dealer reports.

*Response:* All entities that purchase HMS from federally-permitted HMS vessels are currently required to obtain HMS dealers permits. Federally-permitted HMS dealers located in the Caribbean region are also currently required to submit paper reports to NMFS on a biweekly basis. Based on this final rule, federally-permitted HMS dealers will be required to report electronically via the HMS electronic dealer reporting system. As explained in the response to Comment 10, the Agency recognizes that there may be interruptions in electrical power or internet service that are out of the control of Federal HMS dealers, but will impact how dealers submit reports to NMFS through the new HMS electronic reporting system. Further, given the changes to the reporting timeframe from the proposed to the final rule (i.e., from daily to weekly reporting), NMFS does not expect late reporting due to system disruptions to be as much of an issue. NMFS encourages dealers to contact the system administrator for the HMS electronic dealer reporting system when they experience any type of interruption for an extended period of time, and expects dealers to resume reporting as soon as possible once the disruption ends. Finally, NMFS is currently working on a rulemaking that may consider collecting landings information

associated with any new HMS fishing permits through territorial trip tickets.

First Receiver

*Comment 20:* If there are problems with dealers accurately reporting different shark species, then NMFS should find a direct solution for species-specific reporting of sharks and not unnecessarily burden non-shark HMS dealers. NMFS has not provided any discussion of widespread problems with Atlantic HMS reporting and the industry is not aware of misidentification problems in HMS swordfish or tunas dealer reports. First receivers may need to be the dealer for sharks, but species identification is not a problem that the industry recognizes for BAYS tunas or swordfish. First receivers of BAYS tunas and swordfish should not have to get a dealer permit.

*Response:* NMFS realizes that swordfish and tuna fisheries operate differently than shark fisheries, in part due to the difference in prices associated with swordfish and BAYS tunas, and in part due to difficulties in identifying sharks. Thus, because species identification and species-specific reporting tend to be issues related to HMS shark dealers, NMFS will keep the status quo with regard to which entity is required to have a dealer permit for Atlantic tunas and swordfish. That is, a person who takes possession for commercial purposes, of any BAYS tunas, swordfish, or shark or any parts of those species by purchasing, trading, or bartering for it from the fishing vessel or owner of a fishing vessel, once it is offloaded, will be required to obtain the corresponding Federal HMS dealer permit.

*Comment 21:* Since non-U.S. citizens cannot obtain U.S. permits, the proposed first receiver requirement would not work for product that is offloaded in Canada or other foreign countries by first receivers who are not U.S. citizens, and NMFS has no jurisdiction to require reporting by docks, shipping companies, and transporters that are not U.S. companies.

*Response:* Due, in part, to the complexity of dealer transactions, including fish being brought in from foreign ports, and the importance of having one consistent definition of first receiver across all species, NMFS is changing the definition of first receiver with regard to which entity is required to have a dealer permit for Atlantic tunas, swordfish, and sharks to make it more consistent with current industry practice and to simplify regulations. As such, a person who takes possession, for commercial purposes, of any BAYS tunas, swordfish, or shark or any parts of those species by purchasing, trading, or bartering for it from the fishing vessel or owner of a fishing vessel, once it is offloaded, will be required to obtain the corresponding Federal HMS dealer permit.

*Comment 22:* Requiring the first receiver to obtain a dealer permit will result in duplicative reporting, especially in the Northeast, as the person who receives the product will be required to have a dealer permit and report to NMFS, and then the dealer who ultimately purchases that product from the fishing vessel will also be required to report his entire purchase through SAFIS. Identifying duplicate reports will be difficult as most HMS product is offloaded at a dock and goes to multiple fish houses/dealers.

*Response:* As explained above, NMFS will change the definition with regard to which entity is required to have a dealer permit in order to make it more consistent with current industry practice and to simply the regulations. This should reduce the possibility for duplicative reporting and should not interrupt business practices as it will not change the universe of permitted dealers. In addition, dealers will be able to report HMS through existing SAFIS and Trip Tickets electronic systems, which will keep dealers from having to report in multiple systems.

*Comment 23:* In the Gulf of Mexico, many dealers are the first receivers, and fish are offloaded at a fish house that weighs, packs, pays the vessel, and reports the landings to NMFS. In addition, dealers usually own their own trucks, so the truck drivers would be covered by the dealers' permits. Pack houses who receive fish also have the dealer permits and report to NMFS. NMFS needs to simplify it so that the person who has product come across the dock needs to report it to NMFS. However, NMFS also heard that a first receiver should be able to purchase product from a fishing vessel without necessarily owning the dock facility where the product is landed as long as they possess the proper permits, and the first receiver should not need a dealer permit unless they purchase product from the fishing vessel.

*Response:* In the proposed rule, NMFS proposed to have first receivers, such as pack houses, be required to obtain HMS dealer permits and report to NMFS. However, based on public comment that indicated this would create a major disruption in business practices, given that current regulations appear to work for dealers in both the Gulf of Mexico and Atlantic regions, and the importance of having one consistent definition of first receiver across all species, NMFS is changing the definition of first receiver with regard to which entity is required to have a dealer permit for Atlantic tunas, swordfish, and sharks to make it more consistent with current industry practice and to simplify the regulations. As such, a person who takes possession, for commercial purposes of any BAYS tunas, swordfish, or shark or any parts of those species by purchasing, trading, or bartering for it from the fishing vessel or owner of a fishing vessel, once it is offloaded, will be required to obtain the corresponding Federal HMS dealer permit.

*Comment 24:* NMFS received several comments regarding first receivers of HMS product having to obtain a dealer permit, including: NMFS should keep the current definition of dealer for swordfish and BAYS tunas (i.e., the entity that purchases the product from the vessel should be considered the dealer); the facilities where fish are unloaded and packed in vats for shipment do not know final weights or prices; when fish are packed by a dock for shipment, packing/saltwater ice is not removed from fish in order to keep fish cold, and tails are not cut to preserve freshness of the fish; dealers remove ice, cut tails, weigh the fish, determine prices, and then repack the fish in ice, which is a labor intensive and costly process; the dealers' weights are more accurate than the shipping weights and recording accurate weight information is important not only for economic reasons and domestic quota management, but also for reporting to ICCAT; and if a dealer pays a dockage fee to have fish cross a remote dock, the catch and vessel information is forwarded to the dealer via fax or the transporter so that the current dealers have vessel-specific information that can be reported to NMFS. NMFS also heard that entities purchasing product from fishing vessels are not going to share price information with transporters; therefore, NMFS will lose price information by requiring first receivers, such as transporters, to obtain dealer permits and report to NMFS.

*Response:* Based on public comment, NMFS understands that many entities responsible for packing and shipping fish do not have vessel or price information that is required on dealer reports. NMFS proposed that first receivers, including transporters, of non-BFT HMS product obtain an HMS dealer permit to ensure species-specific and vessel-specific information is received from dealers and reported to NMFS for quota monitoring. NMFS has learned that many of these facilities and

transporters that first receive Atlantic BAYS tunas and swordfish products do not have final fish weights or price information and lack the resources and incentive to function as proper HMS dealers. In addition, since requiring transporters to obtain an HMS dealer permit may disrupt business practices, result in vessels not being able to land in safe harbors/docks, or result in vessels being unable to unload at reliable dealers, NMFS will not require transporters to obtain HMS dealer permits at this time. If the current universe of dealers has access to the information required by NMFS for reporting, including vessel-specific information, NMFS agrees that requiring first receivers of Atlantic BAYS tunas and swordfish product to have dealer permits and report to NMFS would not be an efficient process. In addition, having accurate price information is critical for management and the analysis of economic impacts. Thus, NMFS will maintain the status quo with regard to which entity is required to have a dealer permit for Atlantic BAYS tunas and swordfish.

*Comment 25:* NMFS heard that in certain areas, such as in the Gulf of Mexico region, the trucks used to transport fish typically belong to the dealer who is purchasing the product; and individuals who transport fish should be an extension of the dealers' place of business to ensure that product is properly stored and handled.

*Response:* Requiring transportation companies to be owned by dealers is outside the scope of this rulemaking. The Food and Drug Administration (FDA) published regulations (December 18, 1995; 60 FR 65197) mandating the application of the Hazardous Analysis of Critical Control Point (HACCP) principles to ensure the safe and sanitary processing of seafood products. Dealers are responsible for ensuring product they purchase and sell is in compliance with FDA HACCP regulations.

*Comment 26:* NMFS received a comment asking if a dealer located in a region closed for a particular shark fishery could accept shark product from an area that is open for that fishery if the dealer does not have a facility in that open area.

*Response:* This final rule does not change the regulations at 50 CFR § 635.28(b)(4). Under those regulations, except for under certain conditions, sharks dealers located in a region closed to a specific species or complex are not able to accept that species or complex from an area that is open unless the dealer has a facility in the open area and can receive sharks at that facility.

*Comment 27:* NMFS should consider requiring fishermen to offload HMS product to designated ports/fish houses as is currently required in the reef fish Individual Fishing Quota (IFQ) Program in the Gulf of Mexico.

*Response:* NMFS may consider this requirement in future rulemakings, especially for any HMS fisheries that might be considering catch share programs in the future, such as the shark fishery.

*Comment 28:* Dealers in the U.S.V.I. and Puerto Rico are usually the first receivers.

*Response:* Given the current definition of an HMS ''dealer'' under § 635.4, this should not change any business practices of dealers in the U.S. Caribbean as this action will change the current definitions of a dealer to make it more consistent with current industry practice.

**Timely Dealer Reporting**

*Comment 29:* NMFS received several comments regarding the proposed regulations to encourage timely reporting, including: support for the proposed changes where dealers would not be able to accept HMS product unless they had submitted their reports on time; NMFS should not punish all dealers because of a small universe of dealers that are not reporting on time; and NMFS should have enforcement actions against dealers who are not reporting on time instead of implementing new regulations.

*Response:* There have been several issues of late reporting by Federal Atlantic HMS dealers, particularly for a number of the Atlantic shark dealers. Efforts by the Agency to follow up on dealer reports (i.e., phone calls; certified correspondence regarding late reporting; visits from local port agents and/or agents with the NOAA Office of Law Enforcement) drain scarce staff resources. In addition, late reporting negatively effects NMFS' ability to monitor the quota in a timely manner. NMFS feels the actions taken in this final rule, in regard to late reporting, strengthens the Agency's ability to take enforcement action when appropriate while not imposing any additional requirements on dealers. As such, in order to ensure timely reporting by all Atlantic HMS dealers, the Agency will require that a Federal Atlantic HMS dealer will only be authorized to purchase Atlantic swordfish, sharks, and BAYS tunas if the dealers have submitted all required reports to NMFS by the required reporting deadline. Any delinquent reports will need to be submitted and received by NMFS before a dealer could purchase commercially-harvested Atlantic swordfish, sharks, and BAYS tunas from a fishing vessel. Failure to report Atlantic sharks, swordfish, and BAYS tunas to NMFS within the required reporting frequency will result in dealers being ineligible to purchase Atlantic sharks, swordfish, and BAYS tunas. Although submission of delinquent reports will allow a dealer to legally purchase commercially-harvested Atlantic swordfish, sharks, and BAYS tunas from a fishing vessel, late reporting will still be a violation of the regulations and could result in enforcement action.

*Comment 30:* Larger dealers may accept product even if a report has not been submitted on time due to different people submitting reports and accepting product. The scenario would not be intentional, but it could happen. NMFS should not deny a business the ability to accept fish strictly on the basis of late paperwork, and such a measure should be seen as a last resort. NMFS needs to be reasonable concerning penalties for inadvertent paperwork omissions. We have seen times when NMFS computers go down, sometimes over an entire weekend. NMFS should not apply penalties if they cannot receive information from dealers; therefore, NMFS should drop the idea of penalties for late reporting unless it becomes a persistent problem. NMFS should allow dealers to purchase product even if they are late in reporting, as it is important to revitalize HMS fisheries.

*Response:* As previously mentioned in the response to Comment 29, late reports from Federal HMS dealers effect timely quota monitoring and require staff resources to resolve. Under the new HMS electronic reporting system, all delinquent reports will need to be submitted and received by NMFS before a dealer could purchase commercially-harvested Atlantic swordfish, sharks, and BAYS tunas. A Federal Atlantic HMS dealer who is receiving, and/or purchasing HMS product without having submitted all required report to NMFS will be in violation and subject to enforcement action for failing to submit reports on time as well as accepting non-BFT HMS product during the time the dealer reports were delinquent. This may require additional coordination between persons who receive fish and person who report to NMFS to ensure all the necessary reports have been submitted to NMFS before new non-BFT HMS product is accepted. In the event of a reporting disruption due to a loss of power or internet service, as with any instance of regulatory non-compliance, the Agency would exercise its enforcement discretion in determining whether or

not to take enforcement action considering all the circumstances, for example, whether the outage or loss was verified, and whether the dealer submitted the report as soon as possible once the outage ended. Further, given the changes to the reporting timeframe from the proposed to the final rule (i.e., from daily to weekly reporting), NMFS does not expect late reporting due to system disruptions to be as much of an issue. NMFS encourages dealers to contact the system administrator for the HMS electronic dealer reporting system when they experience any type of interruption for an extended period of time.

*Comment 31:* NMFS should have a way to remind dealers of when their reports are due to NMFS. NMFS should provide adequate warning and opportunity to provide reports before having their livelihoods damaged just for the convenience of NMFS.

*Response:* The Agency expects federal HMS dealers to comply with all applicable regulations without prompting from the Agency. It is the dealer's responsibility to keep track of reporting deadlines. In the final rule, NMFS will require a weekly reporting deadline for Atlantic swordfish, sharks, and BAYS tunas dealers. NMFS expects that the consistent reporting frequency for all HMS dealer permits should make it easier to remember when HMS reports are due to NMFS. Additionally, the new HMS electronic reporting system will track the timing and submission of Federal Atlantic HMS dealer reports and automatically notify dealers and NMFS (the HMS Management Division and NOAA Office of Law Enforcement) via email if reports are delinquent. The new HMS electronic reporting system will also notify dealers of the current reporting deadlines.

*Comment 32:* NMFS needs to provide incentives to dealers so they comply with all of the dealer requirements (e.g., valid dealer permit, reporting deadline).

*Response:* The Agency limits the sale of HMS product harvested from federally permitted vessels to federally-permitted HMS dealers. This should provide some incentive for federally-permitted HMS dealers to comply with all applicable regulations. Federal HMS dealers are required to submit dealer data in a timely manner to NMFS. Such timely submission is critical for accurate quota monitoring and management of HMS. Failure to comply with timely submission will affect the dealer's ability to accept new HMS product and will also make them subject to enforcement action. In addition, failure to submit timely dealer reports can lead to overharvests of allocated quotas, which can decrease quotas and shorten fishing seasons in subsequent fishing years, which can negatively affect both fishermen and dealers.

**IRFA Alternatives**

*Comment 33:* NMFS received a comment supporting the delayed implementation date of February 1, 2012. NMFS should give sufficient time for dealers to prepare for the new system's implementation and learn how to use it.

*Response:* NMFS agrees with this comment and will delay implementation of proposed electronic weekly reporting requirements for all federally-permitted HMS dealers for Atlantic swordfish, BAYS tunas, and shark dealers until January 2013.

**Economic Concerns**

*Comment 34:* NMFS has grossly under estimated the time it will take dealers to submit dealer reports and the cost associated with hiring additional personnel to be in compliance with the additional paperwork.

*Response:* Based on public comments, NMFS has reconsidered the proposed reporting frequencies for Atlantic HMS dealers to simplify reporting requirements and satisfy the need for timely landings data while avoiding an excessive reporting burden on dealers. NMFS recognizes that daily reporting requirements for sharks as proposed under alternative A3 in the proposed rule would not allow dealers sufficient time to gather accurate price information for sharks and could have resulted in a large reporting burden on dealers. At the same time, NMFS acknowledges that unlike some shark fisheries, Atlantic swordfish and BAYS tunas fisheries are currently not quota limited and may not require more frequent reporting than the current biweekly reporting. However, NMFS notes that other Federal dealer permits, such as all NERO-issued dealer permits, require weekly reporting. Many HMS dealers also possess these NERO-issued permits and, therefore, are already reporting on a weekly basis. Additionally, many fisheries managed by the SERO are moving to weekly reporting and many HMS dealers also possess permits for these fisheries. Therefore, NMFS believes that weekly reporting balances the need for more timely landings data and maintains consistency in reporting requirements for different dealer permits. In addition, NMFS is integrating the HMS electronic reporting requirements into existing electronic reporting programs in large part to ease the overall burden on dealers.

*Comment 35:* NMFS's average cost of internet service is incorrect and flawed. My monthly high-speed internet service is higher, around $110 a month.

*Response:* Based on public comment, NMFS has revised the cost of internet service from $50 per month used in the analyses for the proposed rule to $110 per month. This $110 estimate was the average cost for internet service presented in the IRFA, based on public comment, more accurately reflects the cost of having monthly internet service. Therefore, assuming dealers will need the most basic internet connection to support NMFS' electronic reporting system at a cost of $110 per month for internet services, the average annual cost to dealers will be $1,320 for internet services ($110 * 12 months = $1,320/year).

**General**

*Comment 36:* NMFS should have a dedicated email for submitting comments instead of having comments submitted through the regulations.gov Web site. The Councils provide an email address for submission of comments.

*Response:* Current NMFS guidance requires all public comments on rulemakings to be submitted through *http://www.regulations.gov.* Regulations.gov is continually updating its Web page based on public feedback. Additionally, users can establish news feeds for any Federal agency that regularly publishes proposed and final rules.

*Comment 37:* The ASMFC and others commented that NMFS currently closes the Atlantic shark fisheries when landings in each fishery reach 80 percent of quota to avoid overages. NMFS should consider increasing this threshold with the implementation of electronic dealer reporting as the Agency will be receiving more timely data.

*Response:* NMFS will consider increasing the 80-percent threshold used to close the shark fisheries in the future based on timely receipt of state data and timely reporting by dealers.

*Comment 38:* Currently, the Gulf reef fish fishery requires fishing vessels to get a confirmation number for their catch before a vessel can offload. This ensures that the Agency can account for all landings under the IFQ system for Gulf reef fish. NMFS should consider a similar system for HMS so that product can be tracked and reported to NMFS.

*Response:* NMFS did not analyze the impact of requiring a confirmation code upon landing of HMS product in this rulemaking. However, NMFS may consider this requirement in a future rulemaking, as appropriate.

*Comment 39:* NMFS should require all state dealers to get Federal dealer permits in the Gulf of Mexico. It would make the collection of data more coordinated between state and Federal agencies.

*Response:* NMFS agrees that the coordination of data collection between state and Federal agencies would make data collection more efficient and timely. To that end, NMFS is appreciative of the efforts of ASMFC in implementing such a requirement in the Atlantic states under its jurisdiction. However, NMFS cannot require all states to implement such regulations. Rather, NMFS is working with state agencies in the Gulf of Mexico and Caribbean to streamline data collection, to the extent possible.

*Comment 40:* NMFS should ensure that dealers and brokers are not subjected to duplicative reporting and out of state dealer licensing requirement that presently occurs in South Carolina.

*Response:* As mentioned in the response to Comment 41, NMFS tries to streamline data collection, to the extent possible. However, NMFS does not have jurisdiction over what states can request for reporting under state law. While NMFS continues to coordinate with states to reduce duplicative reporting to the extent possible, because NMFS mandates reporting of HMS for federally-permitted dealers in all states from Maine through Texas and the Caribbean, there will be cases where NMFS requests data that is duplicative of some state requirements. NMFS feels that implementation of this electronic dealer system, because of the efforts to coordinate with states, ACCSP, SAFIS, and other electronic reporting systems, should remove some, but not all, of these duplicative requirements.

*Comment 41:* NMFS should consider electronic logbooks for commercial fishing, and NMFS should specify the collections methods being considered for recreational data.

*Response:* NMFS is currently working on electronic logbooks in some fisheries. For instance, in the Northeast region, fishermen can submit electronic vessel trip reports (VTRs). HMS fisheries may consider electronic logbooks in the future, and the Agency is continually working towards more timely data collection from both fishermen and dealers. In terms of recreational fishing data, NMFS collects recreational catch and effort information through the Marine Recreational Information Program (MRIP). MRIP is a new way NMFS is counting and reporting marine recreational catch and effort and replaces the Marine Recreational Fisheries Statistics Survey, or MRFSS, which had been in place since the 1970s. More information on MRIP can be found at *http://www.countmyfish.noaa.gov/index.html.*

**Changes From the Proposed Rule (76 FR 37750, June 28, 2011)**

In addition to minor corrections throughout, NMFS has made several changes to the proposed rule. These changes are outlined below.

1. In § 635.2, the definitions of ''first receiver'' was removed and ''first receive'' was clarified and revised to mean ''to take possession for commercial purpose of any fish or any part thereof by purchasing, trading or bartering for it from the fish vessel owner or operator or operator once it is offloaded from the vessel, where the owner or operator has been issued, or should have been issued, a valid permit under this part. First receive does not mean to take possession solely for transport.'' In addition, the definition of ''reporting week'' was added to mean ''the period of time beginning at 0001 local time on Sunday and ending at 2400 hours local time the following Saturday.''

2. Modifications made to § 635.4(g) under the proposed rule were removed in the final rule. Specifically, § 635.4(g)(1)(i), which stipulated different permitting requirements for Atlantic tunas dealers that received Atlantic bluefin, was removed. In addition, § 635.4(g)(1)(ii), which would have required first receivers of Atlantic BAYS tunas to obtain a dealer permits, was removed. Changes to sections § 635.4(g)(1)–(3), which stipulated different dealer permit requirements for BAYS tunas, sharks, and swordfish in the current regulations, respectively, were modified based on public comment. In addition, changes were made to maintain consistency with the ''dealer'' definition under § 600.10 and changes to the ''first receive'' definition under § 635.2 in this final rule.

3. In § 635.5(b)(1)(i)–(iii), NMFS made various modifications and clarifications based, in part, on public comment. Specifically, as described above, the reporting frequencies that apply to Atlantic swordfish, BAYS tunas, and shark dealers were modified based on public comment to satisfy the need for timely landings data while avoiding an excessive reporting burden on dealers. In addition, it was clarified that dealers must report through a NMFS-approved electronic reporting system no later than midnight, local time, of the first Tuesday following the end of the reporting week unless the dealer is otherwise notified by NMFS, and can make modifications to their dealer reports not more than 30 days from when the report is submitted and received by NMFS.

4. NMFS made various changes throughout § 635.31(a) and (c). Most were minor changes to the language in order to be consistent with the language in other sections of the final rule. Regarding § 635.31(a)(1)(i), NMFS determined that the proposed change was not needed and decided to keep the existing regulatory text. Regarding § 635.31(c)(6), this regulatory text was not proposed in the proposed rule as it has been implemented in a recent final rule (August 29, 2011, 76 FR 53652), which was implemented after the publication of the proposed rule of this action (June 28, 2011, 76 FR 37550). In this final rule, NMFS replaces the word ''purchase'' with ''first receive'' to be consistent with the other changes made in this final rule. Regarding § 635.31(d)(1), the proposed rule stipulated that fishermen could only offload Atlantic swordfish to dealers as all entities that first received Atlantic swordfish (i.e., not just entities which bought fish from fishermen) would have needed a dealer permit under the proposed rule. As a result of public comments, NMFS is not making that a requirement in this final rule. As such, NMFS is maintaining the existing language in § 635.31(d)(1).

5. In § 635.71, NMFS simplified paragraph (a)(3). NMFS also decided that due, in part, to the changes made as a result of public comments, the changes proposed in paragraphs (a)(4), (a)(55), and (e)(1) were not needed at this time. Therefore, NMFS kept the existing language for paragraphs (a)(4) and (e)(1) and moved the proposed paragraph (a)(56) to paragraph (a)(55).

**Classification**

The NMFS Assistant Administrator has determined that this final action is consistent with the Magnuson-Stevens Act, 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and its amendments, ATCA, and other applicable law.

This final rule modifies a collection-of-information requirement associated with dealer reporting for Atlantic HMS dealers subject to the Paperwork Reduction Act (PRA) which has been approved by the Office of Management and Budget (OMB) under control number 0648–0040. The modifications were approved by OMB on July 31, 2012. The public reporting burden is associated with Atlantic HMS dealers having to report receipt of Atlantic swordfish, sharks, and BAYS tunas to NMFS electronically (15 minutes per positive report and 5 minutes per

negative report). NMFS will establish a weekly reporting frequency and may increase the reporting frequency via another regulatory action in the future for all HMS species if more frequent reporting is necessary to monitor the available quota. NMFS does not expect to do so in the near future for BAYS tunas, sharks, or swordfish.

Public reporting burden for Atlantic swordfish, sharks, and BAYS tunas will be one hour per month (15 minutes per report each week 7×4 weeks/month) or 12 hours per year. Based on the number of Atlantic swordfish, sharks, and tunas dealer permits (that deal with BAYS tunas) in 2011 (or 916 total permits), this will result in an estimated total annual burden of 10,992 hours.

Negative reports will require less of a reporting burden as negative reports are estimated to only take 5 minutes to complete and send to NMFS. Finally, all 916 permit holders affected by this final rule are considered respondents.

Send comments on this or any other aspects of the collection-of-information to NMFS (see **ADDRESSES**) and by email to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–7285.

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

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

Ecological impacts, outside of those that have been previously analyzed for Atlantic shark dealer reporting requirements in Amendment 2 to the 2006 Consolidated HMS FMP and categorically excluded for Atlantic swordfish and BAYS tunas, are not expected as a result of this final rule. This action will not directly affect fishing effort, quotas, fishing gear, authorized species, interactions with threatened or endangered species, or other relevant parameters. This final rule is exempt from the requirement to prepare an Environmental Assessment in accordance with NAO 216–6 because it will not have significant, additional impacts on the human environment, or any environmental consequences that have not been previously analyzed or are categorically excluded in accordance with Sections 5.05b and Section 6.03.c.3(i) of NOAA's Administrative Order (NAO) 216–6. However, social and economic impacts are expected as a result of this final action.

A FRFA was prepared, as required by 5 U.S.C. Section 604 of the Regulatory Flexibility Act (RFA). The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, and NMFS responses to those comments, and a summary of the analyses completed to support the action. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

Section 604(a)(1) of the Regulatory Flexibility Act requires that the Agency describe the need for, and objectives of, the final rule. The purpose of this final rule is, consistent with the Magnuson-Stevens Act and the 2006 Consolidated HMS FMP and its amendments, to aid NMFS in monitoring and enforcing fisheries regulations, including those implemented at 50 CFR part 635. Specifically, this final action will change the current regulations and infrastructure of the Atlantic HMS quota-monitoring system by requiring all federally-permitted Atlantic HMS dealers to report receipt of Atlantic swordfish, sharks, and BAYS tunas to NMFS through an electronic dealer reporting system on a weekly basis and, delinquent reports to be submitted by dealers and received by NMFS before a dealer could purchase commercially-harvested Atlantic swordfish, sharks, and BAYS tunas. These actions are necessary to ensure timely and accurate reporting, which is critical for quota monitoring and management of these species.

Section 604(a)(2) requires a summary of the significant issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis (IRFA) and a statement of any changes made in the proposed rule as a result of such comments. The Agency received comments concerning the Initial Regulatory Flexibility Analysis stating that the Agency's estimate of monthly internet service of $50 per month was not appropriate (see comment 35 above). As a result, the estimate of monthly internet costs associated with this final action has increased to $110 per month, based on public comment. Estimates of the economic impacts of compliance with the final regulations have been updated in the FRFA and final rule.

Comments were also received on the delayed implementation date discussed in the IRFA and proposed rule (see comment 33 above). The Agency proposed a delayed implementation date of 3 months, and the public was in support of such a delay. Therefore, NMFS plans to delay the implementation of the final action for this rule to provide dealers with approximately four to five months to learn about the electronic dealer reporting system before its use is required.

Finally, comments also indicated that it would take dealers additional time to submit more frequent dealer reports and that there would be additional costs associated with hiring personnel to be in compliance with the proposed reporting frequencies (see comments 12, 16, and 34 above). Based on public comments, NMFS has reconsidered the proposed reporting frequencies for Atlantic HMS dealers to simplify reporting requirements and satisfy the need for timely landings data while avoiding an excessive reporting burden on dealers. NMFS recognizes that daily reporting requirements for sharks as preferred in the proposed rule would not allow dealers sufficient time to gather accurate price information for sharks and could have resulted in a large reporting burden on dealers. At the same time, NMFS acknowledges that unlike some shark fisheries, Atlantic swordfish and BAYS tunas fisheries are currently not quota limited and may not require more frequent reporting than the current biweekly reporting. However, NMFS notes that other Federal dealer permits currently require weekly reporting, including all Northeast Regional Office (NERO)-issued dealer permits. Many HMS dealers also possess NERO-issued permits and, therefore, are already reporting on a weekly basis. Additionally, many fisheries managed by SERO are moving to weekly dealer reporting and many HMS dealers also possess permits for these fisheries. Therefore, NMFS believes that weekly reporting balances the need for more timely landings data and maintains consistency in reporting requirements for different dealer permits. In addition, NMFS is integrating the HMS electronic reporting requirements into existing electronic reporting programs, in part to ease the overall burden on dealers. Thus, NMFS feels the final action satisfies the need for timely reporting and avoids being overly burdensome on dealers with regard to reporting.

Under Section 604(a)(3), Federal agencies must provide an estimate of the number of small entities to which the rule would apply. The Small Business Administration (SBA) standards for a ''small'' versus ''large'' business entity are entities that have average annual receipts less than $4.0 million for fish-harvesting; average annual receipts less than $6.5 million for charter/party boats; 100 or fewer employees for wholesale dealers; or 500 or fewer employees for seafood processors. Under these standards, NMFS considers all HMS permit holders subject to this rulemaking to be small entities. This

action would apply to all 916 Federal Atlantic HMS dealer permit holders (in 2011), of which 183 had Atlantic shark, 350 had Atlantic swordfish, and 383 had Atlantic tunas (bigeye, albacore, yellowfin, and skipjack) dealer permits.

Under Section 604(a)(4), Federal agencies must provide a description of the projected reporting, recordkeeping, and other compliance requirements of the rule. The final action requires Federal Atlantic HMS dealers to report receipt of Atlantic sharks, swordfish, and BAYS tunas to NMFS through an electronic reporting system on a weekly basis. Under the final rule, the HMS dealer permit will continue to require the same application and fees (i.e., $50 to $75) that are currently in place. The information collected through the electronic dealer system will include additional data fields, including vessel and location of catch information; however, many new fields will be auto-populated or selected from data fields in a drop down menu in the electronic system. In addition, failure to report Atlantic sharks, swordfish, and BAYS tunas to NMFS within the required reporting frequency will result in dealers being ineligible to first receive Atlantic sharks, swordfish, and BAYS tunas. This final rule will not conflict, duplicate, or overlap with other relevant Federal rules. Fishermen, dealers, and managers in these fisheries must comply with a number of international agreements, domestic laws, and other FMPs. These include, but are not limited to, the MSA, the ATCA, the Marine Mammal Protection Act, the Endangered Species Act, the National Environmental Policy Act, and the Paperwork Reduction Act. NMFS does not believe that the new regulations proposed to be implemented will duplicate, overlap, or conflict with any relevant regulations, Federal or otherwise.

Under section 604(a)(5), agencies are required to describe any alternatives to the rule which accomplish the stated objectives and which minimize any significant economic impacts. These impacts are discussed below. Additionally, the RFA (5 U.S.C. 603(c)(1)–(4)) lists four general categories of ''significant'' alternatives that will assist an agency in the development of significant alternatives. These categories of alternatives are:

1. Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

2. Clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;

3. Use of performance rather than design standards; and

4. Exemptions from coverage of the rule for small entities.

In order to meet the objectives of this final rule, consistent with the MSA, NMFS cannot exempt small entities or change the reporting requirements only for small entities because all of the participants in Atlantic HMS fisheries are considered small entities. All federally-permitted HMS dealers will submit weekly reports of all HMS received. Similarly, the application process for the dealer permit will be the same as the process that is required under the current regulations. The majority of the information required to report in the new reporting system will be the same as what is currently required. However, the final rule will require federally-permitted dealers to report information to NMFS weekly about Atlantic sharks, swordfish, and BAYS tunas received, in an electronic format rather than on paper.

NMFS considered and analyzed four alternatives to ensure more timely, efficient, and accurate dealer reporting and subsequent quota monitoring of Atlantic HMS. NMFS considered the following alternatives: Alternative A1—Status quo; Alternative A2—Establish new flexible reporting requirements for all federally-permitted HMS dealers effective 30 days after publication of the final rule; Alternative A3—Establish new flexible reporting requirements for all federally-permitted HMS dealers and delay implementation; and Alternative A4—Establish new weekly reporting requirements for all federally-permitted HMS dealers and delay implementation.

Alternative A1, the no action alternative, would maintain existing reporting requirements for federally-permitted HMS dealers. There is no monetary cost associated with the required reporting as NMFS provides pre-paid envelopes for dealers to mail in their reports to the SEFSC. However, HMS dealers must renew their open-access dealer permit each year, and the total cost associated with obtaining a dealer permit, on an annual basis, is between $50 to $75 per dealer, depending on their participation in each of the HMS fisheries. With 916 dealers in the HMS fishery (as specified in section 2.3), the total annual cost for maintaining the dealer permits under the current paper format is from $45,800 (916 dealers * $50 for dealer permits) to $68,700 (916 dealers * $75 for dealer permits).

Alternative A2, A3, and A4 would require all federally-permitted Atlantic HMS dealers to report receipt of Atlantic sharks, swordfish, and BAYS tunas to NMFS through an electronic dealer reporting system. As such, all of these alternatives would have similar direct economic impacts to dealers in terms of purchasing a computer and/or internet service (if they have not already done so) to comply with the final electronic reporting measures under alternative A2, A3, and A4. According to the Small Business Administration, Office of Advocacy (2010) approximately 94 percent of businesses own computers. Therefore, NMFS estimates that 861 dealers (916 * 0.94) already have a computer. Of businesses with computers, 95 percent or 817 dealers (861 dealers * 0.95) have Internet service. Using these estimates, approximately between 44 (861 − 817 = 44 dealers with computers, but without Internet) to 55 (916 − 861 = 55 without computer and Internet) dealers would have to purchase computer and/or Internet services under this alternative. The total amount of costs associated with dealers reporting through the new dealer electronic system is estimated to be $58,080 (44 dealers * $1,320 for Internet service) for those dealers with a computer, but without Internet service and $106,425 (55 dealers * $1,935 for computer and Internet service) for those dealers without a computer and Internet service. Therefore, the additional aggregate cost for electronic reporting under any of the alternatives is approximately $164,505 ($58,080 + $106,425) in the first year. The cumulative cost for electronic reporting and permitting would be approximately $210,305 ($164,505 + $45,800) to $233,205 ($164,505 + $68,700) in the first year, depending on the number of dealer permits obtained by each dealer.

Alternative A2 and A3 would have increased social and economic impacts based on reporting frequency and the requirement that all first receivers of Atlantic swordfish, sharks, and BAYS tunas, including transporters, obtain dealer permits. The increase in the reporting frequency could result in dealers having to hire additional personnel to comply with the increase number of dealer reports. The annual burden of reporting through the new system would depend on the species under alternative A2 and A3. For Atlantic swordfish and BAYS tunas, this would be an extra 0.5 hours per month (15 minutes per report each week × 4 weeks; dealers are currently required to report to NMFS twice a month) or 12 hours per year. Based on the number of Atlantic swordfish and tunas dealer permits (that deal with BAYS tunas) in 2011 (or 733 total permits), this would

result in an estimated total annual burden of 8,796 hours. If these fisheries reached 80 percent of any codified quotas, then the reporting burden would increase from weekly to daily reporting for positive or negative reports for any of the associated fisheries, however, NMFS does not anticipate that this would occur at this time.

Atlantic sharks dealers would have to report more often while the non-sandbar LCS, blacknose sharks, and non-blacknose SCS fishing seasons were open. Atlantic shark dealers would spend approximately 7.5 hours/month reporting to NMFS (15 minutes per report each day × 30 days; currently dealers spend 0.5 hours reporting each month) while the non-sandbar LCS, blacknose sharks, and non-blacknose SCS fishing seasons were open, and approximately 1 hour per month (15 minutes per report each week × 4 weeks/month) when the fishing seasons for these fisheries were closed. In 2010, the non-sandbar LCS, blacknose, or non-blacknose SCS fisheries were open for 33 weeks. In 2011, however, the blacknose and non-blacknose SCS were open all year round or for 52 weeks. A similar range of season lengths in subsequent years would result in 57.75 to 91.00 hours of reporting by the federal shark dealer to NMFS while these fisheries were open. However, the non-sandbar LCS, blacknose, or non-blacknose SCS fisheries were closed for 20 weeks during 2010, which would result in 5 hours of reporting by the federal shark dealer to NMFS under similar fishing seasons. Based on the number of Atlantic shark dealer permits in 2011 (or 183 total permits), this would result in an estimated total annual burden of 11,483 hours.

In addition, during the comment period on the proposed rule, NMFS heard that requiring all first receivers of Atlantic swordfish, sharks, and BAYS tunas, including transporters, to obtain dealer permits would result in changes to dealer business practices. While the absolute number of entities that would be affected by this alternative was not quantified, the information provided through public comment indicated that there would be negative social and economic impacts by requiring all first receivers, including transporters, of Atlantic swordfish, sharks, and BAYS tunas product to obtain dealers permits.

Alternative A4, the final action, will simplify dealer reporting on dealers compared to the proposed alternative (*i.e.,* alternative A3), and will change the current definition of who is considered an Atlantic HMS dealer in order to simplify the regulations and maintain consistency with respect to who is considered a first receiver across species. In addition, alternative A4 will only allow Atlantic HMS dealer to purchase commercially-harvested Atlantic swordfish, sharks, and BAYS tunas if the dealer has submitted timely reports to NMFS.

Under the final action, the cost associated with alternative A4 would be the additional reporting burden on dealers by requiring weekly reporting frequency for Atlantic swordfish, sharks, and BAYS tunas dealers. The amount of time it would take dealers to report through the electronic system is estimated to be the same amount of time HMS dealers currently take to report in a paper format (i.e., 15 minutes per report); however, dealers would be reporting twice as frequently as they do under the current regulations (i.e., they will be required to report weekly instead of twice a month). Thus, for Atlantic swordfish, sharks, and BAYS tunas, dealers would spend one hour per month (15 minutes per report each week × 4 weeks/month) or 12 hours per year reporting to NMFS. Based on the number of Atlantic swordfish, shark, and tuna dealer permits (that deal with BAYS tunas) in 2011 (or 916 total permits), this would result in an estimated total annual burden of 10,992 hours. Negative reports would require less of a reporting burden as negative reports are estimated to only take 5 minutes to complete and submit to NMFS. NMFS assumes that this reduction in the proposed reporting frequency should balance the need for timely data in quota limited fisheries while minimizing reporting burdens on HMS dealers.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as small entity compliance guide (the guide) was prepared. Copies of the final rule are available from the HMS Management Division, and the guide (i.e., permit holder letter) will be sent to all HMS dealers. The guide and this final rule will be available upon request.

**List of Subjects in 50 CFR Part 635**

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: August 3, 2012.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries, Performing the Functions and Duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For reasons set out in the preamble, 50 CFR part 635 is amended as follows:

## PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 1. The authority citation for part 635 continues to read as follows:

**Authority:** 16 U.S.C. 971 *et seq.;* 16 U.S.C. 1801 *et seq.*

■ 2. In § 635.2, the definition for ''First receiver'' is removed and the definitions for ''First receive'' and ''Reporting week'' are added in alphabetical order to read as follows:

**§ 635.2 Definitions.**

* * * * *

*First receive* means to take possession for commercial purposes of any fish or any part thereof by purchasing, trading or bartering for it from the fishing vessel owner or operator once it is offloaded, where the vessel has been issued, or should have been issued, a valid permit under this part. First receive does not mean to take possession solely for transport.

* * * * *

*Reporting week* means the period of time beginning at 0001 local time on Sunday and ending at 2400 hours local time the following Saturday.

* * * * *

■ 3. In § 635.4, paragraph (g)(1), (g)(2) and (g)(3) are revised to read as follows:

**§ 635.4 Permit and fees.**

* * * * *

(g) * * *

(1) *Atlantic tunas.* A dealer, as defined under § 600.10 of this chapter, must possess a valid federal Atlantic tunas dealer permit to purchase, trade, or barter any Atlantic tunas.

(2) *Shark.* A dealer, as defined in § 600.10 of this chapter, must possess a valid federal Atlantic shark dealer permit to purchase, trade, or barter any Atlantic shark listed in Table 1 of Appendix A of this part.

(3) *Swordfish.* A dealer, as defined under § 600.10 of this chapter, must possess a valid federal Atlantic swordfish dealer permit to purchase, trade, or barter any Atlantic swordfish.

* * * * *

■ 4. In § 635.5, paragraph (b)(1)(iv) is removed and paragraphs (b)(1)(i)

through (iii) are revised to read as follows:

**§ 635.5 Recordkeeping and reporting.**

* * * * *

(b) * * *

(1) * * *

(i) Dealers that have been issued or should have been issued a Federal Atlantic BAYS tunas, swordfish, and/or shark dealer permit under § 635.4 must submit to NMFS all reports required under this section within the timeframe specified under paragraph (b)(1)(ii) of this section. BAYS tunas, swordfish, and sharks commercially-harvested by a vessel can only be first received by dealers that have been issued or should have been issued an Atlantic tunas, swordfish, and/or shark dealer permit under § 635.4. All federal Atlantic HMS dealers must provide a detailed report of all fish first received to NMFS within the period specified under paragraph (b)(1)(ii) of this section. All reports must be species-specific and must include the required information about all, swordfish, and sharks received by the dealer, including the required vessel information, regardless of where the fish were harvested or whether the harvesting vessel is permitted under § 635.4. For sharks, each report must specify the total weight of the carcass(es) without the fins for each species, and the total fin weight by grade for all sharks combined. Dealers are also required to submit ''negative'' reports, indicating no receipt of any species, within the timeframe specified under paragraph (b)(1)(ii) of this section if they did not first receive any fish during the reporting period . As stated in § 635.4(a)(6), failure to comply with these recordkeeping and reporting requirements may result in existing dealer permit(s) being revoked, suspended, or modified, and in the denial of any permit applications.

(ii) Reports of any Atlantic BAYS tunas, sharks, and/or swordfish first received by dealers from a vessel must be submitted electronically on a weekly basis through a NMFS-approved electronic reporting system by the dealer and received by NMFS no later than midnight, local time, of the first Tuesday following the end of the reporting week unless the dealer is otherwise notified by NMFS. Reports of BAYS tunas, sharks, and/or swordfish may be modified for not more than 30 days from when the dealer report is submitted to NMFS. NMFS will require BAYS tunas, swordfish, and shark dealers to submit dealer reports to NMFS on a weekly basis. Atlantic BAYS tunas, sharks, and swordfish dealers must submit electronic negative reports stating that no BAYS tunas, sharks, and/or swordfish were first received when they received no fish of these species, and no parts thereof, during the reporting period. Reporting requirements for bluefin tuna are specified in paragraph (b)(2) of this section. The negative reporting requirement does not apply for bluefin tuna.

(iii) Atlantic HMS dealers are not authorized to first receive Atlantic swordfish, sharks, and/or BAYS tunas if the required reports have not been submitted and received by NMFS according to reporting requirements under this section. Delinquent reports automatically result in an Atlantic HMS dealer becoming ineligible to first receive Atlantic swordfish, sharks, and/or BAYS tunas. Atlantic HMS dealers who become ineligible to first receive Atlantic swordfish, sharks, and/or BAYS tunas due to delinquent reports are authorized to first receive Atlantic swordfish, sharks, and/or BAYS tunas only once all required and delinquent reports have been completed, submitted by the dealer, and received by NMFS.

* * * * *

■ 5. In § 635.8, paragraphs (b)(4) through (6), and paragraph (c)(4) are revised to read as follows:

**§ 635.8 Workshops.**

* * * * *

(b) * * *

(4) Only dealers issued a valid shark dealer permit may send a proxy to the Atlantic shark identification workshops. If a dealer opts to send a proxy, the dealer must designate at least one proxy from each place of business listed on the dealer permit, issued pursuant to § 635.4(g)(2), which first receives Atlantic shark. The proxy must be a person who is currently employed by a place of business covered by the dealer's permit; is a primary participant in the identification, weighing, and/or first receipt of fish as they are received; and fills out dealer reports as required under § 635.5. Only one certificate will be issued to each proxy. If a proxy is no longer employed by a place of business covered by the dealer's permit, the dealer or another proxy must be certified as having completed a workshop pursuant to this section. At least one individual from each place of business listed on the dealer permit which first receives Atlantic sharks must possess a valid Atlantic shark identification workshop certificate.

(5) An Atlantic shark dealer issued or required to be issued a shark dealer permit pursuant to § 635.4(g)(2) must possess and make available for inspection a valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy at each place of business listed on the dealer permit which first receives Atlantic sharks. For the purposes of this part, trucks or other conveyances of a dealer's place of business are considered to be extensions of a dealer's place of business and must possess a copy of a valid dealer or proxy Atlantic shark identification workshop certificate issued to a place of business covered by the dealer permit. A copy of a valid Atlantic shark identification workshop certificate must be included in the dealer's application package to obtain or renew an Atlantic shark dealer permit. If multiple businesses are authorized to first receive Atlantic sharks under the Atlantic shark dealer's permit, a copy of the Atlantic shark identification workshop certificate for each place of business listed on the Atlantic shark dealer permit which first receives Atlantic sharks must be included in the Atlantic shark dealer permit renewal application package.

(6) Persons holding an expired Atlantic shark dealer permit and persons who intend to apply for a new Atlantic shark dealer permit will be issued a participant certificate in their name upon successful completion of the Atlantic shark identification workshop. A participant certificate issued to such persons may be used only to apply for an Atlantic shark dealer permit. Pursuant to § 635.8(c)(4), an Atlantic shark dealer may not first receive Atlantic shark without a valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy. After an Atlantic shark dealer permit is issued to a person using an Atlantic shark identification workshop participant certificate, such person may obtain an Atlantic shark identification workshop dealer certificate for each location which first receives Atlantic sharks by contacting NMFS at an address designated by NMFS.

* * * * *

(c) * * *

(4) An Atlantic shark dealer may not first receive Atlantic shark without a valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy. A valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy must be maintained on the premises of each place of business listed on the dealer permit which first receives Atlantic sharks. An Atlantic shark dealer may not renew a Federal dealer permit issued pursuant to § 635.4(g)(2) unless a

copy of a valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy has been submitted with the permit renewal application. If the dealer is not certified and opts to send a proxy or proxies to a workshop, the dealer must submit a copy of a valid proxy certificate for each place of business listed on the dealer permit which first receives Atlantic sharks.

* * * * *

■ 6. In § 635.27, paragraph (b)(1)(iv)(C) is revised to read as follows:

**§ 635.27 Quotas.**

* * * * *

(b) * * *

(1) * * *

(iv) * * *

(C) Except for non-sandbar LCS landed by vessels issued a valid shark research permit with a NMFS-approved observer onboard, any non-sandbar LCS reported as harvested in the Florida Keys areas or in the Gulf of Mexico will be counted against the non-sandbar LCS Gulf of Mexico regional quota. Except for non-sandbar LCS landed by vessels issued a valid shark research permit with a NMFS-approved observer onboard, any non-sandbar LCS reported as harvested in the Atlantic region will be counted against the non-sandbar LCS Atlantic regional quota. Non-sandbar LCS landed by a vessel issued a valid shark research permit with a NMFS-approved observer onboard will be counted against the non-sandbar LCS research fishery quota using scientific observer reports.

* * * * *

■ 7. In § 635.28, paragraph (b)(4) is revised to read as follows:

**§ 635.28 Closures.**

* * * * *

(b) * * *

(4) When the fishery for a shark species group and/or region is closed, a fishing vessel, issued a Federal Atlantic commercial shark permit pursuant to § 635.4, may not possess or sell a shark of that species group and/or region, except under the conditions specified in § 635.22(a) and (c) or if the vessel possesses a valid shark research permit under § 635.32 and a NMFS-approved observer is on board. During the closure period, an Atlantic shark dealer, issued a permit pursuant to § 635.4, may not first receive a shark of that species group and/or region from a vessel issued a Federal Atlantic commercial shark permit, except that a permitted Atlantic shark dealer or processor may possess sharks that were harvested, offloaded, and sold, traded, or bartered, prior to the effective date of the closure and were held in storage. Under a closure for a shark species group, an Atlantic shark dealer, issued a permit pursuant to § 635.4 may, in accordance with State regulations, purchase, trade for, barter for, or receive a shark of that species group if the sharks were harvested, offloaded, and sold, traded, or bartered from a vessel that fishes only in State waters and that has not been issued a federal Atlantic commercial shark permit, HMS Angling permit, or HMS Charter/Headboat permit pursuant to § 635.4. Additionally, under a closure for a shark species group and/or regional closure, an Atlantic shark dealer, issued a permit pursuant to § 635.4, may first receive a shark of that species group if the sharks were harvested, offloaded, and sold, traded, or bartered from a vessel issued a valid shark research permit (per § 635.32) that had a NMFS-approved observer on board during the trip sharks were collected.

* * * * *

■ 8. In § 635.31, paragraphs (a)(2)(i) and (a)(2)(ii) are added and paragraphs (c)(2), (c)(4), (c)(5), (c)(6), (d)(1), and (d)(2) are revised to read as follows:

**§ 635.31 Restrictions on sale and purchase.**

(a) * * *

(2) * * *

(i) Dealers may purchase Atlantic bluefin tuna only from a vessel that has a valid Federal commercial permit for Atlantic tunas issued under this part in the appropriate category.

(ii) Dealers may first receive BAYS tunas only if they have submitted reports to NMFS according to reporting requirements of § 635.5(b)(1)(ii) and only from a vessel that has a valid Federal commercial permit for Atlantic tunas issued under this part in the appropriate category.

* * * * *

(c) * * *

(2) Persons that own or operate a vessel for which a valid Federal Atlantic commercial shark permit has been issued and on which a shark from the management unit is possessed, may sell, barter or trade such shark only to a dealer that has a valid permit for shark issued under this part.

* * * * *

(4) Only dealers that have a valid a Federal Atlantic shark dealer permit and who have submitted reports to NMFS according to reporting requirements of § 635.5(b)(1)(ii) may first receive a shark from an owner or operator of a vessel that has, or is required to have, a valid federal Atlantic commercial shark permit issued under this part, except that Atlantic shark dealers may purchase, trade for, barter for, or receive a shark from an owner or operator of a vessel that does not have a federal Atlantic commercial shark permit if that vessel fishes exclusively in state waters. Atlantic shark dealers may first receive a sandbar shark only from an owner or operator of a vessel who has a valid shark research permit and who had a NMFS-approved observer on board the vessel for the trip in which the sandbar shark was collected. Atlantic shark dealers may first receive a shark from an owner or operator of a fishing vessel that has a permit issued under this part only when the fishery for that species group and/or region has not been closed, as specified in § 635.28(b).

(5) An Atlantic shark dealer issued a permit under this part may first receive shark fins from an owner or operator of a fishing vessel only if the shark fins were harvested in accordance with the regulations found at part 600, subpart N, of this chapter and in § 635.30(c).

(6) A dealer issued a permit under this part may not first receive oceanic whitetip sharks or scalloped, smooth, or great hammerhead sharks from an owner or operator of a fishing vessel with pelagic longline gear on board, or from the owner of a fishing vessel issued both a HMS Charter/Headboat permit and a commercial shark permit when tuna, swordfish or billfish are on board the vessel, offloaded from the vessel, or being offloaded from the vessel.

(d) * * *

(1) Persons that own or operate a vessel on which a swordfish in or from the Atlantic Ocean is possessed may sell or trade such swordfish only if the vessel has a valid commercial permit for swordfish issued under this part. Persons may offload such swordfish only to a dealer who has a valid permit for swordfish issued under this part.

(2) Atlantic swordfish dealers may first receive a swordfish harvested from the Atlantic Ocean only from an owner or operator of a fishing vessel that has a valid commercial permit for swordfish issued under this part and only if the dealer has submitted reports to NMFS according to reporting requirements of § 635.5(b)(1)(ii).

■ 9. In § 635.71, paragraph (a)(55) is added and paragraphs (a)(3), (d)(11), (d)(14), and (d)(16) are revised to read as follows:

**§ 635.71 Prohibitions.**

(a) * * *

(3) Purchase, receive, or transfer or attempt to purchase, receive, or transfer, for commercial purposes, Atlantic

bluefin tuna landed by owners of vessels not permitted to do so under § 635.4, or purchase, receive, or transfer, or attempt to purchase, receive, or transfer Atlantic bluefin tuna without the appropriate valid Federal Atlantic tunas dealer permit issued under § 635.4. Purchase, receive, or transfer or attempt to purchase, receive, or transfer, for commercial purposes, other than solely for transport, any BAYS tunas, swordfish, or sharks landed by owners of vessels not permitted to do so under § 635.4, or purchase, receive, or transfer, or attempt to purchase, receive, or transfer, for commercial purposes, other than solely for transport, any BAYS tunas, swordfish, or sharks without the appropriate valid dealer permit issued under § 635.4 or submission of reports by dealers to NMFS according to reporting requirements specified in § 635.5. This prohibition does not apply to a shark harvested from a vessel that has not been issued a permit under this part and that fishes exclusively within the waters under the jurisdiction of any state.

* * * * *

(55) Fail to electronically submit an Atlantic HMS dealer report through the HMS electronic dealer reporting system to report BAYS tunas, swordfish, and sharks to NMFS in accordance with § 635.5, if issued, or required to be issued, a Federal Atlantic HMS dealer permit pursuant to § 635.4.

* * * * *

(d) * * *

(11) First receive or attempt to first receive Atlantic sharks without a valid Federal Atlantic shark dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy or fail to be certified for completion of a NMFS Atlantic shark identification workshop in violation of § 635.8.

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(14) First receive or attempt to first receive Atlantic sharks without making available for inspection, at each of the dealer's places of business listed on the dealer permit which first receives Atlantic sharks, an original, valid dealer or proxy Atlantic shark identification workshop certificate issued by NMFS to the dealer or proxy in violation of § 635.8(b), except that trucks or other conveyances of the business must possess a copy of such certificate.

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(16) First receive or attempt to first receive a shark or sharks or part of a shark or sharks landed in excess of the retention limits specified in § 635.24(a).

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[FR Doc. 2012–19457 Filed 8–7–12; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 660

**[Docket No. 120312182–2239–02]**

**RIN 0648–XA882**

## Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement the annual catch limit (ACL), harvest guideline (HG), and associated annual reference points for Pacific sardine in the U.S. exclusive economic zone (EEZ) off the Pacific coast for the fishing season of January 1, 2012, through December 31, 2012. These specifications were determined according to the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). The 2012 maximum HG for Pacific sardine is 109,409 metric tons (mt). The initial overall commercial fishing HG, that is to be allocated across the three allocation periods for sardine management, is 97,409 mt. This amount has been divided across the three seasonal allocation periods for the directed fishery the following way: January 1–June 30—33,093 mt; July 1–September 14—37,964 mt; and September 15–December 31—23,352 mt with an incidental set-aside of 1,000 mt for each of the three periods. This rule is intended to conserve and manage the Pacific sardine stock off the U.S. West Coast.

**DATES:** Effective August 8, 2012 through December 31, 2012.

**FOR FURTHER INFORMATION CONTACT:** Joshua Lindsay, Southwest Region, NMFS, (562) 980–4034.

**SUPPLEMENTARY INFORMATION:** During the Pacific Fishery Management Council's (Council) annual public meetings, the NMFS Southwest Fisheries Science Center presents the estimated biomass for Pacific sardine to the Council's CPS Management Team (Team), the Council's CPS Advisory Subpanel (Subpanel), the Council's Scientific and Statistical Committee (SSC) and the Council. After the biomass and the status of the fisheries are reviewed and discussed, the SSC and other advisory bodies then provide the calculated overfishing limit (OFL), available biological catch (ABC), ACL and ACT (and/or HG) recommendations. Following review by the Council and after considering public comment, the Council adopts a biomass estimate and makes its catch level recommendations to NMFS.

After review of the Council's recommendations from the November 2011 Council meeting, NMFS implements in this rule the 2012 ACL, HG and other annual catch reference points, including an OFL and an ABC that takes into consideration uncertainty surrounding the current estimate of biomass for Pacific sardine in the U.S. EEZ off the Pacific coast. The CPS FMP and its implementing regulations require NMFS to set these annual catch levels for the Pacific sardine fishery based on the annual specification framework in the FMP. This framework includes a harvest control rule that determines the maximum HG, the primary management target for the fishery, for the current fishing season. This level is reduced from the Maximum Sustainable Yield/OFL level for economic and ecological considerations. The HG is based, in large part, on the current estimate of stock biomass for the northern subpopulation of Pacific sardine. The harvest control rule in the CPS FMP is HG = [(Biomass – Cutoff) * Fraction * Distribution] with the parameters described as follows:

1. *Biomass.* The estimated stock biomass of Pacific sardine age one and above for the 2012 management season is 988,385 mt.

2. *Cutoff.* This is the biomass level below which no commercial fishery is allowed. The FMP established this level at 150,000 mt.

3. *Distribution.* The portion of the northern subpopulation of the Pacific sardine biomass estimated in the EEZ off the Pacific coast is 87 percent. This parameter is used to prorate the biomass used to calculate the target harvest level to account for the transboundary nature of the resource.

4. *Fraction.* The harvest fraction is the percentage of the biomass above 150,000 mt that may be harvested.

At the November 2011 Council meeting, the Council adopted the 2012 assessment of the Pacific sardine resource and a Pacific sardine biomass estimate of 988,385 mt. Based on recommendations from its SSC and other advisory bodies, the Council recommended, and NMFS is implementing, an overfishing limit of 154,781 mt, an acceptable biological catch (ABC) of 141,289 mt, an annual catch limit of 141,289 mt (equal to the ABC) and a maximum harvest guideline (HG) (HGs under the CPS FMP are

operationally similar to annual catch targets (ACT)) of 109,409 metric tons (mt) for the 2012 Pacific sardine fishing year. These catch specifications are based on the most recent stock assessment and the control rules established in the CPS FMP.

The Council also recommended, and NMFS is implementing, establishment of an the initial overall commercial fishing HG of 97,409 mt Pacific sardine and allocation of that HG across the three allocation periods. This number has been reduced from the maximum HG by 12,000 mt: (i) For potential harvest by the Quinault Indian Nation of up to 9,000 mt; and (ii) 3,000 mt, which is initially reserved for potential use under an exempted fishing permit(s) (EFPs). Additionally, incidental catch set asides are in place for each allocation period. The purpose of the incidental set-aside allotments and allowance of an incidental catch-only fishery is to allow for the restricted incidental landings of Pacific sardine in other fisheries, particularly other CPS fisheries, when a seasonal directed fishery is closed to reduce bycatch and allow for continued prosecution of other important CPS fisheries.

For the 2012 Pacific sardine fishing season, the incidental set asides and adjusted directed harvest levels for each period are shown in the following table in metric tons:

| | January 1–June 30 | July 1–September 14 | September 15–December 31 | Total |
|---|---|---|---|---|
| Total Seasonal Allocation | 34,093 (35%) | 38,964 (40%) | 24,352 (25%) | 97,409 |
| Incidental Set Aside | 1,000 | 1,000 | 1,000 | 3,000 |
| Adjusted Directed Harvest Allocation | 33,093 | 37,964 | 23,352 | 94,409 |

Although the 2012 HG is well below that of the ACL, additional inseason accountability measures are in place to ensure the fishery stays within the HG. If during any of the seasonal allocation periods the applicable adjusted directed harvest allocation is projected to be taken, fishing will be closed to directed harvest and only incidental harvest will be allowed. For the remainder of the period, any incidental Pacific sardine landings will be counted against that period's incidental set-aside. The incidental fishery will also be constrained to a 30 percent by weight incidental catch rate when Pacific sardine are landed with other CPS so as to minimize the targeting of Pacific sardine. In the event that an incidental set-aside is projected to be attained, the incidental fishery will be closed for the remainder of the period. If the set-aside is either not fully attained or is exceeded in a given seasonal period, the directed harvest allocation in the following seasonal period will automatically be adjusted upward or downward accordingly to account for the discrepancy. Additionally, if during any seasonal period the directed harvest allocation is either not fully attained or is exceeded, then the following period's directed harvest total will be adjusted to account for the discrepancy, as well.

If the total HG or these apportionment levels for Pacific sardine are reached or are expected to be reached, the Pacific sardine fishery will be closed until it re-opens either per the allocation scheme or at the beginning of the next fishing season. The NMFS Southwest Regional Administrator will publish a notice in the **Federal Register** announcing the date of any such closure.

At the April 2012 Council meeting the Council approved and subsequently made a recommendation to NMFS to approve an EFP for all of the 3,000 mt EFP set-aside. NMFS will likely make a decision on whether to issue an EFP for Pacific sardine sometime prior to the start of the second seasonal period (July 1, 2012). Any of the 3,000 mt that is not issued to an EFP will be rolled into the third allocation period's directed fishery. Any set-aside attributed to an EFP designed to be conducted during the closed fishing time in the second allocation period (prior to September 15), but not utilized, will roll into the third allocation period's directed fishery. In response to a request by the Quinault Indian Nation for the exclusive right to harvest Pacific sardine in 2012 in their Usual and Accustomed Fishing Area off the coast of Washington State, pursuant to their rights to fish under the 1856 Treaty of Olympia (Treaty with the Quinault), the Council recommended and NMFS approved an allocation of 9,000 mt of sardine to the Quinault in 2012. NMFS will consult with Quinault Department of Fisheries staff and Quinault Fisheries Policy representatives on or near September 1, 2012 to review Quinault catch to-date, Oregon and Washington catch to-date and any other relevant information in an attempt to project tribal catch for the remainder of the season. The purpose of this consultation will be to determine whether any unused portion of the 2012 Quinault Pacific sardine set-aside of 9,000 mt can be moved into the non-tribal third period allocation that begins September 15.

Detailed information on the fishery and the stock assessment are found in the report ''Assessment of the Pacific Sardine Resource in 2011 for U.S. Management in 2012'' (see **ADDRESSES**).

**Comments and Responses**

On April 3, 2012 NMFS published a proposed rule for this action and solicited public comments (77 FR 19991). NMFS received two comments from one commenter regarding the Pacific sardine annual specifications.

*Comment 1:* The commenter requested that the proposed action be disapproved because the harvest guideline (HG) control rule does not reflect the best available science for setting catch levels and results in a catch level that is too risky, fails to prevent overfishing, and does not account for the role of sardine as forage. As such, the commenter recommends a different approach to setting the catch level referring extensively to a report by the Lenfest Forage Fish Task Force. This report recommends that the fishing mortality rate for forage species be set at one-half the species' natural mortality rate, a rate said to have been traditionally used in some forage fisheries as a proxy for fishing at MSY ($F_{MSY}$). The commenter references the Lenfest Report and a July 2011 article in the journal *Science* to suggest the harvest guideline should be set at ½ of $F_{MSY}$, but does not offer a specific suggestion for determining $F_{MSY}$; the commenter then cites an $F_{MSY}$ rate of 0.12 pulled from modeling conducted for Amendment 8 to the CPS FMP and an $F_{MSY}$ rate of 0.18 developed through modeling as part of the 2011 sardine stock assessment. The comment also states that the best available information is not being used for the FRACTION parameter of the HG control rule and that the DISTRIBUTION parameter does not reflect current catch levels.

*Response:* To the extent this comment is directed to the setting of 2012 Pacific sardine ACL, HG, and associated annual reference points based on the HG

control rule and ABC control rule of the FMP, the 2012 specifications are based on the best available science. As explained above under **SUPPLEMENTARY INFORMATION,** this year's biomass estimate used to establish the 2012 specifications went through extensive review and along with the resulting OFL and ABC, was endorsed by the Council's SSC and NMFS as the best available science. Disapproving this action, as requested by the commenter, would allow the fishery to take place without any HG or quota. The HG and seasonal allocations being put in place by this action are important for preventing overfishing and managing the fishery at a level that will achieve optimum yield while allowing all sectors of the Pacific sardine fishery fair and equitable opportunities to harvest the resource. To the extent that the comment is directed at the HG control rule established in Amendment 8 to the CPS FMP, this rulemaking is not intended to revise the parameters of the existing HG control rule, and so the comment is beyond the scope of this rulemaking.

Although reconsideration of the existing HG control rule is beyond the scope of this rulemaking, NMFS will respond to some aspects of the comment that relate to the HG control rule itself, such as the FRACTION and DISTRIBUTION parameters. The CPS FMP and its implementing regulations require NMFS to set annual catch levels for the Pacific sardine fishery based on the annual specification framework in the FMP. This framework includes a harvest control rule established by Amendment 8 to the FMP, and continued in Amendment 13, that determines the maximum HG, the primary management target for the fishery, for the current fishing season (HGs are operationally similar to annual catch targets) based on the current year's estimated biomass.

NMFS agrees that Pacific sardine is an important prey component of the California Current ecosystem and as such the current harvest control rule formula used to determine the harvest guideline takes into account Pacific sardine's ecological role as forage. The current harvest control established in Amendment 8, developed after 15 public meetings, was chosen from a wide range of FMP harvest policies based on analysis of a variety of measures of performance. Of these performance measures, or OY considerations, six were chosen as priority considerations for determining which harvest policy to choose; three related specifically to sardine's role as forage in the California Current ecosystem, and three stemmed from an interest in maintaining a predictable and constant flow of catch and revenues over the long term. The current harvest policy was chosen because it is the most precautionary as related to conserving sardine as forage, while still providing long-term consistent fishing yields for the fishing industry, ultimately resulting in OY over the long term.

Thus, the HG control rule includes a variety of OY considerations as well as explicit precautions intended to prevent the stock from becoming overfished, prevent overfishing and continuously reduce harvest levels as biomass decreases (low harvest fraction and a 150,000 mt threshold below which fishing is prohibited). These considerations and precautions are based on the environmentally driven dynamic nature of the Pacific sardine stock as well as its importance in the ecosystem as forage for other species. The outcome of this control rule are catch levels more conservative than MSY-based management strategies (OFL/ABC), because the focus for CPS management is oriented primarily towards biomass versus catch, leaving adequate forage in the ocean and maintaining long-term, consistent catch levels for the fishing industry.

Due to past shifts in sardine productivity being linked with warm or cold ocean regimes, the CPS FMP uses a correlation between Scripps Pier sea surface temperature and sardine productivity to determine the FRACTION parameter of the HG rule. Recent work has shown that the strength of the direct correlation between Scripps Pier sea surface temperature and sardine productivity is likely not as strong or defined as previously thought. However, this work did not infer that there was no relationship between sardine productivity and the physical environment (including ocean temperature). It is well established that environmental forcing plays a strong role in Pacific sardine recruitment, with temperature likely being an important factor. However, NOAA recognizes that based on this recent work showing that the explicit relationship underlying the harvest FRACTION parameter may not be as strong as previously thought, it should be reassessed. To that end, the Council is planning a future workshop to determine what key fishery management parameters, such as $F_{MSY}$ or components of the HG control rule, in particular the temperature-based harvest FRACTION, should be reviewed and/or revised. Until the review process is completed, however, NOAA still considers the current control rule as the best available science for setting harvest levels for Pacific sardine. Additionally, on its own, a FRACTION at 15 percent would be considered conservative based on the below discussion of fishing mortality rates, but when used in concert with the other formula parameters it is particularly cautious. Fifteen percent is also less than the $F_{MSY}$ of 18 percent used in the OFL and ABC calculations, therefore adding further protection to the stock.

With regard to the DISTRIBUTION parameter of the sardine HG control rule, which is also used in the MSY type control rules (OFL and ABC), it is a measure of the average ''distribution'' of biomass for the northern subpopulation of Pacific sardine, not ''catch.'' The Distribution parameter is not intended to reflect the proportion of coastwide catch that Canada and Mexico actually catch, or are entitled to catch. The HG control rule was not developed with the assumptions that the entire biomass is readily available to the fleet, that there are no other fishing restrictions, or that U.S. fishing restrictions match those of other countries. Obviously, these assumptions are not correct. For example the U.S. fishery was only open for 83 days in 2011, while Mexico and Canada were not bound by this restriction. Additionally, the majority of the sardine biomass typically is outside the fishing area of the U.S. fleet, as sardines occur up to 300 nautical miles offshore and fisherman typically fish within 5 miles from shore. Therefore, the DISTRIBUTION factor is not incorrect on the basis that it does not reflect current catch levels between the three countries that harvest the northern subpopulation of Pacific sardine, because it was never intended to reflect catch levels. Additionally, due to mixing of the southern and northern subpopulations of Pacific sardine off of northern Baja Mexico, a significant amount of the Mexican catch referenced by the commenter is actually from the southern subpopulation of Pacific sardine not the northern subpopulation; only the northern subpopulation is monitored and managed under the CPS FMP.

Additionally, the commenter states that the information used to develop the current percentage used for the Distribution parameter (87%) came from data collected during low biomass years and that it is a greater percentage then was used by the State of California (59%) to set the state quota in 1998. Although it is correct that the State of California used a distribution factor of 59% in setting California quotas in 1998, this proportion was based on a regional biomass estimate that included sardine only off the area between Baja California and San Francisco. This 59%

figure was probably a reasonable estimate of the fraction of sardine biomass in the region surveyed (the southern distribution of the stock), however the currently used 87% is based on the entire distribution of the stock which extends from the U.S./Canada border to U.S./Mexico border). Additionally, because the data used to calculate the currently used 87% came from low biomass years, this actually results in an underestimate for years with medium to high biomass.

With respect to the commenter's suggestion that catch levels should not be set based on the existing HG control rule but rather be set in accordance with recommendations in the Lenfest Report, it is illustrative to play out what this might mean. The Lenfest Report recommends that harvest be set at ½ the natural mortality rate for forage species; since the estimated natural mortality rate for Pacific sardine is 0.4 of biomass, therefore, based on the Lenfest recommendation, the harvest rate for Pacific sardine should be 0.2 of biomass. Under the MSY control rule in the CPS FMP, the $F_{MSY}$ for the sardine in 2012 is 0.18 (i.e. the OFL), which is a fishing rate below 0.2, and the result of this year's HG control rule is well below this rate at 0.11. Therefore, even if this rulemaking included reconsideration of the HG control rule itself, following the ½-natural-mortality recommendation would be less precautionary than the fishing level for 2012 under the HG control rule of the CPS FMP. To further highlight the current conservative nature of the management in place for Pacific sardine, due to the existing HG control rule and other management measures such as the 200,000 mt maximum catch level in place, annual fishing mortality rates can never exceed .12. Second, NMFS also notes that there is a very large difference (approximately 45,000 mt and 32,000 mt respectively) between the higher OFL and ABC/ACL levels and the lower HG catch level (which is the maximum directed fishing level) for the 2012 fishing year. The lower HG is the result of OY considerations and the management strategy in the CPS FMP that limits Pacific sardine to catch levels more conservative than needed to simply avoid overfishing as described under National Standard 1 or a risk of exceeding the ACL due to management uncertainty.

The commenter's recommendation to use a static management approach apparently does not include precautionary parameters that account for natural variability of the Pacific sardine stock as does the HG formula of the FMP. Furthermore, the commenter offered no clear standard for this approach; instead, commenter referenced an $F_{MSY}$ of 0.12 that appeared in a table in the environmental impact statement for Amendment 8 to the CPS FMP; commenter also references the estimated $F_{MSY}$ of 0.18 from a modeling exercise in Appendix 4 of the 2011 sardine stock assessment prepared by the NMFS Southwest Fisheries Science Center; the intent this estimate was for use in the calculation of OFL and intent of preventing overfishing. Neither modeling exercise was intended to result in an estimate of actual $F_{MSY}$ in the context of the recommendations presented by the commenter.

NFMS recognizes that management of trans-boundary stocks, such as Pacific sardine, is one of the more difficult issues in managing CPS. The current approach in the CPS FMP sets sardine harvest levels for U.S. fisheries by prorating the biomass used to calculate the target harvest level according to the portion of the stock estimated to be in U.S. waters on average over time. The primary advantage of prorating the total target harvest level is that U.S. fisheries can be managed unilaterally in a responsible manner that is consistent with the MSA. Mexican and Canadian landings are not considered explicitly when harvest levels for U.S. waters are determined. However, the allowable harvest level in U.S. waters depends on current biomass estimates, so U.S. harvest will be reduced if the stock is depleted by fishing in either Mexico or Canada. Additionally, fishery data from both Mexico and Canada is used in the U.S. stock assessment to ensure the best available information is used to assess the stock. In practice, this approach is similar to managing the U.S. and other portions of a stock separately since harvest for the U.S. fishery in a given year depends ultimately on the biomass in U.S. waters.

Prorating total harvest by the portion in U.S. waters may not protect CPS stocks against high combined U.S., Mexican and Canadian harvest, but harvest in U.S. waters will automatically decrease if biomass decreases. In any given year, combined harvest rates may be higher than desirable, and biomass and fishery yields may be reduced due to too much fishing. However, the total exploitation rate on the stock has averaged approximately only 13% over the last 10 years and is currently about 14.5%. The U.S. exploitation rate has averaged 7.6% since 2000 and is currently about 6.6%.

*Comment 2:* The same commenter also stated that an Environment Impact Statement (EIS) should have been prepared instead of an Environmental Assessment (EA), the range of alternatives analyzed in the EA was not adequate, and alternative methods for determining the annual specifications should have been analyzed. Specifically, the commenter suggested that the EA should have analyzed the setting of catch limits based one half of $F_{MSY}$, in addition to alternatives based on the existing HG and ABC control rules. In connection with their NEPA comment, the commenter does not indicate what $F_{MSY}$ would be. Based on discussion in another part of the comment letter, the commenter apparently supports using an $F_{MSY}$ of 0.12 used in an (unselected) alternative for the environmental analysis for Amendment 8 to the CPS FMP or perhaps an $F_{MSY}$ of 0.18 that was used as part of the 2011 sardine stock assessment.

*Response:* Regarding the comments about the National Environmental Policy Act (NEPA) analysis for this action, the EA completed for this action demonstrates that the implementation of these annual catch levels for the Pacific sardine fishery based on the HG and ABC control rules in the FMP will not significantly adversely impact the quality of the human environment. Therefore an EIS is not necessary to comply with NEPA for this action.

With regard to the scope and range of alternatives, the six alternatives analyzed in the EA was a reasonable number and covered an appropriate scope based on the limited nature of this action, which is the application of a set formula in the FMP's HG and ABC control rules to determine harvest levels of Pacific sardine for one year and the allocation of that level between allocation periods, with a set-aside for an exempted fishing permit and an Indian nation. The six alternatives analyzed (including the proposed action) were objectively evaluated in recognition of the purpose and need of this action and the framework process in place based on the HG and ABC control rules for setting catch levels for Pacific sardine. The CPS FMP describes a specific framework process for annually setting required catch levels and reference points. Within this framework are specific control rules used for determining the annual OFL, ABC, ACL, and HG/ACT. Although there is some flexibility built into this process in terms of determinations of scientific and management uncertainty, there is little discretion in the control rules for the OFL (level for determining overfishing) and the HG (level at which directed fishing is stopped), with the annual biomass estimate being the

primary determinant in both these levels. Therefore, the alternatives in the EA covered a range of higher and lower ABC and ACL levels in the context of the OFL and HG levels.

With regard to the suggestion by the commenter to analyze as an alternative in this EA one-half $F_{MSY}$ (a static percentage applied to the biomass estimate) as the basis from which to set the annual specifications, this would not have been a pertinent alternative for an EA on the 2012 annual specifications. The annual specifications implement the FMP, which uses a harvest guideline control rule with a specific, ecosystem-sensitive formula. To analyze such an alternative would have been outside the scope of the rulemaking. The purpose of this EA was to analyze alternative approaches to implementing the existing FMP, not alternatives for changing the FMP.

Furthermore, even if this were an EA considering amendments to the existing FMP, as stated above, fishery management approaches for small pelagic species based on equilibrium or steady-state concepts, such as those suggested by the commenter (i.e., MSY or $B_{MSY}$), which ignore natural variability in abundance, are not the most appropriate or reasonable and therefore the current approach—which accounts for natural variability—is used. Although the commenter cites an $F_{MSY}$ of 0.12 from an alternative not chosen in the environmental impact statement for Amendment 8 to the CPS FMP as well as an $F_{MSY}$ of 0.18 from modeling conducted as part of the 2011 sardine stock assessment, neither value was intended even in those documents to be used as part of an actual static MSY harvest strategy because biomass and productivity of most CPS change in response to environmental variability on annual and decadal time scales. These numbers were postulated as modeling exercises, or for the sake of considering a range of alternatives or other specific purposes. The harvest strategy in the FMP accounts for environmental variability and requires annual estimates of biomass rather than using a static harvest strategy.

The commenter is welcome to recommend that the Council and NMFS amend the FMP to manage Pacific sardine using a steady-state formula that would not account for natural fluctuations or conditions, but the EA for the 2012 annual specifications was not the appropriate place to conduct the analysis of that alternative.

**Classification**

The Administrator, Southwest Region, NMFS, determined that this action is necessary for the conservation and management of the Pacific sardine fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

NMFS finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for the establishment of the harvest specifications for the 2012 Pacific sardine fishing season. For the reasons set forth below, the immediate implementation of this measure is necessary for the conservation and management of the Pacific sardine resource. This rule establishes seasonal harvest allocations and the ability to restrict fishing when these allocations are approached or reached. These allocations are important mechanisms in preventing overfishing and managing the fishery at optimum yield while allowing fair and equitable opportunity to the resource by all sectors of the Pacific sardine fishery. A delay in effectiveness is likely to prevent the ability to close the fishery when necessary and cause the fishery to exceed the second seasonal allocation. The directed and incidental harvest allocations are designed to allow fair and equitable opportunity to the resource by all sectors of the Pacific sardine fishery and to allow access to other profitable CPS fisheries, such as squid and Pacific mackerel. Because the directed harvest allocation for the second allocation period is approximately 30,000 mt greater than the level in 2011, NMFS did not expect that it would be necessary to close the directed fishery prior to the start of the third allocation period. However, based on current landings information, which are significantly higher than anticipated, NMFS expects the directed fishery will need to be closed during the current allocation period, which began on July 1. Delaying the effective date of this rule is contrary to the public interest because additional reduction of Pacific sardine beyond the incidental take limit set out in this action would decrease the future harvest limits, thereby reducing future potential catch of the stock along with the profits associated with those harvests. Therefore, NMFS finds that there is good cause to waive the 30-day delay in effectiveness in this circumstance. To help keep the regulated community informed of this final rule NMFS will also announce this action through other means available, including fax, email, and mail to fishermen, processors, and state fishery management agencies. Additionally, NMFS will advise the CPS Advisory Subpanel, which is comprised of representatives from all sectors and regions of the sardine industry, including processors, fishermen, user groups, conservation groups, and fishermen association representatives, of current landings as they become available and for the public at-large also post them on NMFS' Southwest Regional Office Web site, *http://swr.nmfs.noaa.gov/*.

This final rule is exempt from Office of Management and Budget review under Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here.

No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

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

Dated: August 3, 2012.

**Alan D. Risenhoover,**

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

[FR Doc. 2012–19419 Filed 8–7–12; 8:45 am]

**BILLING CODE 3510–22–P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 660

**[Docket No. 100804324–1265–02]**

**RIN 0648–BC36**

## Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Biennial Specifications and Management Measures; Inseason Adjustments

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

**ACTION:** Final rule; inseason adjustments to biennial groundfish management measures.

**SUMMARY:** This final rule announces inseason changes to management measures in the Pacific Coast groundfish fisheries. This action, which is authorized by the Pacific Coast

Groundfish Fishery Management Plan (FMP), is intended to allow fisheries to access more abundant groundfish stocks while protecting overfished and depleted stocks.

**DATES:** Effective 0001 hours (local time) September 1, 2012.

**FOR FURTHER INFORMATION CONTACT:** Colby Brady (Northwest Region, NMFS), phone: 206–526–6117, fax: 206–526–6736, *colby.brady@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

## Electronic Access

This final rule is accessible via the Internet at the Office of the Federal Register's Web site at *http://www.gpo.gov/fdsys/search/home.action.* Background information and documents are available at the Pacific Fishery Management Council's Web site at *http://www.pcouncil.org/.*

## Background

The Pacific Coast Groundfish FMP and its implementing regulations at title 50 in the Code of Federal Regulations (CFR), part 660, subparts C through G, regulate fishing for over 90 species of groundfish off the coasts of Washington, Oregon, and California. Groundfish specifications and management measures are developed by the Pacific Fishery Management Council (Council), and are implemented by NMFS.

On November 3, 2010, NMFS published a proposed rule to implement the 2011–2012 harvest specifications and management measures for most species of the Pacific Coast groundfish fishery (75 FR 67810). The final rule to implement the 2011–12 harvest specifications and management measures for most species of the Pacific Coast Groundfish Fishery was published on May 11, 2011 (76 FR 27508). This final rule was subsequently amended by several inseason actions (76 FR 39313, 76 FR 67092, 76 FR 79122, 77 FR 12503, 77 FR 22679, 77 FR 24634). On September 27, 2011, NMFS published a proposed rule to implement final 2012 specifications for overfished species and assessed flatfish species pursuant to Secretarial Amendment 1 to the Groundfish FMP (76 FR 59634). That final rule was effective January 1, 2012. These specifications and management measures are codified in the CFR (50 CFR part 660, subparts C through G).

Changes to current groundfish management measures implemented by this action were recommended by the Council, in consultation with Pacific Coast Treaty Indian Tribes and the States of Washington, Oregon, and California, at its June 20–June 25, 2012 meeting. The Council recommended adjusting the biennial groundfish management measures for the remainder of the biennial period to respond to updated fishery information and additional inseason management needs. The adjustment to fishery management measures are not expected to result in greater impacts to overfished species than originally projected through the end of 2012. Estimated mortality of overfished and target species are the result of management measures designed to achieve, to the extent possible, but not exceed, annual catch limits (ACLs) of target species while fostering the rebuilding of overfished stocks by remaining within their rebuilding ACLs.

## Limited Entry (LE) Fixed Gear Fishery Management Measures

### *Sablefish Daily Trip Limit (DTL) Trip Limits North of 36° N. Lat.*

To ensure that harvest opportunities for this stock do not exceed the LE fixed gear sablefish DTL allocation north of 36° N. lat., the Council considered decreases to trip limits for sablefish in this fishery and the potential impacts on overall catch levels. Model-based landings projections of the LE fixed gear sablefish DTL fishery north of 36° N. lat. were made for the remainder of 2012 by the Council's Groundfish Management Team (GMT). These projections were made based on the most recent information available under the current 2012 trip limit scenario, and predicted a harvest overage of 41 percent, or 108 metric tons in excess of this fishery's harvest guideline under the status quo trip limits. Projections for the other three fixed gear sablefish fisheries were tracking within their targets for 2012. An overage by the northern LE fixed gear sablefish DTL fishery could result in an overage of the northern sablefish ACL.

Therefore, the Council recommended and NMFS is implementing trip limit changes for the LE fixed gear sablefish DTL fishery north of 36° N. lat. that decrease LE fixed gear sablefish DTL fishery limits from ''1,000 lb (454 kg) per week, not to exceed 4,000 lb (1,814 kg) per 2 months'' to ''800 lb (363 kg) per week, not to exceed 1,600 lb (726 kg) per 2 months'' beginning in period 5, September 1, 2012 through the end of the year. This decrease in trip limits is not anticipated to increase projected impacts to overfished species and is anticipated to help maintain mortality levels within the northern sablefish ACL.

### *Shelf Rockfish Trip Limits South of 34°27′ N. Lat.*

The Council received an industry request to increase the LE fixed gear shelf rockfish trip limits south of 34°27′ N. lat. The shelf rockfish complex south of 40°10′ N. lat. has not been fully harvested in recent years, averaging between 29.7 percent and 51.1 percent of its ACL in years 2006–2010. West Coast Groundfish Observer Program data indicate very few encounters with overfished species and California state fish ticket data indicate that very few vessels actually attained full trip limits between 2008 and 2010.

Based on these data, the Groundfish Management Team estimated that landings would increase by approximately 0.2 metric tons, to a total of 2.2 metric tons. This modest increase in trip limits for shelf rockfish is not expected to result in an overharvest of any species' contribution to the complex as a result of this request.

Therefore, the Council recommended and NMFS is implementing increased trip limits for shelf rockfish in the LE fixed gear fishery south of 34°27′ N. lat., from ''3,000 pounds (1361 kg) per 2 months'' to ''4,000 pounds (1814 kg) per 2 months'' beginning in period 5, September 1, 2012 through the end of the year.

### *Bocaccio Trip Limits South of 34°27′ N. Lat.*

There are increased encounters with bocaccio south of 34°27′ N. lat. resulting from a very strong year class entering the fishery. In order to reduce unnecessary discarding as a result of increased encounters with the new year-class entrants, industry submitted a request to the Council to raise the bimonthly limit of bocaccio south of 34°27′ N. lat. The estimated take of bocaccio would increase to 0.7 metric tons from the annual average of 0.4 metric tons, which is well within the non-trawl bocaccio allocation south of 40°10′ N. lat.

Therefore, the Council recommended and NMFS is implementing trip limit changes for bocaccio in the LE fixed gear fishery south of 34°27′ N. lat. from ''300 pounds (136 kg) per two months'' to ''500 pounds (227 kg) per two months'' beginning in period 5, September 1, 2012 through the end of the year.

## Classification

This final rule makes routine inseason adjustments to groundfish fishery management measures based on the best available information and is consistent with the Pacific Coast Groundfish FMP and its implementing regulations.

This action is taken under the authority of 50 CFR 660.60(c) and is exempt from review under Executive Order 12866.

These inseason changes in sablefish, shelf rockfish, and bocaccio limits are based on the most recent data available. The aggregate data upon which these actions are based are available for public inspection at the Office of the Administrator, Northwest Region, NMFS, (see **ADDRESSES**) during business hours.

For the following reasons, NMFS finds good cause to waive prior public notice and comment on the revisions to groundfish management measures under 5 U.S.C. 553(b) because notice and comment would be impracticable and contrary to the public interest. Also, for the same reasons, NMFS finds good cause to partially waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(3), so that this final rule may become effective September 1, 2012.

At the June Council meeting, the Council recommended that these changes, which are based on the most recent information available, be implemented by September 1, 2012. There was not sufficient time after that meeting to draft this document and undergo proposed and final rulemaking before these actions need to be in effect. For the actions to be implemented in this final rule, affording the time necessary for prior notice and opportunity for public comment would prevent NMFS from managing fisheries using the best available science to approach, without exceeding, the ACLs for federally managed species in accordance with the FMP and applicable laws. The adjustments to management measures in this document affect commercial fisheries from southern California to Washington State. These adjustments to management measures must be implemented in a timely manner, by September 1, 2012, to: Allow LE fixed gear fishermen an opportunity to harvest their limits in 2012 for sablefish without exceeding the ACL North of 36° N. lat., to allow harvest of shelf rockfish without exceeding the ACL south of 34°27′ N. lat., and to allow incidental catch of bocaccio without exceeding the ACL south of 34°27′ N. lat. in response to significant recent recruitment events. These changes in the LE fixed gear fishery continue to allow fishermen opportunities to harvest available healthy stocks while staying within the ACLs for these species. If this rule is not implemented immediately, the public could have incorrect information regarding allowed LE fixed gear trip limits which would cause confusion and be inconsistent with the intent of the Council. It would be contrary to the public interest to delay implementation of these changes until after public notice and comment, because making this regulatory change by September 1, 2012, allows harvest as intended by the Council in fisheries that are important to coastal communities in a manner that prevents ACLs of overfished and target species from being exceeded.

No aspect of this action is controversial and no change in operating practices in the fishery is required from those intended in this inseason adjustment.

Delaying these changes would also keep management measures in place that are not based on the best available information. Such delay would impair achievement of the Pacific Coast Groundfish FMP objectives of providing for year-round harvest opportunities, extending fishing opportunities as long as practicable during the fishing year, or staying within ACLs or allocations for sablefish, shelf rockfish, and bocaccio in the LE fixed gear fishery.

Accordingly, for the reasons stated above, NMFS finds good cause to waive prior notice and comment and to partially waive the delay in effectiveness.

**List of Subjects in 50 CFR Part 660**

Fisheries, Fishing, Indian fisheries.

Dated: August 3, 2012.

**Lindsay Fullenkamp,**

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

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

## PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. Table 2 (North) to part 660, Subpart E is revised to read as follows:

BILLING CODE 3510–22–P

**Table 2 (North) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear North of 40°10' N. Lat.**

**Other Limits and Requirements Apply -- Read § 660.10 - § 660.399 before using this table** 09012012

| | | JAN-FEB | MAR-APR | MAY-JUN | JUL-AUG | SEP-OCT | NOV-DEC |
|---|---|---|---|---|---|---|---|
| | **Rockfish Conservation Area (RCA)[6/]:** | | | | | | |
| 1 | North of 46°16' N. lat. | shoreline - 100 fm line[6/] | | | | | |
| 2 | 46°16' N. lat. - 43°00' N. lat. | 30 fm line[6/] - 100 fm line[6/] | | | | | |
| 3 | 43°00' N. lat. - 42°00' N. lat. | 20 fm line[6/] - 100 fm line[6/] | | | | | |
| 4 | 42°00' N. lat. - 40°10' N. lat. | 20 fm depth contour - 100 fm line[6/] | | | | | |
| | **See § 660.60 and § 660.230 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).** | | | | | | |
| | State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California. | | | | | | |
| 5 | **Minor slope rockfish[2/] & Darkblotched rockfish** | 4,000 lb/ 2 months | | | | | |
| 6 | **Pacific ocean perch** | 1,800 lb/ 2 months | | | | | |
| 7 | **Sablefish** | 1,300 lb per week, not to exceed 5,000 lb/ 2 months | | 1,000 lb per week, not to exceed 4,000 lb/2 months | | 800 lb per week, not to exceed 1,600 lb/2 months | |
| 8 | **Longspine thornyhead** | 10,000 lb/ 2 months | | | | | |
| 9 | **Shortspine thornyhead** | 2,000 lb/ 2 months | | | | | |
| 10 | **Dover sole** | 5,000 lb/ month<br>South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs. | | | | | |
| 11 | **Arrowtooth flounder** | | | | | | |
| 12 | **Petrale sole** | | | | | | |
| 13 | **English sole** | | | | | | |
| 14 | **Starry flounder** | | | | | | |
| 15 | **Other flatfish[1/]** | | | | | | |
| 16 | **Whiting** | 10,000 lb/ trip | | | | | |
| 17 | **Minor shelf rockfish[2/], Shortbelly, Widow, & Yellowtail rockfish** | 200 lb/ month | | | | | |
| 18 | **Canary rockfish** | CLOSED | | | | | |
| 19 | **Yelloweye rockfish** | CLOSED | | | | | |
| 20 | **Minor nearshore rockfish & Black rockfish** | | | | | | |
| 21 | North of 42° N. lat. | 5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish[3/] | | | | | |
| 22 | 42° - 40°10' N. lat. | 8,500 lb/ 2 months, of which no more than 1,200 lb may be species other than black rockfish 3/ | | | | | |
| 23 | **Lingcod[4/]** | CLOSED | | 800 lb/ 2 months | | 400 lb/ month | CLOSED |
| 24 | **Pacific cod** | 1,000 lb/ 2 months | | | | | |
| 25 | **Spiny dogfish** | 200,000 lb/ 2 months | | 150,000 lb/ 2 months | 100,000 lb/ 2 months | | |
| 26 | **Other fish[5/]** | Unlimited | | | | | |

TABLE 2 (North)

1/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
2/ Bocaccio, chilipepper and cowcod are included in the trip limits for minor shelf rockfish and splitnose rockfish is included in the trip limits for minor slope rockfish.
3/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.
4/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.
5/ "Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (except longnose skates), ratfish, morids, grenadiers, and kelp greenling. Cabezon and longnose skate are included in the trip limits for "other fish."
6/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

**To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.**

BILLING CODE 3510–22–C

■ 3. Table 2 (South) to part 660, Subpart E is revised to read as follows:

BILLING CODE 3510–22–P

**Table 2 (South) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear South of 40°10' N. Lat.**

**Other Limits and Requirements Apply -- Read § 660.10 - § 660.399 before using this table** 09012012

| | | JAN-FEB | MAR-APR | MAY-JUN | JUL-AUG | SEP-OCT | NOV-DEC |
|---|---|---|---|---|---|---|---|
| | **Rockfish Conservation Area (RCA)[5/]:** | | | | | | |
| 1 | 40°10' - 34°27' N. lat. | 30 fm line[5/] - 150 fm line[5/] | | | | | |
| 2 | South of 34°27' N. lat. | 60 fm line[5/] - 150 fm line[5/] (also applies around islands) | | | | | |
| | **See § 660.60 and § 660.230 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).** | | | | | | |
| | State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California. | | | | | | |
| 3 | **Minor slope rockfish[2/] & Darkblotched rockfish** | 40,000 lb/ 2 months | | | | | |
| 4 | **Splitnose** | 40,000 lb/ 2 months | | | | | |
| 5 | **Sablefish** | | | | | | |
| 6 | 40°10' - 36° N. lat. | 1,300 lb/ week, not to exceed 5,000 lb/ 2 months | | 1,000 lb per week, not to exceed 4,000 lb/2 months | | 800 lb per week, not to exceed 1,600 lb/2 months | |
| 7 | South of 36° N. lat. | 1,800 lb/ week | | | | | |
| 8 | **Longspine thornyhead** | 10,000 lb / 2 months | | | | | |
| 9 | **Shortspine thornyhead** | | | | | | |
| 10 | 40°10' - 34°27' N. lat. | 2,000 lb/ 2 months | | | | | |
| 11 | South of 34°27' N. lat. | 3,000 lb/ 2 months | | | | | |
| 12 | **Dover sole** | 5,000 lb/ month<br>South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs. | | | | | |
| 13 | **Arrowtooth flounder** | | | | | | |
| 14 | **Petrale sole** | | | | | | |
| 15 | **English sole** | | | | | | |
| 16 | **Starry flounder** | | | | | | |
| 17 | **Other flatfish[1/]** | | | | | | |
| 18 | **Whiting** | 10,000 lb/ trip | | | | | |
| 19 | **Minor shelf rockfish[2/], Shortbelly, Widow rockfish, and Bocaccio (including Chilipepper between 40°10' - 34°27' N. lat.)** | | | | | | |
| 20 | 40°10' - 34°27' N. lat. | Minor shelf rockfish, shortbelly, widow rockfish, bocaccio & chilipepper: 2,500 lb/ 2 months, of which no more than 500 lb/ 2 months may be any species other than chilipepper. | | | | | |
| 21 | South of 34°27' N. lat. | 3,000 lb/ 2 months | CLOSED | 3,000 lb/ 2 months | | 4,000 lb/ 2 months | |
| 22 | **Chilipepper rockfish** | | | | | | |
| 23 | 40°10' - 34°27' N. lat. | Chilipepper included under minor shelf rockfish, shortbelly, widow and bocaccio limits - - See above | | | | | |
| 24 | South of 34°27' N. lat. | 2,000 lb/ 2 months, this opportunity only available seaward of the nontrawl RCA | | | | | |
| 25 | **Canary rockfish** | CLOSED | | | | | |
| 26 | **Yelloweye rockfish** | CLOSED | | | | | |
| 27 | **Cowcod** | CLOSED | | | | | |
| 28 | **Bronzespotted rockfish** | CLOSED | | | | | |
| 29 | **Bocaccio** | | | | | | |
| 30 | 40°10' - 34°27' N. lat. | Bocaccio included under Minor shelf rockfish, shortbelly, widow & chilipepper limits -- See above | | | | | |
| 31 | South of 34°27' N. lat. | 300 lb/ 2 months | CLOSED | 300 lb/ 2 months | | 500 lb/ 2 months | |

TABLE 2 (South)

*Table 2 (South). Continued*

| | | JAN-FEB | MAR-APR | MAY-JUN | JUL-AUG | SEP-OCT | NOV-DEC | |
|---|---|---|---|---|---|---|---|---|
| 32 | **Minor nearshore rockfish & Black rockfish** | | | | | | | |
| 33 | Shallow nearshore | 600 lb/ 2 months | CLOSED | 800 lb/ 2 months | 900 lb/ 2 months | 800 lb/ 2 months | 1,000 lb/ 2 months | |
| 34 | Deeper nearshore | | | | | | | |
| 35 | 40°10' - 34°27' N. lat. | 700 lb/ 2 months | CLOSED | 700 lb/ 2 months | 900 lb/ 2 months | | | |
| 36 | South of 34°27' N. lat. | 500 lb/ 2 months | | 600 lb/ 2 months | | | | |
| 37 | California scorpionfish | 1,200 lb/ 2 months[7/] | CLOSED | 1,200 lb/ 2 months | 1,200 lb/ 2 months | | | |
| 38 | **Lingcod**[3/] | CLOSED | | 800 lb/ 2 months | | | 400 lb/ month | CLOSED |
| 39 | **Pacific cod** | 1,000 lb/ 2 months | | | | | | |
| 40 | **Spiny dogfish** | 200,000 lb/ 2 months | | 150,000 lb/ 2 months | 100,000 lb/ 2 months | | | |
| 41 | **Other fish**[4/] | Unlimited | | | | | | |

TABLE 2 (South)

1/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

2/ POP is included in the trip limits for minor slope rockfish. Yellowtail is included in the trip limits for minor shelf rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ The commercial mimimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.

4/ "Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (except longnose skates), ratfish, morids, grenadiers, and kelp greenling. Cabezon and longnose skate are included in the trip limits for "other fish."

5/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

**To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.**

**BILLING CODE 3510–22–C**

[FR Doc. 2012–19445 Filed 8–7–12; 8:45 am]

**BILLING CODE 3510–22–P**

# Proposed Rules

Federal Register
Vol. 77, No. 153
Wednesday, August 8, 2012

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

## DEPARTMENT OF ENERGY

### 5 CFR Chapter XXII

### 10 CFR Chapters II, III, X

### Reducing Regulatory Burden

**AGENCY:** Office of the General Counsel, Department of Energy.

**ACTION:** Request for information.

**SUMMARY:** As part of its implementation of Executive Order 13563, ''Improving Regulation and Regulatory Review,'' issued by the President on January 18, 2011, the Department of Energy (Department or DOE) is seeking comments and information from interested parties to assist DOE in reviewing its existing regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed. The purpose of DOE's review is to make the agency's regulatory program more effective and less burdensome in achieving its regulatory objectives.

**DATES:** Written comments and information are requested on or before September 7, 2012.

**ADDRESSES:** Interested persons are encouraged to submit comments, identified by ''Regulatory Burden RFI,'' by any of the following methods:

*White House Web site: http://www.whitehouse.gov/advise.*

*Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

*Email: Regulatory.Review@hq.doe.gov.* Include ''Regulatory Burden RFI'' in the subject line of the message.

*Mail:* U.S. Department of Energy, Office of the General Counsel, 1000 Independence Avenue SW., Room 6A245, Washington, DC 20585.

*Docket:* For access to the docket to read background documents, or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov.*

That Department's plan for retrospective review of its regulations and its January 2012 and May 2012 update reports can be accessed at *http://www.whitehouse.gov/21stcenturygov/actions/21st-century-regulatory-system.*

**FOR FURTHER INFORMATION CONTACT:** Daniel Cohen, Assistant General Counsel for Legislation, Regulation, and Energy Efficiency, U.S. Department of Energy, Office of the General Counsel, 1000 Independence Avenue SW., Washington, DC 20585. Email: *Regulatory.Review@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:** On January 18, 2011, the President issued Executive Order 13563, ''Improving Regulation and Regulatory Review,'' to ensure that Federal regulations seek more affordable, less intrusive means to achieve policy goals, and that agencies give careful consideration to the benefits and costs of those regulations. To that end, the Executive Order requires, among other things, that:

- Agencies propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; and that agencies tailor regulations to impose the least burden on society, consistent with obtaining the regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; and that, consistent with applicable law, agencies select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity).
- The regulatory process encourages public participation and an open exchange of views, with an opportunity for the public to comment.
- Agencies coordinate, simplify, and harmonize regulations to reduce costs and promote certainty for businesses and the public.
- Agencies consider low-cost approaches that reduce burdens and maintain flexibility.
- Regulations be guided by objective scientific evidence.

Additionally, the Executive Order directs agencies to consider how best to promote retrospective analyses of existing rules. Specifically, agencies were required to develop a plan under which the agency will periodically review existing regulations to determine which should be maintained, modified, strengthened, or repealed to increase the effectiveness and decrease the burdens of the agency's regulatory program. DOE's plan and its January 2012 and May 2012 update reports can be accessed at *http://www.whitehouse.gov/21stcenturygov/actions/21st-century-regulatory-system.*

The Department is committed to maintaining a consistent culture of retrospective review and analysis. DOE will continually engage in review of its rules to determine whether there are burdens on the public that can be avoided by amending or rescinding existing requirements. To that end, DOE is publishing today's RFI to again explicitly solicit public input. In addition, DOE is always open to receiving information about the impact of its regulations. To facilitate both this RFI and the ongoing submission of comments, interested parties can identify regulations that may be in need of review at the following recently established White House Web site: *http://www.whitehouse.gov/advise.* DOE has also created a link on the Web page of DOE's Office of the General Counsel to an email in-box for the submission of comments, *Regulatory.Review@hq.doe.gov.*

While the Department promulgates rules in accordance with the law and to the best of its analytic capability, it is difficult to be certain of the consequences of a rule, including its costs and benefits, until it has been tested. Because knowledge about the full effects of a rule is widely dispersed in society, members of the public are likely to have useful information and perspectives on the benefits and burdens of existing requirements and how regulatory obligations may be updated, streamlined, revised, or repealed to better achieve regulatory objectives, while minimizing regulatory burdens. Interested parties may also be well-positioned to identify those rules that are most in need of review and, thus, assist the Department in prioritizing and properly tailoring its retrospective review process. In short, engaging the public in an open, transparent process is a crucial step in DOE's review of its existing regulations.

### List of Questions for Commenters

The following list of questions is intended to assist in the formulation of

comments and not to restrict the issues that may be addressed. In addressing these questions or others, DOE requests that commenters identify with specificity the regulation or reporting requirement at issue, providing legal citation where available. The Department also requests that the submitter provide, in as much detail as possible, an explanation why a regulation or reporting requirement should be modified, streamlined, expanded, or repealed, as well as specific suggestions of ways the Department can better achieve its regulatory objectives.

(1) How can the Department best promote meaningful periodic reviews of its existing rules and how can it best identify those rules that might be modified, streamlined, expanded, or repealed?

(2) What factors should the agency consider in selecting and prioritizing rules and reporting requirements for review?

(3) Are there regulations that are or have become unnecessary, ineffective, or ill advised and, if so, what are they? Are there rules that can simply be repealed without impairing the Department's regulatory programs and, if so, what are they?

(4) Are there rules or reporting requirements that have become outdated and, if so, how can they be modernized to accomplish their regulatory objectives better?

(5) Are there rules that are still necessary, but have not operated as well as expected such that a modified, stronger, or slightly different approach is justified?

(6) Does the Department currently collect information that it does not need or use effectively to achieve regulatory objectives?

(7) Are there regulations, reporting requirements, or regulatory processes that are unnecessarily complicated or could be streamlined to achieve regulatory objectives in more efficient ways?

(8) Are there rules or reporting requirements that have been overtaken by technological developments? Can new technologies be leveraged to modify, streamline, or do away with existing regulatory or reporting requirements?

(9) How can the Department best obtain and consider accurate, objective information and data about the costs, burdens, and benefits of existing regulations? Are there existing sources of data the Department can use to evaluate the post-promulgation effects of regulations over time? We invite interested parties to provide data that may be in their possession that documents the costs, burdens, and benefits of existing requirements.

(10) Are there regulations that are working well that can be expanded or used as a model to fill gaps in other DOE regulatory programs?

The Department notes that this RFI is issued solely for information and program-planning purposes. Responses to this RFI do not bind DOE to any further actions related to the response. All submissions will be made publically available on. *http://www.regulations.gov.*

Issued in Washington, DC on August 2, 2012.

**Gregory H. Woods,**

*General Counsel.*

[FR Doc. 2012–19392 Filed 8–7–12; 8:45 am]

**BILLING CODE 6450–01–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2012–0805; Directorate Identifier 2012–NM–117–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; The Boeing Company Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Proposed rule; rescission.

**SUMMARY:** We propose to rescind an existing airworthiness directive (AD) that applies to certain The Boeing Company Model 767–200, –300, –300F, and –400ER series airplanes. The existing AD currently requires an inspection to determine if certain motor operated valve actuators for the fuel tanks are installed, and related investigative and corrective actions if necessary. We issued that AD to prevent an ignition source inside the fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane. Since we issued that AD, we have received new data indicating that the existing AD addresses that safety concern, but also introduces a different unsafe condition.

**DATES:** We must receive comments on this proposed AD by September 24, 2012.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to the 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:** Rebel Nichols, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: (425) 917–6509; fax: (425) 917–6590; email: *Rebel.Nichols@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0805; Directorate Identifier 2012–NM–117–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

**Discussion**

On October 19, 2009, we issued AD 2009–22–13, Amendment 39–16066 (74 FR 55755, October 29, 2009), for certain The Boeing Company Model 767–200, –300, –300F, and –400ER series airplanes. That AD requires an inspection to determine if certain motor operated valve actuators for the fuel tanks are installed, and related investigative and corrective actions if necessary. That AD resulted from fuel system reviews conducted by the manufacturer. We issued that AD to prevent an ignition source inside the fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

**Actions Since Existing AD (74 FR 55755, October 29, 2009) Was Issued**

Since we issued AD 2009–22–13, Amendment 39–16066 (74 FR 55755, October 29, 2009), we discovered that the corrective action addresses that safety concern, but also introduces a different unsafe condition. The manufacturer is developing a more complete solution to address both unsafe conditions. We will consider additional rulemaking to require a new solution once that solution is developed, approved, and available for accomplishment.

**FAA's Conclusions**

Upon further consideration, we have determined that existing AD 2009–22–13, Amendment 39–16066 (74 FR 55755, October 29, 2009), must be rescinded. Accordingly, this proposed AD would rescind AD 2009–22–13. Rescission of AD 2009–22–13 would not preclude the FAA from issuing another related action or commit the FAA to any course of action in the future.

**Related Costs**

AD 2009–22–13, Amendment 39–16066 (74 FR 55755, October 29, 2009), affects about 397 airplanes of U.S. registry. The estimated cost of the currently required actions for U.S. operators is between $67,490 and $134,980, or between $170 and $340 per airplane. Rescinding AD 2009–22–13 would eliminate those costs.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2009–22–13, Amendment 39–16066 (74 FR 55755, October 29, 2009), and adding the following new AD:

**The Boeing Company:** Docket No. FAA–2012–0805; Directorate Identifier 2012–NM–117–AD.

**Comments Due Date**

(a) The FAA must receive comments on this AD action by September 24, 2012.

**Affected ADs**

(b) This action rescinds AD 2009–22–13, Amendment 39–16066 (74 FR 55755, October 29, 2009).

**Applicability**

(c) This action applies to The Boeing Company Model 767–200, –300, –300F, and –400ER series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 767–28A0090, dated July 3, 2008.

Issued in Renton, Washington, on July 31, 2012.

**Michael Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2012–19238 Filed 8–7–12; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2011–0158; Directorate Identifier 2010–NM–118–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; The Boeing Company Airplanes

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

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** The FAA withdraws a notice of proposed rulemaking (NPRM) that proposed to supersede an existing airworthiness directive (AD) that applies to certain The Boeing Company Model 767–200, –300, –300F, and –400ER series airplanes. The proposed AD would have continued to require an inspection to determine if certain motor operated valve actuators for the fuel tanks are installed, and related investigative and corrective actions if necessary. That proposed AD would have added airplanes and, for certain airplanes, required additional inspections to determine if certain motor operated valve actuators for the fuel tanks are installed, and related

investigative and corrective actions if necessary. Since the proposed AD was issued, we have received new data indicating that the existing AD addresses that safety concern, but also introduces a different unsafe condition. Accordingly, the proposed AD is withdrawn.

**ADDRESSES:** 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 rule, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Rebel Nichols, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: (425) 917–6509; fax: (425) 917–6590; email: *Rebel.Nichols@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

## Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 of with a notice of proposed rulemaking (NPRM) to supersede AD 2009–22–13, Amendment 39–16066 (74 FR 55755, October 29, 2009). That AD applies to the specified products. The NPRM published in the **Federal Register** on March 14, 2011 (76 FR 13534). That NPRM would have continued to require an inspection to determine if certain motor operated valve actuators for the fuel tanks are installed, and related investigative and corrective actions if necessary. That proposed AD would have added airplanes and, for certain airplanes, required additional inspections to determine if certain motor operated valve actuators for the fuel tanks are installed, and related investigative and corrective actions if necessary. That NPRM resulted from fuel system reviews conducted by the manufacturer. The proposed actions were intended to prevent an ignition source inside the fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

## Actions Since NPRM (76 FR 13534, March 14, 2011) Was Issued

Since we issued the NPRM (76 FR 13534, March 14, 2011), we discovered that the corrective action mandated by AD 2009–22–13, Amendment 39–16066 (74 FR 55755, October 29, 2009), and subsequently the corrective actions proposed by the NPRM, address that safety concern, but also introduce a different unsafe condition. The manufacturer is developing a more complete solution to address both unsafe conditions.

Accordingly, we have determined that the NPRM (76 FR 13534, March 14, 2011), must be withdrawn. In addition, we are considering further rulemaking to rescind AD 2009–22–13, Amendment 39–16066 (74 FR 55755, October 29, 2009), and will consider requiring a new solution once it is developed, approved, and available for accomplishment.

## FAA's Conclusions

Upon further consideration, we have determined that the existing AD does not properly address the safety concern. Accordingly, the NPRM (76 FR 13534, March 14, 2011) is withdrawn.

Withdrawal of the NPRM (76 FR 13534, March 14, 2011) does not preclude the FAA from issuing another related action or commit the FAA to any course of action in the future.

## Regulatory Impact

Since this action only withdraws an NPRM (76 FR 13534, March 14, 2011), it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

## List of Subjects in 14 CFR Part 39

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

## The Withdrawal

Accordingly, we withdraw the NPRM, Docket No. FAA–2011–0158, Directorate Identifier 2010–NM–118–AD, which was published in the **Federal Register** on March 14, 2011 (76 FR 13534).

Issued in Renton, Washington, on July 31, 2012.

**Michael Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2012–19244 Filed 8–7–12; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2012–0343]**

**RIN 1625–AA11**

# Regulated Navigation Area—New Haven Harbor, Quinnipiac River, Mill River, New Haven, CT; Pearl Harbor Memorial Bridge (Interstate 95) Construction

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing changes to the existing regulated navigation area in the navigable waters of New Haven Harbor, Quinnipiac River and Mill River. The current RNA pertains only to the operation of tugs and barges. The changes would allow periodic, temporary closure of the area which will be needed during construction of the new Pearl Harbor Memorial Bridge, and which could be needed at other times as well. This proposed revision would allow the Coast Guard to suspend all vessel traffic through the RNA during periods of temporary closure. This rule is necessary to provide for the safety of life in the regulated area.

**DATES:** Comments and related material must be received by the Coast Guard on or before September 7, 2012.

Requests for public meetings must be received by the Coast Guard on or before August 20, 2012.

**ADDRESSES:** You may submit comments identified by docket number USCG–2012–0343 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or email Petty Officer Joseph Graun, Prevention Department, U. S. Coast Guard Sector Long Island Sound, (203) 468–4544, *Joseph.L.Graun@uscg.mil*; or Lieutenant Isaac M. Slavitt, Waterways Management Division, U.S. Coast Guard First District, (617) 223–8385. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

## Table of Acronyms

COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

## A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

*1. Submitting Comments*

If you submit a comment, please include the docket number for this rulemaking (USCG–2012–0343), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via www.regulations.gov, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, type the docket number (USCG–2012–0343) in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

*2. Viewing Comments and Documents*

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number ''USCG–2012–0343'' in the ''SEARCH'' box and click ''Search.'' Click and Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

*3. Privacy Act*

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

*4. Public Meeting*

We do not now plan to hold a public meeting. But you may submit a request for one on or before August 20, 2012 using one of the methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

## B. Basis and Purpose

Under the Ports and Waterways Safety Act, the Coast Guard has the authority to establish RNAs in defined water areas that are hazardous or in which hazardous conditions are determined to exist. See 33 U.S.C. 1231 and Department of Homeland Security Delegation No. 0170.1.

The purpose of this proposed rulemaking is to provide for safety on the navigable waters in the regulated area, and to update some of the terminology used in describing the boundaries of the RNA.

## C. Discussion of Proposed Rule

The Coast Guard proposes to amend 33 CFR 165.150, the regulation that establishes the New Haven Harbor, Quinnipiac River, and Mill River RNA. The proposed amendment would give the Captain of the Port Sector Long Island Sound (COTP) the authority to temporarily close the RNA to vessel traffic in any circumstance, whether currently planned or unforeseen, that the COTP determines creates an imminent hazard to waterway users in the RNA. Waterway closures would be made with as much advance notice as possible and, when a closure is planned, at least ten days in advance. During closures, mariners may request permission from the COTP to transit through the RNA.

The proposed rule was prompted by (but is not limited to) the navigation safety situation created by reconstruction of the Pearl Harbor Memorial Bridge (sometimes referred to as the I–95 Bridge, Quinnipiac Bridge, or ''Q'' Bridge). This bridge carries Interstate 95 (Connecticut Turnpike) over the Quinnipiac River in New Haven. The present bridge was built in the 1950s and designed with a 50 year life span. The bridge has surpassed its useable life span and the Connecticut Department of Transportation (CDOT) has contracted H. W. Lochner INC. (Lochner) to construct a replacement bridge. Lochner has begun bridge construction and is scheduled to complete the project in 2015.

The Coast Guard has discussed this project at length with CDOT and Lochner to determine whether the project can be completed without channel closures and, if possible, what impact that would have on the project timeline. Through these discussions, it became clear that while the majority of construction activities during the span of this project would not require waterway closures, there are certain tasks that can only be completed in the channel and will require closing the waterway. Specifically, this includes the demolition of steel support beams. These large and extremely heavy steel support beams are suspended 60 feet above the water; to demolish them, they must be cut into small sections and lowered on to a barge below. This process will be extremely complex and presents many safety hazards including overhead crane operations, overhead cutting operations, potential falling debris, and barges positioned in the

channel with a restricted ability to maneuver.

In an email to the U.S. Coast Guard dated January 20, 2012, Lochner outlined three phases of operations that require in-channel work, two of which will require waterway closures. Lochner will notify the Coast Guard as far in advance as possible if additional closures are needed.

The first planned closure period will be two days during the fall of 2012. The purpose of this closure is to remove the steel support beams of the existing Pearl Harbor Memorial Bridge northbound span. The two days will be weekdays and the closure will be in effect for the full 48 hours.

The second planned closure period will be two days during the fall of 2013. The purpose of this closure is to remove the steel support beams of the existing Pearl Harbor Memorial Bridge southbound span. The two days will be weekdays and the closure will be in effect for the full 48 hours.

In addition to the revisions discussed above, the Coast Guard is proposing several wording updates in the description of the RNA. The updates would reflect the current names of local landmarks to make them more easily identifiable for mariners, but do not change the location or dimensions of the RNA.

**D. Regulatory Analyses**

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

*1. Regulatory Planning and Review*

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

The Coast Guard determined that this rulemaking would not be a significant regulatory action for the following reasons: vessel traffic would only be restricted from the RNA for limited durations and the RNA covers only a small portion of the navigable waterways. Furthermore, entry into this RNA during a closure may be authorized by the COTP Sector Long Island Sound or designated representative.

Advanced public notifications will also be made to local mariners through appropriate means, which will include but are not limited to the Local Notice to Mariners and Broadcast Notice to Mariners.

*2. Impact on Small Entities*

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit, anchor or moor within the regulated areas during a vessel restriction period.

The RNA will not have a significant economic impact on a substantial number of small entities for the following reasons: the RNA will be of limited size and any waterway closures will be of short duration, and entry into this RNA during a closure is possible if the vessel has Coast Guard authorization. Additionally, before the effective period of a waterway closure, notifications will be made to local mariners through appropriate means.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

*3. Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Petty Officer Joseph Graun, Prevention Department, U.S. Coast Guard Sector Long Island Sound, (203) 468–4544, *Joseph.L.Graun@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

*4. Collection of Information*

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

*5. Federalism*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

*6. Protest Activities*

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

*7. Unfunded Mandates Reform Act*

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

*8. Taking of Private Property*

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

*9. Civil Justice Reform*

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

*10. Protection of Children*

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

*11. Indian Tribal Governments*

This proposed rule does not have tribal implications under Executive Order 13175, 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.

*12. Energy Effects*

This proposed rule is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use 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. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

*13. Technical Standards*

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

*14. Environment*

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves restricting vessel movement within a regulated navigation area. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. In § 165.150 revise paragraphs (a) and (b)(8), and add new paragraph (b)(9) to read as follows:

**§ 165.150 New Haven Harbor, Quinnipiac River, Mill River.**

(a) *Boundaries.* The following is a regulated navigation area: The waters surrounding the Tomlinson Bridge and Pearl Harbor Memorial Bridge (I–95 Bridge) located within a line extending from a point A at 41°17′50″ N, 072°54′36″ W (the southeast corner of the Magellan Pink Tanks Terminal dock) thence along a line 126°T to point B at 41°17′42″ N, 072°54′21″ W (the southwest corner of the Gulf facility) thence north along the shoreline to point C at 41°17′57″ N, 072°54′06″ W (the northwest corner of the R & H Terminal dock) thence along a line 303°T to point D at 41°18′05″ N, 072°54′23″ W (the west bank of the mouth of the Mill River) thence south along the shoreline to point of origin.

* * * * *

(b) * * *

(8) The Captain of the Port Sector Long Island Sound (COTP) may issue an authorization to deviate from any regulation in paragraph (b) of this section if the COTP determines that an alternate operation can be done safely.

(9) The COTP may temporarily close the RNA for any situation the COTP determines would create an imminent hazard to waterway users in the RNA. Entry into the RNA during temporary closure is prohibited unless authorized by the COTP or the COTP's designated representative. The COTP or designated representative may order the removal of any vessel or equipment within the RNA. To assure wide advance notice of each closure among affected mariners, the COTP will use means including, but not limited to, Broadcast Notice to Mariners and Local Notice to Mariners. The COTP will announce the dates and times of the closure and whether exceptions will be authorized for emergency or other specific vessel traffic.

Dated: July 19, 2012.

**D. B. Abel,**

*Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.*

[FR Doc. 2012–19378 Filed 8–7–12; 8:45 am]

BILLING CODE 9110–04–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket Number USCG–2012–0694]**

**RIN 1625–AA00**

## Safety Zone; Red Bull Flugtag, Delaware River; Camden, NJ

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a safety zone for the ''Red Bull Flugtag Camden'', a marine event to be held on September 15, 2012 from 10 a.m. to 5 p.m., in an area of the Delaware River, Camden, NJ, described as North of the Wiggins Park Marina and South of the Benjamin Franklin Bridge. This safety zone is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic on a portion of the Delaware River during the event.

**DATES:** Comments and related material must be received by the Coast Guard on or before August 23, 2012.

**ADDRESSES:** You may submit comments identified by docket number using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Corrina Ott, Chief Waterways Management, Sector Delaware Bay, U.S. Coast Guard; telephone (215) 271–4902, email *Corrina.Ott@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

**Table of Acronyms**

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

**A. Public Participation and Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

*1. Submitting Comments*

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov*, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, type the docket number (USCG–2012–0694) in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

*2. Viewing Comments and Documents*

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number (USCG–2012–0694) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*3. Privacy Act*

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

*4. Public Meeting*

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

**B. Basis and Purpose**

Red Bull is sponsoring a Flugtag event along the Camden Riverfront. During this event participants will enter the Delaware River from an elevated platform, utilizing makeshift flying apparatuses with the intent to maintain a controlled descent into the Delaware River. This safety zone will help protect both life and property on the navigable waterways of the Delaware River in respect to event participants and commercial and recreational vessel traffic.

**C. Discussion of Proposed Rule**

The Coast Guard proposes to establish a safety zone on the Delaware River in Camden, NJ from 10 a.m. to 5 p.m. on September 15, 2012. The safety zone will restrict vessel traffic on the Delaware River in the immediate area of the Red Bull Flugtag event taking place inside a boundary described as originating from the shoreline then west to 39° 56′54″ N, 075° 07′59″ W then north to 39° 56′58″ N, 075° 07′58″ W then east to the shoreline. The safety zone will protect event participants, life, and property while preventing vessel traffic from navigating on the Delaware River in an area described as north of the Wiggins Park Marina and south of the Benjamin Franklin Bridge. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area during the enforcement period. The Captain of the Port (COTP) will notify the public of specific enforcement times by marine Radio Safety Broadcast.

**D. Regulatory Analyses**

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

*1. Regulatory Planning and Review*

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. Due to the location of the proposed regulated area being outside of and East of Anchorage Area #13, as well as being located in an area that would not have a significant impact on vessel traffic, the regulatory impact is expected to be minimal.

*2. Impact on Small Entities*

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

(1) This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Delaware River from 10 a.m. to 5 p.m. on September 15, 2012.

(2) This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This safety zone would be activated, and thus subject to enforcement, for only 7 hours. Vessel traffic could pass safely around the safety zone with permission from the (COTP). Before the activation of the zone, we would issue Broadcast Notice to Mariners widely available to users of the river.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

*3. Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

*4. Collection of Information*

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

*5. Federalism*

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

*6. Protest Activities*

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

*7. Unfunded Mandates Reform Act*

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

*8. Taking of Private Property*

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

*9. Civil Justice Reform*

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

*10. Protection of Children From Environmental Health Risks*

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

*11. Indian Tribal Governments*

This proposed rule does not have tribal implications under Executive Order 13175, 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.

*12. Energy Effects*

This proposed rule is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use 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. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

*13. Technical Standards*

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

*14. Environment*

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves establishing special local regulations issued in conjunction with a marine parade, as described in figure 2–1, paragraph (34)(h), of the Instruction. This rule is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. Under Figure 2–1, paragraph 34(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.T05–0694 to read as follows:

**§ 165.T05–0694 Safety Zone; Red Bull Flugtag, Delaware River, Camden, NJ.**

(a) *Definitions.* The following definitions apply to this section:

(1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Delaware Bay.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Delaware Bay with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* includes all vessels participating in the Red Bull Flugtag Camden under the auspices of a Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Delaware Bay.

(4) *Regulated area* includes the boundary described as originating from the shoreline then west to 39°56′54″ N, 075°07′59″ W then north to 39°56′58″ N, 075°07′58″ W then east to the shoreline.

(b) *Regulations.* (1) Except for event participants and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any Official Patrol.

(ii) Proceed as directed by any Official Patrol.

(iii) When authorized to transit the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the event area.

(c) *Effective period.* This section will be enforced from 10 a.m. to 5 p.m. on September 15, 2012.

Dated: July 26, 2012.

**T. C. Wiemers,**

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

[FR Doc. 2012–19345 Filed 8–7–12; 8:45 am]

BILLING CODE 9110–04–P

## DEPARTMENT OF AGRICULTURE

## Forest Service

## 36 CFR Part 218

**RIN 0596–AD07**

## Project-Level Predecisional Administrative Review Process

**AGENCY:** Forest Service, USDA.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** This proposed rule establishes the sole process by which the public may file objections seeking predecisional administrative review for proposed projects and activities implementing land management plans, including projects authorized pursuant to the Healthy Forests Restoration Act of 2003 (HFRA). The Consolidated Appropriations Act of 2012 directs the Secretary of Agriculture, acting through the Chief of the Forest Service, to provide for a pre-decisional objection process for proposed actions of the Forest Service concerning projects and activities implementing land and resource management plans developed under the Forest and Rangeland Renewable Resources Planning Act of 1974, and documented with a Record of Decision (ROD) or Decision Notice (DN). Section 428 further directs the Secretary to apply these procedures in lieu of the Appeal Reform Act (ARA), which provided for a postdecisional administrative appeal process. The proposed rule also establishes procedures concerning how the Forest Service will provide notice for such projects and activities. The Forest Service invites written comments on this proposed rule.

**DATES:** Comments on this proposed rule must be received in writing by September 7, 2012. Comments concerning the information collection requirements contained in this proposed rule must be received in writing by October 9, 2012.

**ADDRESSES:** Send written comments to USDA Forest Service, Objection Regulation Comments, P.O. Box 4654, Logan, UT 84323; by electronic mail to *ObjectionRegulation@fscomments.us*; by fax to 435–750–8799; or by the electronic process available at the Federal eRulemaking portal at *http://www.regulations.gov.*

The public may inspect comments received on this proposed rule at USDA, Forest Service, Ecosystem Management Coordination Staff, 1400 Independence Ave. SW., Washington, DC, between 8:00 a.m. and 4:30 p.m. on business days. Those wishing to inspect comments should call ahead 202–205–0895 to facilitate an appointment and entrance to the building.

Comments concerning the information collection requirements contained in this proposed rule should reference OMB No. 0596–0172 and the docket number, date, and page number of this issue of the **Federal Register**. Comments concerning the information collection requirements may be submitted as provided for comments on the proposed rule. For more information, see **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Deb Beighley, Assistant Director, Appeals and Litigation at 202–205–1277.

Individuals using telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m. Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** If comments are sent by electronic mail or by fax, the public is requested not to send duplicate written comments via regular mail. Please confine written comments to issues pertinent to the proposed rule; explain the reasons for any recommended changes; and, where possible, reference the specific section or paragraph being addressed.

The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means the Forest Service will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the Forest Service without going through *http://www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public record. If you submit an electronic comment, the Forest Service recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the Forest Service cannot read your comment due to technical difficulties and cannot contact you for clarification, the Agency may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

All timely and properly submitted comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received on this proposed rule at USDA, Forest Service,

Ecosystem Management Coordination Staff, 1400 Independence Ave. SW., Washington, DC, between 8:00 a.m. and 4:30 p.m. on business days. Those wishing to inspect comments should call ahead 202–205–0895 to facilitate an appointment and entrance to the building.

**Background**

On December 23, 2011, President Obama signed into law the Consolidated Appropriations Act of 2012. Section 428 of the Act (hereafter ''Section 428'') directs the Secretary of Agriculture (Secretary), acting through the Chief of the Forest Service (Chief), to provide for a predecisional objection process based on Section 105(a) of the Healthy Forests Restoration Act of 2003 (HFRA) (16 U.S.C. 6515(a), for proposed actions of the Forest Service concerning projects and activities implementing land management plans and documented with a Record of Decision or Decision Notice. The Act further directs that these procedures be applied in lieu of subsections (c), (d), and (e) of Section 322 of Public Law 102–381 (16 U.S.C. 1612 note) (Appeal Reform Act or ARA) that collectively provide for a postdecisional administrative appeal process for projects and activities implementing land management plans. The Department has developed this proposed rule to: (1) Preserve the predecisional objection process already in place for proposed hazardous fuel reduction projects authorized under the HFRA; (2) expand the scope of that objection process to include other covered actions; and (3) establish a process for providing the notice and comment provisions of the ARA.

President Bush signed into law the Healthy Forests Restoration Act of 2003 (HFRA) to reduce the threat of destructive wildfires while upholding environmental standards and encouraging early public input during planning processes. One of the provisions of the Act (sec. 105) required the Secretary to issue an interim final rule establishing a predecisional administrative review process for hazardous fuel reduction projects authorized by the HFRA. The interim final rule was promulgated at 36 CFR part 218 on January 9, 2004 (69 FR 1529), followed by a final rule on September 17, 2008 (73 FR 53705) that incorporated the results of public comment and the knowledge gained through the Agency's experience with implementing the rule.

Congress enacted the ARA in 1992. The ARA states that ''the Secretary of Agriculture, acting through the Chief of the Forest Service, shall establish a notice and comment process for proposed actions of the Forest Service concerning projects and activities implementing land and resource management plans * * * and shall modify the procedure for appeals of decisions concerning such projects.'' ARA section 322(a), 106 Stat. 1419. The ARA (ARA § 322(c), 106 Stat. 1419) further provided that qualifying individuals may file an appeal ''[n]ot later than 45 days after the date of issuance of a decision of the Forest Service concerning actions referred to in subsection (a) * * *.'' The Department promulgated implementing regulations for the ARA at 36 CFR part 215 in 1993 and revised them in 2003.

Prior to passage of the HFRA, public notice and comment for hazardous fuel reduction project proposals, and appeal of the decisions, would have been conducted according to the procedures set out at 36 CFR part 215. The HFRA objection rule exempts qualifying hazardous fuel reduction projects from the notice, comment, and appeal procedures set out at part 215 and establishes separate objection procedures specifically for hazardous fuel reduction projects, pursuant to 36 CFR part 218.

Now, through Section 428, Congress has directed the Secretary to apply the predecisional objection established in part 218, in place of the appeal provisions at part 215, for proposed actions regarding projects and activities implementing land management plans and documented with a Record of Decision (ROD) or Decision Notice (DN). The Department has determined the most appropriate way to carry out this direction is to revise part 218, by amending subparts A and B, and creating subpart C.

Subpart A includes general provisions applicable to HFRA and non-HFRA covered projects and activities.

Subpart B provides additional direction that is specific to proposed actions not authorized under the HFRA. This subpart includes the notice and comment requirements directed by subsection (b) of the ARA and the emergency situation provisions directed by Section 428.

Subpart C provides additional direction that is specific to proposed hazardous fuel reduction projects authorized under the HFRA.

**Administrative Review of Categorically Excluded Projects**

On March 19, 2012, the U.S. District Court for the Eastern District of California found that Forest Service regulations exempting project decisions from notice, comment, and appeal when they are categorically excluded from analysis under the National Environmental Policy Act (NEPA) are in violation of the ARA and enjoined the Forest Service from following these regulations. The court's nationwide injunction precludes use of Forest Service notice, comment, and administrative appeal regulations, 36 CFR 215.4(a) and 215.12(f). The court held the 215 regulations conflict with the plain language of the ARA, claiming that Congress did not intend to exclude from notice, comment, and appeal actions that were categorically excluded from documentation under the NEPA. The Department promulgated the regulations pursuant to the Agency's reasonable interpretation of the ARA and the Government has appealed the ruling to the U.S. Court of Appeals for the Ninth Circuit.

The Department is concerned that statements made in the District Court's opinion regarding prudential mootness of litigation concerning 36 CFR part 215 may confuse the public regarding the Congressional intent with respect to the enactment and promulgation of regulations implementing Section 428. While the District Court noted that Section 428 did not change Section 322(a) and (b) of the ARA, the Court's order did not address the full implication of the enactment of Section 428. Section 428 is an amendment of Section 322, and the revised statutory scheme must be read as whole; the existing provisions of Section 322 must be read in harmony with the new provisions of Section 428.

Section 322(a) commands an integrated regulatory system of notice, comment, and appeal for covered projects. Section 322(b) establishes the notice system for such projects. Through Section 428, the post-decisional appeal system of Section 322(c)–(e) has been replaced by a predecisional objection process that is similar to the HFRA administrative review process in that it is exclusively applicable to projects and activities evaluated in an environmental analysis (EA) or environmental impact statement (EIS). Congress gave no indication that it intended differential treatment between the scope of coverage for the notice and comment provisions for ''such projects'' compared to the activities to be covered by the new predecisional objection process (which are expressly limited in the statutory text to decisions documented in DNs and RODs).

The Department is aware that plaintiffs proffered an alternative view suggesting Congress intended to create a third separate administrative review system with the result being the use of

three appeal processes: an administrative review system under Section 105 of HFRA for HFRA predecisional objections; an administrative review system under Section 428 establishing a non-HFRA predecisional objection process; and an independent, residual post-decisional appeal system under Section 322.

During the pendency of the appeal of the District Court's ruling, the Forest Service has instructed its line officers to abide and comply with the District Court's orders. Further, the Department is aware that Congress is presently considering legislation clarifying notice, comment, and appeal of categorical exclusions. Rather than delay in their entirety the implementation regulations under Section 428, the Department has elected to move forward with the portion of the Section 428 rulemaking that addresses projects associated with EAs and EISs, but reserves and defers promulgation of regulations addressing categorically excluded projects and activities. Within the comment period provided for by this proposed rule, the public may provide written comments concerning treatment of such projects in the future by the Forest Service.

**Use of Legal Notices To Initiate Opportunities To Comment and Object**

Since 1990 the Agency has relied on the publication of notices in the legal notices section of newspapers of general circulation as the means to make interested and affected parties aware that a plan or project decision has been made. Even more significantly, because the legal notice is not the only means used to provide decision notification, the publication date of legal notices has been used as the sole trigger initiating the start of an appeal filing period. Beginning in 1993, legal notices have also been used to notify and initiate the 30-day comment period mandated by the Appeal Reform Act.

Prior to 1990, the beginning of appeal filing periods were based on the date of the plan or project decision. Deciding officers were required to promptly mail the appropriate decision document to those who had requested it and those who were known to have participated in the decision making process, with the intention that those wishing to utilize the administrative appeal process would have the maximum time available to them.

The switch to requiring the publication of legal notices and using the publication date to initiate the appeal filing period was made to address problems notifying all potentially affected individuals and organizations in enough time that they had the full time available to file an appeal. The causes of these problems included inadvertent failure to identify all interested or potentially affected individuals and organizations, and the delay between when a decision was signed and when a potential appellant received a mailed notice of the decision or otherwise learned of the decision. The reliance on a legal notice publication date was seen as providing an additional and reliable source of notification that would maximize the time available for filing a notice of appeals, and establishing a uniform, service-wide mechanism that provides convincing evidence that the Agency has given timely and constructive notice of decisions to the public.

Although legal notices have been used, generally with success, in this manner for the past two decades, they are still an imperfect solution for some potential appellants. Not all appellants have ready access to the newspaper of record used for the project decision they are interested in and, even if access is available, it can be a burden to keep close watch on the legal notices section of a paper for the appearance of a notice announcing the decision for a particular project.

There are also issues from the Agency's perspective with the use of legal notices. Some newspapers only publish weekly, which can cause delays in getting a notice published in a timely manner. Also, legal notices can be quite expensive, costing in the hundreds of dollars in a newspaper of larger circulation.

The rationale in support of, and the arguments against, the use of legal notices have changed little in the past 20 years. One thing that has changed is the availability of new communications technology, including email, web pages, and social media. The Department believes that within these tools is the potential to provide more effective means of providing timely notifications to those who may be interested in providing comment on a project proposal or who wish to be eligible to submit an objection for administrative review. Even so, these technologies may still not be a solution for all. As widespread as communications technology has become, it is still not used by all citizens.

This proposed rule does not vary from the standard practice of requiring legal notices to notify and establish the beginning dates for the 30-day comment periods and objection filing periods. Still, the Department is open to suggestions on an improved means of providing timely notification to all interested and affected individuals so that the full comment period or objection filing period is available. Comments and suggestions concerning this aspect of the administrative review procedures will be considered when developing a final rule.

**Page Limits for Objections**

Several persons within and outside the Forest Service have suggested imposing a limitation on the number of pages permitted for objections and appeals. These proponents contend that limiting the number of pages would encourage a more focused presentation of issues regarding an Agency proposal or decision and provide for a more effective review of the issues being raised.

The Agency's appeal and objection regulations have had no limitations on the number of pages that could be filed, and historically these filings have included from 1 to well over 100 pages, exclusive of attachments or exhibits. The Department of the Interior's Board of Land Appeals currently imposes a 30-page limitation on appeals, and some have suggested this would be an appropriate limitation for Forest Service objections and appeals. Consideration would also be given to including documents incorporated by reference, attachments, or exhibits as part of any page limitation that might be imposed.

Although there is no page limitation on objections included in this proposed rule, the Department is taking public comment on this topic now for consideration when a final rule is developed.

**Section-by-Section Description of Proposed Rule**

**Part 218—Project-Level Predecisional Administrative Review Process**

*Subpart A—General Provisions*

Section 218.1—Purpose and Scope

This section describes the purpose and scope of a predecisional administrative review (hereinafter ''objection'') process for projects and activities implementing land management plans, including proposed hazardous fuel reduction projects authorized by the Healthy Forests Restoration Act (HFRA).

Section 218.2—Definitions

This section defines some of the commonly used terms and phrases in the proposed rule.

Section 218.3—Reviewing Officer

Paragraph (a) of this section establishes who has the authority to carry out the responsibilities of the reviewing officer.

Paragraph (b) provides the reviewing officer with the authority to make all procedural determinations not specifically explained in this part, including those procedures necessary to ensure compatibility, to the extent practicable, when undertaking a joint proposed project subject to each agency's administrative review procedures. The section also provides that such procedural determinations are not subject to further review.

Section 218.4—Proposed Projects and Activities Not Subject to Objection

This section establishes that when no timely and qualifying comments (§§ 218.2 and 218.25) are received, a proposed project or activity is not subject to objection. This is because there would be no eligible objectors (§ 218.5) if no timely and qualifying comments are submitted.

Section 218.5—Who May File an Objection

This section of the rule identifies the qualifying requirements for who may file an objection under this subpart.

Paragraph (a) provides that those individuals and non-Federal entities who have submitted specific and timely written comments regarding the proposed project or activity during a designated opportunity for public comment provided during preparation of an environmental assessment or environmental impact statement for the proposed project or activity are eligible to file an objection. Paragraph (a) further states that for a proposed project or activity described in an environmental impact statement, the opportunity for public comment would be fulfilled during scoping, by the formal comment process for draft environmental impact statements set forth in 40 CFR 1506.10, and any other periods public comment is specifically requested. For proposed actions described in an environmental assessment, the opportunity for public comment will be fulfilled during scoping or any other periods public comment is specifically requested, as environmental assessments are not required to be circulated for public comment in draft form.

Paragraph (b) states that when an organization submits specific written comments, eligibility is conferred on that organization only, not on individual members of that organization. The Department will treat an organization as its own entity for purposes of submitting comments and determining eligibility to file objections. The Department will not accept individual members of organizations to establish eligibility to file individual objections. Any individual member of an organization may submit written comments on his or her own behalf.

Paragraph (c) clarifies that if an objection is submitted on behalf of a number of named individuals or non-Federal entities, each individual or entity listed must meet the eligibility requirement of having submitted specific written comments during scoping or the other opportunities to comment.

Paragraph (d) states that Federal agencies are not allowed to file an objection. Other avenues are available to Federal agencies for working through concerns regarding a proposed action. It is expected that the various Federal agencies will work cooperatively during project development.

Paragraph (e) allows Federal employees to file objections as individuals in a manner consistent with Federal conflict of interest requirements.

Section 218.6—Computation of Time Periods

Paragraphs (a) and (b) describe how time periods are computed.

Paragraph (c) states that the time to file an objection is determined exclusively by the publication date of the legal notice of the EA or final EIS, and draft DN or ROD, in the newspaper of record or, when the Chief is the responsible official, in the **Federal Register**. Although other notifications may be provided, only the legal notice or **Federal Register** publication dates may be used to calculate the objection filing period.

Paragraph (d) states that time extensions are not permitted except as necessary to avoid having a time period end on a non-business day or as permitted at § 218.26.

Section 218.7—Giving Notice of Objection Process for Proposed Projects and Activities Subject to Objection

This section describes the methods to be used when giving notice that an EA or final EIS, and draft Decision Notice (DN) or Record of Decision (ROD) for a proposed action is available for administrative review and how the proposed action must be described in this notice.

Paragraph (a) states that the responsible official should provide early disclosure during scoping and in the EA or EIS, whether a proposed action is a hazardous fuel reduction project under the HFRA or other project implementing a land management plan, and which part 218 objection procedures will be applicable.

Paragraph (b) requires that the responsible official must make available the EA or final EIS, and a draft DN or ROD, to those who have requested the documents or meet the objection eligibility requirements at § 218.4(a). Making a draft decision document available at this time provides the public with a clear statement of the Agency's intent and rationale for the decision to be made following the objection process, even more so than that provided by identification of a preferred alternative in the NEPA analysis documents.

Paragraph (c) states that the responsible official must announce through notice in a previously designated newspaper of record when an EA or final EIS, and draft DN or ROD, are available for administrative review, except for proposals of the Chief where **Federal Register** publication is provided. The legal notice begins the objection-filing period of either 30 or 45 days as specified at §§ 218.26(a) and 218.33(a).

Paragraph (c) further outlines the format and content of the legal notice, including a statement that incorporation of documents by reference is permitted only as provided for at § 218.7(b). This provision ensures that the contents of an objection, including all attachments, are readily available to the reviewing officer for timely completion of the objection process. Similarly, objectors cannot meet the requirements of this process by attempting to incorporate substantive materials and arguments from other objectors. The Federal courts have taken a similar view of such procedural strategies; see *Swanson* v. *U.S. Forest Service,* 87 F.3d 339 (9th Cir. 1996).

The content requirement for a legal notice also includes a statement that issues raised in objections must be based on previously submitted specific written comments regarding the proposed project or activity unless the issue is based on new information arising after the opportunities for comment.

Paragraph (d) requires annual publication in the **Federal Register** of the newspapers to be used for giving legal notice of proposed actions subject to this rule.

Section 218.8—Filing an Objection

This section provides information on how to file an objection.

Paragraph (a) provides for an objection to be filed with the reviewing officer in writing.

Paragraph (b) provides that incorporation of documents by reference shall not be allowed except for certain specified documents. The reasons for

not permitting other documents by reference are addressed in preceding § 218.6(c).

Paragraph (c) specifies that issues raised in objections must be based on previously submitted specific written comments regarding the proposed project or activity and attributed to the objector. This requirement does not apply to objection issues based on new information arising after the opportunities for comment. The paragraph also places the burden of demonstrating compliance with this requirement on the objector.

Paragraph (d) provides a detailed list of information that must be included in an objection. The information in the list is needed for timely and effective processing and review of the objections.

Section 218.9—Evidence of Timely Filing

This section describes the objector's responsibilities for ensuring the timely filing of an objection, including the means to be used by the Forest Service for determining timeliness.

Section 218.10—Objections Set Aside From Review

Paragraph (a) specifies when the reviewing officer must set aside an objection without review or response on the concerns raised, including when an objection is not filed within the objection period; the proposed project is not subject to the procedures of this part and, therefore, is not subject to the objections process; the objector did not submit specific written comments regarding the proposed project or activity during the opportunities for public comment; there is insufficient information to review and respond; the objector withdraws the objection; the objector's identity is not provided or cannot be determined from the signature; or the objection is illegible for any reason.

Paragraph (b) states that when an objection is set aside and not processed, the reviewing officer must give written notice to the objector and responsible official, and document the set aside in the appeal record.

Section 218.11—Resolution of Objections

This section describes the objection resolution process.

Paragraph (a) allows for either the reviewing officer or the objector to request a meeting to discuss the objection and attempt resolution. The reviewing officer has the discretion to determine if sufficient time remains in the review period to make a meeting practical. To assist with identifying areas of potential resolution, the responsible official should be a participant in objection resolution meetings. The paragraph further requires that all meetings with objectors are open to the public.

Paragraph (b) provides for a written response to the objection. The response is not required to be point-by-point and the reviewing officer may issue a single response to multiple objections of the same proposed action. Paragraph (b) also states that there is no higher level review of the reviewing officer's written response to the objection.

Section 218.12—Timing of Project Decision

This section describes when a responsible official may make a final decision regarding a proposed action subject to the provisions of this part.

Paragraph (a) allows decisions to be made on proposed actions only when responses have been made to all objections, and paragraph (b) specifies that the decisions documented in a DN or ROD must be consistent with the reviewing officer's response to the objections.

Paragraph (c) states that a decision can be made on a proposed action on the 5th business day following the close of the filing period when no timely objections are filed. This is to allow for receipt of any objections that might have been mailed and postmarked prior to the close of the objection filing period. National Environmental Policy Act regulations (40 CFR 1506.10) require a minimum of 30 days between notice of the final environmental impact statement and issuance of a ROD when administrative appeal of the ROD is not available.

Section 218.13—Secretary's Authority

Paragraph (a) identifies the Secretary's authority.

Paragraph (b) identifies that projects and activities authorized by the Secretary or Under Secretary of Agriculture are not subject to these procedures. Nothing in the Consolidated Appropriations Act (CAA), Appeal Reform Act (ARA), or HFRA alters the Secretary's long-established authority to exercise any delegated authority and such decisions constitute the final administrative determination of the USDA.

Section 218.13—Judicial Proceedings

Section 218.13 reflects the Department's interpretation and implementation of the ARA, CAA, and HFRA, the statutory foundation for these regulations. Statutory and judicial exhaustion requirements ensure that an agency is able to develop full factual records, to apply technical and managerial expertise to identified problems, to exercise its judgment and discretion, and to correct its own mistakes. Exhaustion requirements are credited with promoting accuracy, efficiency, public participation, agency autonomy, and judicial economy.

Generally, statutory exhaustion requirements are jurisdictional and cannot be waived by courts. The CAA and HFRA permit plaintiffs to undertake the burden of demonstrating that a ''futility or inadequacy'' exception should be invoked as to a specific plaintiff or claim. The Department understands these statutory provisions are to be read together, narrowly construed, and invoked only in rare instances such as where information becomes available only after the conclusion of the administrative process.

Congress stated that National Environmental Policy Act (NEPA) documents are to be in complete or final form when made available for objection. The objection process is, therefore, not a second comment period on a draft document, but rather a final opportunity to ensure full understanding of public concerns shortly preceding a decision.

Congress' view on the purpose or intent for the objection process likewise narrows the operation of the futility exemption to those situations where information, which dramatically changes the picture with regard to environmental effects, or the need for the project, comes to light after the NEPA document has been completed.

A contrary reading would be inconsistent with Congress' expectation that the exception provisions are not applicable to information which has not been brought to the attention of the Agency. The objection process protects against the possibility of a ''futile'' objection due to delay because final decisions on proposed actions cannot be issued prior to conclusion of the objection process and any issue brought to the attention of the agency during project or activity development can be assessed through the objection process. Similarly, predecisional review of each proposed action avoids the criticism sometimes leveled against postdecisional appeals that reviewers are unfairly disposed to a particular or predetermined outcome. Instances of futility or inadequacy should be rare indeed as the administrative review is conducted through a process Congress created specifically for authorized hazardous fuel reduction projects and then applied to this broader class of actions, and which occurs prior to the

Agency's final decision. Moreover, the participatory requirements for these projects are predicated on Congress's determination, expressed through the statutory scheme, that predecisional collaboration is vital to avoiding potential disputes and that the land managers are in the optimal position to identify and correct any errors and to fine-tune the design of proposed actions if they are made aware of concerns before final decisions are made. Sweeping exceptions to the participatory requirements are at odds with Congress' intent.

Section 218.15—Information Collection Requirements

This section explains that the rule contains information collection requirements as defined in 5 CFR part 1320 by specifying the information that objectors must supply in an objection. Public comment is being sought on this information collection requirement, as discussed in the Regulatory Certifications section. See the Addresses section for instructions on how to submit comments on the information collection requirement.

Section 218.16—Effective Dates

This section sets out the effective date of this rule and provides for a rapid, yet smooth, transition from the use of a postdecisional appeal process for most project proposals to this predecisional objection process. Transition provisions are necessary to assure that interested and affected parties have full opportunity to be notified of the applicable administrative review procedures and to gain eligibility to file objections under these regulations regardless of what stage of planning and decision making the proposal is at when the final rule becomes effective.

*Subpart B—Provisions Specific to Project-Level Proposals Not Authorized Under the Healthy Forests Restoration Act*

Section 218.20—Applicability and Scope

This section explains that the subpart is applicable to proposed actions regarding projects and activities implementing land management plans and documented with a Record of Decision (ROD) or Decision Notice (DN), except those authorized under the Healthy Forests Restoration Act. These are the proposals for which Section 428 of the Consolidated Appropriations Act of 2012 (hereafter ''Section 428'') directed that final regulations be issued that provide for a predecisional objection process for proposed projects and activities documented with a ROD or DN, in lieu of subsections (c), (d), and (e) of Section 322 of the Appeal Reform Act (ARA). The provisions of this subpart implement the notice and comment requirements of the ARA and the emergency situation requirements of Section 428. These provisions are to be used for applicable projects in combination with the general provisions of subpart A.

Section 218.21—Emergency Situations

This section sets out the procedures for emergency situations. Section 428 specifies that if the Chief of the Forest Service determines an emergency situation exists for which immediate implementation of a proposed action is necessary, the proposed action shall not be subject to the predecisional objection process, and implementation shall begin immediately after the Forest Service gives notice of the final decision for the proposed action.

Paragraph (a) establishes that authority for making an emergency situation determination rests with the Chief and Associate Chief.

Paragraph (b) describes the process of making an emergency situation determination. Emergency situation is defined in § 218.2. This paragraph also notes that an emergency situation determination is not subject to review.

Paragraph (c) clarifies when implementation of a project or activity decision may begin if an emergency situation determination has been made. It differentiates between decisions determined to be an emergency documented in a DN and in a ROD. This differentiation is necessary to clarify compliance with Council on Environmental Quality regulations governing final environmental impact statement and ROD timeframes.

Paragraph (d) explains that the decision notification required by Forest Service NEPA regulations at part 220 shall include notification that the proposed action has been determined to be an emergency situation.

Section 218.22—Proposed Projects and Activities Subject to Legal Notice and Opportunity To Comment

Although the Consolidated Appropriations Act of 2012 superseded subsections (c), (d), and (e) of the Appeal Reform Act (ARA), the Department understands Congress' intent to be that the notice and comment provisions of the ARA would continue to operate for the set of projects and activities subject to predecisional objection. The ARA established an integrated system of notice, comment, and appeal for certain Forest Service projects and activities. Congress has reformed this system with the Consolidated Appropriations Act of 2012.

This section describes the proposed actions that are subject to the notice and comment requirements established by Section 322(b) of the ARA.

Paragraphs (a) and (b) establish that proposed projects and activities for which an environmental assessment (EA) or environmental impact statement (EIS) are prepared are subject to the legal notice and opportunity to comment requirements of this subpart.

Paragraph (c) requires that legal notice and opportunity to comment will be provided for proposed amendments to a land management plan that are included as part of a proposed project or activity for which an EA is prepared and that are applicable only to the proposed project or activity.

This section also provides that proposed projects or activities resulting from a supplement or revision of an EA or EIS based on consideration of new information or changed circumstances (paragraph (d)) and proposed research activities to be conducted on National Forest System land (paragraph (e)) are subject to legal notice and opportunity to comment procedure.

Section 218.23—Proposed Projects and Activities Not Subject to Legal Notice and Opportunity To Comment

Paragraph (a) is reserved pending consideration of further developments concerning whether proposed actions that are categorically excluded from documentation in an EA or EIS should be subject to the notification and public involvement requirements.

Land management plan proposals that are made separately from any proposed projects are not subject to the legal notice and opportunity to comment provisions of this subpart (paragraph (b)), nor are proposed projects and activities that are not subject to provisions of the NEPA and its implementing regulations.

As with prior project appeal procedures, paragraph (d) excludes from legal notice and opportunity to comment determinations by the responsible official that a correction, supplement, or revision of an EA or EIS is not required and paragraph (e) excludes rules promulgated in accordance with the Administrative Procedure Act and policies and procedures issued in the Forest Service directives system.

Paragraph (f) excludes from legal notice and opportunity to comment hazardous fuel reduction projects authorized under the HFRA. Public

notice and comment opportunities for these projects are guided by the provisions of the HFRA and of the NEPA and its implementing regulations.

Section 218.24—Notification of Opportunity To Comment on Proposed Projects and Activities

This section establishes the requirements for providing legal and other notice of the opportunity to comment on proposed projects and activities implementing land management plans.

Paragraph (a) describes general responsibilities of the responsible official regarding publication of a legal notice of opportunity to comment.

Paragraph (b) provides the content requirements of a legal notice of opportunity to comment.

Paragraph (c) provides for where legal notices of opportunity to comment must be published.

Section 218.25—Comments on Proposed Projects and Activities

Paragraph (a) establishes specific provisions regarding the opportunity to comment, including the time periods for submission, requirements associated with the comments, and the means by which the Agency will establish timeliness of comments submitted.

Paragraph (b) provides requirements for the acceptance and use of submitted comments.

Section 218.26—Objection Time Periods

Paragraph (a) specifies that the objection-filing period is 45 days following publication of the legal notice of the EA or final EIS, and draft decision, in the newspaper of record or the publication date of the notice in the **Federal Register** when the Chief is the responsible official. This is the same filing period length that has been provided for postdecisional appeals of project decisions since 1993.

Paragraph (b) states that a written response to the objection shall be issued within 45 days following the end of the objection-filing period. The reviewing officer has the discretion to extend the time for up to 10 days when he or she determines that additional time is necessary to provide adequate response to objections or to participate in resolution discussions with the objector(s). This provision for optional extension of the review and response time increases the potential for constructive resolution of objection concerns when fruitful discussions are occurring.

*Subpart C—Provisions Specific to Proposed Projects Authorized Under the Healthy Forests Restoration Act*

Section 218.30—Applicability and Scope

This section explains that the subpart is applicable to proposed hazardous fuel reduction projects authorized under the Healthy Forests Restoration Act (HFRA). The provisions of this subpart are to be used for applicable projects in combination with the general provisions of subpart A.

Section 218.31—Authorized Hazardous Fuel Reduction Projects Subject to Objection

This section describes projects subject to the objection process provisions of subpart C. Hazardous fuel reduction projects that are subject to the provision of subpart C, in combination with the provision of subpart A, are not subject to the requirements of subpart B.

Section 218.32—Objection Time Periods

Paragraph (a) specifies that the objection-filing period is 30 days following publication of the legal notice of the EA or final EIS in the newspaper of record or the publication date of the notice in the **Federal Register** when the Chief is the responsible official.

Paragraph (b) states that a written response to the objection shall be issued within 30 days following the end of the objection-filing period.

These are the same filing and response timeframes provided for proposed hazardous fuel reduction projects authorized under the HFRA since 2004. The shorter timeframes for this class of projects, as compared to those for proposed actions not authorized under the HFRA (subpart B of the proposed rule), are appropriate because of the interest in expediting the reduction of hazardous fuels as a means to reduce the threat of destructive wildfires.

**Regulatory Certifications**

*Regulatory Impact*

This proposed rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is not a significant rule. This proposed rule will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This proposed rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients of such programs.

Moreover, this proposed rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined by that act. Therefore, a regulatory flexibility analysis is not required for this proposed rule.

*Environmental Impacts*

This proposed rule establishes a predecisional administrative review (objection) process for proposed actions regarding projects and activities implementing land management plans, including authorized hazardous fuel reduction projects on National Forest System land. Agency NEPA regulations at 36 CFR 220.6(d)(2) exclude from documentation in an environmental assessment or impact statement ''rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instruction.'' This proposed rule clearly falls within this category of actions and no extraordinary circumstances exist which would require preparation of an environmental assessment or an environmental impact statement. Previous Forest Service administrative appeal rulemakings have applied this categorical exclusion and been confirmed by the courts.

*Energy Effects*

This proposed rule has been reviewed under Executive Order 13211 of May 18, 2001, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.'' It has been determined that this proposed rule does not constitute a significant energy action as defined in the Executive order.

*Controlling Paperwork Burdens on the Public*

This proposed rule represents an extension with revision of a currently approved information collection requirement as defined in 5 CFR Part 1320, Controlling Paperwork Burdens on the Public. The information to be collected from those who choose to participate in the predecisional administrative review process under the Consolidated Appropriations Act of 2012 and the Healthy Forests Restoration Act is the minimum needed for the reviewing officer to make an informed decision on an objection.

Description of Information Collection

*Title:* Project-Level Predecisional Administrative Review Process.

*OMB Number:* 0596–0172.

*Expiration Date of Approval:* February 28, 2014.

*Type of Request:* Extension with Revision.

*Abstract:* The information collected is needed for a citizen or organization to explain the nature of the objection being made to a proposed project or activity undertaken under the authority of the Consolidated Appropriations Act of 2012 or the Healthy Forests Restoration Act, and the reason(s) why the individual or organization objects. Specifically, an objector must provide:

1. A name, mailing address, and if possible, telephone number;
2. Signature or other verification of authorship upon request;
3. The name of the proposed project or activity, the name and title of the responsible official, the National Forest(s) and/or Ranger District(s) on which the proposed project or activity will be implemented; and
4. Any specific changes that the objector seeks and the rationale for those changes.

*Estimate of Burden:* The public reporting burden to provide information when filing an objection to a proposed project or activity is estimated to average 8 hours per response.

*Respondents:* Individuals, businesses, not-for-profit institutions, State, local or Tribal Government.

*Estimated Number of Respondents:* 375.

*Estimated Number of Responses per Respondent:* 1 response per year.

*Estimated Total Annual Burden on Respondents:* 3,000 hours.

*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 will have practical utility; (b) the accuracy of this Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

*Use of Comments:* All comments received in response to this information collection will be summarized and included in the request for final OMB approval. All comments, including names and addresses when provided will become a matter of public record.

*Federalism*

The Agency has considered this proposed rule under the requirements of Executive Order 13132, Federalism, and Executive Order 12875, Government Partnerships. The Agency has made a preliminary assessment that the proposed rule conforms with the federalism principles set out in these Executive orders; would not impose any compliance costs on the States; and would 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. Based on comments received on this proposed rule, the Agency will consider if any additional consultation will be needed with State and local governments prior to adopting a final rule.

*Consultation and Coordination With Indian Tribal Governments*

On March 21, 2012, the Regional Foresters were instructed by the Deputy Chief for the National Forest System to send letters inviting more than 600 federally recognized Tribes and Alaska Native Corporations to begin consultation on the proposed rule for a project-level predecisional review process. The Forest Service will continue to conduct government-to-government consultation on the project-level predecisional review process rule until the date 30 days after publication of the proposed rule in the **Federal Register**. The Department considers tribal consultation as an ongoing, iterative process that encompasses development of the proposed rule through the issuance of the final rule.

*No Takings Implications*

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630. It has been determined that the proposed rule does not pose the risk of a taking of private property.

*Civil Justice Reform*

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

*Unfunded Mandates*

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the Agency has assessed the effects of this proposed rule on State, local, and tribal governments and the private sector. This proposed rule does not compel the expenditure of $100 million or more by any State, local, or tribal governments or anyone in the private sector. Therefore, a statement under Section 202 of the act is not required.

**List of Subjects in 36 CFR Part 218**

Administrative practice and procedure, National Forests.

Therefore, for the reasons set forth in the preamble, part 218 of Title 36 of the Code of Federal Regulations is proposed to be revised as follows:

## PART 218—PROJECT-LEVEL PREDECISIONAL ADMINISTRATIVE REVIEW PROCESS

### Subpart A—General Provisions

Sec.

218.1 Purpose and scope.
218.2 Definitions.
218.3 Reviewing officer.
218.4 Proposed projects and activities not subject to objection.
218.5 Who may file an objection.
218.6 Computation of time periods.
218.7 Giving notice of objection process for proposed projects and activities subject to objection.
218.8 Filing an objection.
218.9 Evidence of timely filing.
218.10 Objections set aside from review.
218.11 Resolution of objections.
218.12 Timing of project decision.
218.13 Secretary's authority.
218.14 Judicial proceedings.
218.15 Information collection requirements.
218.16 Effective dates.

### Subpart B—Provisions Specific to Project-Level Proposals Not Authorized Under the Healthy Forests Restoration Act

218.20 Applicability and scope.
218.21 Emergency situations.
218.22 Proposed projects and activities subject to legal notice and opportunity to comment.
218.23 Proposed projects and activities not subject to legal notice and opportunity to comment.
218.24 Notification of opportunity to comment on proposed projects and activities.
218.25 Comments on proposed projects and activities.
218.26 Objection time periods.

### Subpart C—Provisions Specific to Proposed Projects Authorized Under the Healthy Forests Restoration Act

218.30 Applicability and scope.
218.31 Authorized hazardous fuel reduction projects subject to objection.

218.32 Objection time periods.

**Authority:** Pub. L. 108–148, 117 Stat 1887 (Healthy Forests Restoration Act of 2003); Sec. 428, Pub. L. 112–74 (Consolidated Appropriations Act, 2012); 125 Stat 1046 (16 U.S.C. 6515 note).

## Subpart A—General Provisions

### § 218.1 Purpose and scope.

This subpart establishes a predecisional administrative review (hereinafter referred to as ''objection'') process for proposed actions of the Forest Service concerning projects and activities implementing land and resource management plans and documented with a Record of Decision or Decision Notice, including proposed authorized hazardous fuel reduction projects as defined in the Healthy Forests Restoration Act of 2003 (HFRA). The objection process is the sole means by which administrative review of qualifying project proposals on National Forest System land may be sought.

(a) Subpart A provides the general provisions of the objection process, including who may file objections to proposed projects and activities, the responsibilities of the participants in an objection, and the procedures that apply for review of the objection.

(b) Subpart B includes provisions that are specific to proposed projects and activities implementing land and resource management plans and documented with a Record of Decision or Decision Notice, except those authorized under the HFRA.

(c) Subpart C includes provisions that are specific to proposed hazardous fuel reduction projects authorized under the HFRA.

### § 218.2 Definitions.

*Address.* An individual's or organization's current physical mailing address. An email address is not sufficient.

*Authorized hazardous fuel reduction project*—A hazardous fuel reduction project authorized by the Healthy Forests Restoration Act of 2003 (HFRA).

*Comments*—Specific written comments submitted to the responsible official or designee during a designated opportunity for public participation provided for a proposed project that are in regard to that project.

*Decision notice (DN)*—A concise written record of a responsible official's decision based on an environmental assessment and a finding of no significant impact (FONSI) (40 CFR 1508.13; 36 CFR 220.7). The draft decision document made available pursuant to § 218.7(c)(1) will include a draft FONSI unless an environmental impact statement is being prepared.

*Emergency situation*—A situation on National Forest System (NFS) lands for which immediate implementation of a decision is necessary to achieve one or more of the following: relief from hazards threatening human health and safety; mitigation of threats to natural resources on those NFS or adjacent lands; avoiding a loss of commodity value sufficient to jeopardize the agency's ability to accomplish project objectives directly related to resource protection or restoration.

*Entity*—For purposes of who may file an objection (§ 218.5), an entity includes non-governmental organizations, businesses, partnerships, state and local governments, Alaska Native Corporations, and Indian Tribes.

*Environmental assessment (EA)*—A public document that provides sufficient evidence and analysis for determining whether to prepare an environmental impact statement (EIS) or a finding of no significant impact (FONSI), aids an agency's compliance with the National Environmental Policy Act (NEPA) when no EIS is necessary, and facilitates preparation of a statement when one is necessary (40 CFR 1508.9; 36 CFR 220.7).

*Environmental impact statement (EIS)*—A detailed written statement as required by Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 (40 CFR 1508.11; 36 CFR 220.5).

*Forest Service line officer*—A Forest Service official who serves in a direct line of command from the Chief and who has the delegated authority to make and execute decisions approving projects subject to this part.

*Lead objector*—For an objection submitted with multiple individuals and/or entities listed, the individual or entity identified to represent all other objectors for the purposes of communication, written or otherwise, regarding the objection.

*Name*—The first and last name of an individual or the name of an entity. An electronic username is insufficient for identification of an individual or entity.

*National Forest System land*—All lands, waters, or interests therein administered by the Forest Service (36 CFR 251.51).

*Newspaper(s) of record*—Those principal newspapers of general circulation annually identified in a list and published in the **Federal Register** by each regional forester to be used for publishing notices of projects and activities implementing land management plans.

*Objection*—The written document filed with a reviewing officer by an individual or entity seeking predecisional administrative review of a proposed project or activity implementing a land management plan, including proposed HFRA-authorized hazardous fuel reduction projects, and documented with an environmental assessment or environmental impact statement.

*Objection period*—The period following publication of the legal notice in the newspaper of record of an environmental assessment (30 calendar days) or final environmental impact statement (45 calendar days) for a proposed project or activity during which an objection may be filed with the reviewing officer. When the Chief is the responsible official the objection period begins following publication of a notice in the **Federal Register**.

*Objection process*—The procedures established in this subpart for predecisional administrative review of proposed projects or activities implementing land management plans, including proposed HFRA-authorized hazardous fuel reduction projects.

*Objector*—An individual or entity filing an objection who submitted comments specific to the proposed project or activity during scoping or other opportunity for public comment. The use of the term ''objector'' applies to all persons or entities who meet eligibility requirements associated with the filed objection (§ 218.5).

*Record of decision (ROD)*—A document signed by a responsible official recording a decision that was preceded by preparation of an environmental impact statement (EIS) (40 CFR 1505.2; 36 CFR 220.5).

*Responsible official*—The Forest Service employee who has the delegated authority to make and implement a decision approving proposed projects or activities subject to this part.

### § 218.3 Reviewing officer.

(a) The reviewing officer is the U. S. Department of Agriculture (USDA) or Forest Service official having the delegated authority and responsibility to review an objection filed under this part. The reviewing officer is a Forest Service line officer at the next higher administrative level above the responsible official, or the respective Associate Deputy Chief, Deputy Regional Forester, or Deputy Forest Supervisor with the delegation of authority relevant to the provisions of this part.

(b) The reviewing officer determines procedures to be used for processing objections when the procedures are not

specifically described in this part, including such procedures as needed to be compatible to the extent practicable, with the administrative review processes of other Federal agencies, for projects proposed jointly with other agencies. Such determinations are not subject to further administrative review.

**§ 218.4 Proposed projects and activities not subject to objection.**

Proposed projects and activities are not subject to objection when no specific and timely written comments regarding the proposed project or activity (see § 218.2) are received during a designated opportunity for public comment (see § 218.5(a)). The responsible official must issue an explanation with the Record of Decision or Decision Notice that the project or activity was not subject to objection.

**§ 218.5 Who may file an objection.**

(a) Individuals and entities as defined in § 218.2 who have submitted specific and timely written comments as defined in § 218.2 regarding the proposed project or activity during a designated opportunity for public comment provided during preparation of an EA or EIS for the proposed project or activity may file an objection. For proposed projects or activities described in a draft EIS, such opportunity for public comment will be fulfilled during scoping, by the comment period on the draft EIS in accordance with procedures in 40 CFR 1506.10, and any other periods public comment is specifically requested. For proposed projects or activities described in an EA, such opportunity for public comment will be fulfilled during scoping or any other periods public comment is specifically requested.

(b) Comments received from an authorized representative(s) of an entity are considered those of the entity only. Individual members of that entity do not meet objection eligibility requirements solely on the basis of membership in an entity. A member or an individual must submit written comments independently in order to be eligible to file an objection in an individual capacity.

(c) When an objection lists multiple individuals or entities, each individual or entity must meet the requirements of paragraph (a) of this section. If the objection does not identify a lead objector as required at § 218.8(d)(3), the reviewing officer will delegate the first eligible objector on the list as the lead objector. Individuals or entities listed on an objection that do not meet eligibility requirements must not be considered objectors. Objections from individuals or entities that do not meet the requirements of paragraph (a) must not be accepted and must be documented in the objection record.

(d) Federal agencies may not file objections.

(e) Federal employees who otherwise meet the requirements of this subpart for filing objections in a non-official capacity must comply with Federal conflict of interest statutes at 18 U.S.C. 202–209 and with employee ethics requirements at 5 CFR part 2635. Specifically, employees must not be on official duty nor use Government property or equipment in the preparation or filing of an objection. Further, employees must not incorporate information unavailable to the public, such as Federal agency documents that are exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552 (b)).

**§ 218.6 Computation of time periods.**

(a) *Computation.* All time periods are computed using calendar days, including Saturdays, Sundays, and Federal holidays. However, when the time period expires on a Saturday, Sunday, or Federal holiday, the time is extended to the end of the next Federal working day as stated in the legal notice (11:59 p.m. in the time zone of the receiving office for objections filed by electronic means such as email or facsimile).

(b) *Objection-filing period.* The day after publication of the legal notice for the EA or final EIS in the newspaper of record or **Federal Register** (see § 218.7(c)) is the first day of the objection-filing period.

(c) *Publication date.* The publication date of the legal notice of the EA or final EIS in the newspaper of record or, when the Chief is the responsible official, the **Federal Register**, is the exclusive means for calculating the time to file an objection. Objectors may not rely on dates or timeframe information provided by any other source.

(d) *Extensions.* Time extensions are not permitted except as provided at paragraph (a) of this section, and § 218.26(b).

**§ 218.7 Giving notice of objection process for proposed projects and activities subject to objection.**

(a) In addition to the notification required in paragraph (c) of this section, the responsible official must disclose during scoping and in the EA or EIS that the proposed project or activity is:

(1) A hazardous fuel reduction project as defined by the HFRA, section 101(2), that is subject to subparts A and C of this part, or

(2) A project or activity implementing a land management plan and not authorized under the HFRA, that is subject to subparts A and B of this part.

(b) The responsible official must promptly make available the final EIS or the EA, and a draft Record of Decision (ROD) or Decision Notice (DN), to those who have requested the documents or are eligible to file an objection in accordance with § 218.5(a).

(c) Upon completion and notification of the availability of the final EIS or EA, and draft ROD or DN, legal notice of the opportunity to object to a proposed project or activity must be published in the applicable newspaper of record identified as defined in § 218.2 for each National Forest System unit. When the Chief is the responsible official, notice must be published in the **Federal Register**. The legal notice or **Federal Register** notice must

(1) Include the name of the proposed project or activity, a concise description of the draft decision and any proposed land management plan amendments, name and title of the responsible official, name of the forest and/or district on which the proposed project or activity will occur, instructions for obtaining a copy of the final EIS or EA and draft ROD or DN as defined in § 218.2, and instructions on how to obtain additional information on the proposed project or activity.

(2) State that the proposed project or activity is subject to the objection process pursuant to 36 CFR part 218 and include the following:

(i) Name and address of the reviewing officer with whom an objection is to be filed. The notice must specify a street, postal, fax, and email address, the acceptable format(s) for objections filed electronically, and the reviewing officer's office business hours for those filing hand-delivered objections.

(ii) A statement that objections will be accepted only from those who have previously submitted specific written comments regarding the proposed project during scoping or other opportunity for public comment in accordance with § 218.5(a). The statement must also specify that issues raised in objections must be based on previously submitted specific written comments regarding the proposed project unless the issue is based on new information arising after the opportunities for comment.

(iii) A statement that the publication date of the legal notice in the newspaper of record or **Federal Register** notice is the exclusive means for calculating the time to file an objection (see §§ 218.26(a) and 218.32(a)), and that those wishing to object should not rely

upon dates or timeframe information provided by any other source. A specific date must not be included in the notice.

(iv) A statement of whether the proposal is a hazardous fuel reduction project authorized under the HFRA and subject to the predecisional objection procedures specific to such projects in subpart C of this part or is a project implementing a land management plan, not authorized under the HFRA, and therefore subject to the objection procedures specific to these projects in subpart B of this part.

(v) A statement that an objection, including attachments, must be filed (regular mail, fax, email, hand-delivery, express delivery, or messenger service) with the appropriate reviewing officer (see § 218.8) within 30 days of the date of publication of the legal notice for the objection process if the proposal is an authorized hazardous fuel reduction project, or within 45 days if the proposal is otherwise a project or activity implementing a land management plan. It should also be stated that incorporation of documents by reference is permitted only as provided for at § 218.8(b).

(vi) A statement describing the minimum content requirements of an objection (see § 218.8(d)).

(d) Through notice published annually in the **Federal Register**, each regional forester must advise the public of the newspaper(s) of record utilized for publishing legal notice required by this part.

**§ 218.8 Filing an objection.**

(a) Objections must be filed with the reviewing officer in writing. All objections are available for public inspection during and after the objection process.

(b) Incorporation of documents by reference is not allowed, except for the following list of items which may be provided by including date, page, and section of the cited document. All other documents must be included with the objection.

(1) All or any part of a Federal law or regulation.

(2) Forest Service directives and land management plans.

(3) Documents referenced by the Forest Service in the proposed project EA or EIS that is subject to objection.

(4) Comments previously provided to the Forest Service by the objector during proposed project or activity comment periods.

(c) Issues raised in objections must be based on previously submitted specific written comments regarding the proposed project or activity and attributed to the objector, unless the issue is based on new information that arose after the opportunities for comment. The burden is on the objector to demonstrate compliance with this requirement for objection issues (see § 218.8(d)(6)).

(d) At a minimum, an objection must include the following:

(1) Objector's name and address as defined in § 218.2, with a telephone number, if available;

(2) Signature or other verification of authorship upon request (a scanned signature for electronic mail may be filed with the objection);

(3) When multiple names are listed on an objection, identification of the lead objector as defined in § 218.2. Verification of the identity of the lead objector must be provided upon request;

(4) The name of the proposed project, the name and title of the responsible official, and the name(s) of the national forest(s) and/or ranger district(s) on which the proposed project will be implemented;

(5) Sufficient narrative description of those aspects of the proposed project addressed by the objection, specific issues related to the proposed project; if applicable, how the objector believes the environmental analysis or draft decision specifically violates law, regulation, or policy; and suggested remedies that would resolve the objection; and

(6) A statement that demonstrates the link between prior written comments on the particular proposed project or activity and the content of the objection, unless the objection concerns an issue that arose after the designated opportunity(ies) for comment (see § 218.8(c)).

**§ 218.9 Evidence of timely filing.**

It is the objector's responsibility to ensure timely filing of an objection. Timeliness must be determined by the following indicators:

(a) The date of the U.S. Postal Service postmark for an objection received before the close of the fifth business day after the objection filing date;

(b) The electronically generated posted date and time for email and facsimiles;

(c) The shipping date for delivery by private carrier for an objection received before the close of the fifth business day after the objection filing date; or

(d) The official agency date stamp showing receipt of hand delivery.

**§ 218.10 Objections set aside from review.**

(a) The reviewing officer must set aside and not review an objection when one or more of the following applies:

(1) Objections are not filed in a timely manner (see §§ 218.7(c)(2)(v), 218.9).

(2) The proposed project is not subject to the objection procedures in §§ 218.1, 218.4, 218.20, and 218.31 of this part.

(3) The individual or entity did not submit timely and specific written comments regarding the proposed project or activity during scoping or another designated opportunity for public comment (see § 218.5(a)).

(4) None of the issues included in the objection are based on previously submitted written comments unless one or more of those issues arose after the opportunities for comment.

(5) The objection does not provide sufficient information as required by § 218.8(d)(5) and (6) for the reviewing officer to review.

(6) The objector withdraws the objection.

(7) An objector's identity is not provided or cannot be determined from the signature (written or electronically scanned) and a reasonable means of contact is not provided (see § 218.8(d)(1) and (2)).

(8) The objection is illegible for any reason, including submissions in an electronic format different from that specified in the legal notice.

(b) The reviewing officer must give written notice to the objector and the responsible official when an objection is set aside from review and must state the reasons for not reviewing the objection. If the objection is set aside from review for reasons of illegibility or lack of a means of contact, the reasons must be documented and a copy placed in the objection record.

**§ 218.11 Resolution of objections.**

(a) *Meetings.* Prior to the issuance of the reviewing officer's written response, either the reviewing officer or the objector may request to meet to discuss issues raised in the objection and potential resolution. The reviewing officer has the discretion to determine whether or not adequate time remains in the review period to make a meeting with the objector practical. The responsible official should be a participant along with the reviewing officer in objection resolution meetings. All meetings are open to the public.

(b) *Reviewing officer's response to objections.* (1) A written response must set forth the reasons for the response, but need not be a point-by-point response and may contain instructions to the responsible official, if necessary. In cases involving more than one objection to a proposed project or activity, the reviewing officer may consolidate objections and issue one or more responses.

(2) No further review from any other Forest Service or USDA official of the

reviewing officer's written response to an objection is available.

**§ 218.12 Timing of project decision.**

(a) The responsible official may not sign a ROD or DN concerning a proposed project or activity subject to the provisions of this part until the reviewing officer has responded to all pending objections.

(b) The ROD or DN signed by the responsible official must be consistent with the reviewing officer's response to objections.

(c) When no objection is filed within the allotted filing period (see §§ 218.26 and 218.32):

(1) The reviewing officer must notify the responsible official.

(2) Approval of the proposed project or activity documented in a ROD in accordance with 40 CFR 1506.10, or in a DN may occur on, but not before, the fifth business day following the end of the objection-filing period.

**§ 218.13 Secretary's authority.**

(a) Nothing in this section shall restrict the Secretary of Agriculture from exercising any statutory authority regarding the protection, management, or administration of National Forest System land.

(b) Decisions concerning projects and activities issued by the Secretary of Agriculture or the Under Secretary, Natural Resources and Environment, are not subject to the procedures set forth in this part. Approval of projects and activities by the Secretary or Under Secretary constitutes the final administrative determination of the U.S. Department of Agriculture.

**§ 218.14 Judicial proceedings.**

The objection process set forth in this subpart fully implements Congress' design for a predecisional administrative review process. These procedures present a full and fair opportunity for concerns to be raised and considered on a project-by-project basis. Individuals and groups must structure their participation so as to alert the local agency officials making particular land management decisions of their positions and contentions. Further, any filing for Federal judicial review of a decisions covered by these regulations is premature and inappropriate unless the plaintiff has exhausted the administrative review process set out in this part.

**§ 218.15 Information collection requirements.**

The rules of this part specify the information that objectors must provide in an objection to a proposed project (see § 218.8). As such, these rules contain information collection requirements as defined in 5 CFR part 1320. These information requirements are assigned OMB Control Number 0596–0172.

**§ 218.16 Effective dates.**

(a) *Effective dates for HFRA-authorized projects.* (1) Provisions of this part that are applicable to hazardous fuel reduction projects authorized under the HFRA are in effect as of [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**] for projects where scoping begins on or after this date.

(2) Hazardous fuel reduction project proposals under the HFRA for which public scoping began prior to [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**] may use the predecisional objection procedures posted at *http://www.fs.fed.us/objections*.

(3) Hazardous fuel reduction project proposals that are re-scoped with the public or re-issued for notice and comment after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**] are subject to this part.

(b) *Effective dates for non-HFRA-authorized projects.* (1) Project proposals with public scoping completed, but that have not had legal notice published. The applicable provisions of this part are in effect as of [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**] where public scoping was previously initiated for project proposals, but legal notice of the opportunity to comment has not yet been published; unless scoping or other public notification of the project (e.g. Schedule of Proposed Actions) has clearly indicated the project to be under the former 36 CFR part 215 appeal process.

(2) Project proposals which have legal notice published, but a Decision Notice or Record of Decision has not been signed. If a Decision Notice or Record of Decision is signed within 6 months of [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], it will be subject to the 36 CFR part 215 appeal process. If the Decision Notice or Record of Decision is to be signed more than 6 months beyond [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], the project proposal will be subject to the requirements of this part. In this case, the responsible official will notify all interested and affected parties who participated during scoping or provided specific written comment regarding the proposed project or activity during the comment period initiated with a legal notice that the project proposal will be subject to the predecisional objection regulations at 36 CFR part 218. All interested and affected parties who provided written comment as defined in § 218.2 during scoping or the comment period will be eligible to participate in the objection process.

(3) Project proposals are subject to the requirements of this part when initial public scoping, re-scoping with the public, or re-issuance of notice and comment begins on or after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

## Subpart B—Provisions Specific to Project-Level Proposals Not Authorized Under Healthy Forests Restoration Act

**§ 218.20 Applicability and scope.**

This subpart includes provisions that are specific to proposed projects and activities implementing land and resource management plans and documented with a Record of Decision or Decision Notice, except those authorized under the Healthy Forests Restoration Act (HFRA). The sections of this subpart must be considered in combination with the general provisions of subpart A for the full complement of regulatory direction pertaining to predecisional administrative review of the applicable projects and activities.

**§ 218.21 Emergency situations.**

(a) *Authority.* The Chief and the Associate Chief of the Forest Service are authorized to make the determination that an emergency situation as defined in § 218.2 exists.

(b) *Determination.* The determination that an emergency situation exists shall be based on an examination of the relevant information. During the consideration by the Chief or Associate Chief, additional information may be requested from the responsible official. The determination that an emergency situation does or does not exist is not subject to administrative review under this part.

(c) *Implementation.* When it is determined that an emergency situation exists with respect to all or part of the decision, implementation may proceed as follows:

(1) Immediately after notification (see 36 CFR 220.7(d)) of a decision documented in a decision notice (DN).

(2) Immediately when the decision is documented in a record of decision (ROD), after complying with the timeframes and publication requirements described in 40 CFR 1506.10(b)(2).

(d) *Notification.* The responsible official shall identify any emergency

situation determination made for a project or activity in the notification of the decision (see 36 CFR 220.5(g) and 220.7(d)).

**§ 218.22 Proposed projects and activities subject to legal notice and opportunity to comment.**

The legal notice and opportunity to comment procedures of this subpart apply only to:

(a) Proposed projects and activities implementing land management plans for which an environmental assessment (EA) is prepared;

(b) Proposed projects and activities implementing land management plans and described in a draft or supplemental environmental impact statement (EIS), for which notice and comment procedures are governed by 40 CFR parts 1500 through 1508 also;

(c) Proposed amendments to a land management plan that are included as part of a proposed project or activity for which an EA or EIS is prepared and which are applicable only to a proposed project or activity covered in paragraph (a) of this section;

(d) A proposed project or activity decision resulting from a supplement or revision of an EA or EIS based on consideration of new information or changed circumstances; and

(e) Proposed research activities to be conducted on National Forest System land.

**§ 218.23 Proposed projects and activities not subject to legal notice and opportunity to comment.**

The legal notice and opportunity to comment procedures of this subpart do not apply to:

(a) [Reserved];

(b) Proposed land management plans, plan revisions, and plan amendments that are made separately from any proposed projects;

(c) Proposed projects and activities not subject to the provisions of the National Environmental Policy Act and the implementing regulations at 40 CFR parts 1500 through 1508 and 36 CFR part 220;

(d) Determinations by the responsible official, after consideration of new information or changed circumstances, that a correction, supplement, or revision of the EA or EIS is not required; and

(e) Rules promulgated in accordance with the Administrative Procedure Act (5 U.S.C. 551 et seq.) or policies and procedures issued in the Forest Service Manual and Handbooks (36 CFR part 216).

(f) Proposed hazardous fuel reduction projects authorized under the Healthy Forests Restoration Act.

**§ 218.24 Notification of opportunity to comment on proposed projects and activities.**

(a) *Responsible official.* The responsible official shall:

(1) Provide legal notice of the opportunity to comment on a proposed project or activity implementing the land management plan.

(2) Determine the most effective timing and then publish the legal notice of the opportunity to comment on a proposed project or activity as provided for in paragraph (c)(2) of this section.

(3) Promptly provide notice about the proposed project or activity to any individual or organization who has requested it and to those who have participated in planning for that project.

(4) Accept all written comments on the proposed project or activity as provided for in § 218.25(a)(4).

(5) Identify all specific written comments regarding the proposed project.

(b) *Content of legal notice.* All legal notices shall include the following:

(1) The title and brief description of the proposed project or activity.

(2) A general description of the proposed project or activity's location with sufficient information to allow the interested public to identify the location.

(3) When applicable, a statement that the responsible official is requesting an emergency situation determination or it has been determined that an emergency situation exists for the proposed project or activity as provided for in § 218.21.

(4) For a proposed project or activity to be analyzed and documented in an environmental assessment (EA), a statement that the opportunity to comment ends 30 days following the date of publication of the legal notice in the newspaper of record (see § 218.25(a)(2)); legal notices shall not contain the specific date since newspaper publication dates may vary.

(5) For a proposed project or activity that is analyzed and documented in a draft environmental impact statement (EIS), a statement that the opportunity to comment ends 45 days following the date of publication of the notice of availability (NOA) in the **Federal Register** (see § 218.25(a)(2)). The legal notice must be published after the NOA and contain the NOA publication date.

(6) A statement that only those who submit timely and specific written comments regarding the proposed project or activity during a designated opportunity for public comment will be accepted as objectors.

(7) The responsible official's name, title, telephone number, and addresses (street, postal, facsimile, and email) to whom comments are to be submitted and the responsible official's office business hours for those submitting hand-delivered comments (see § 218.25(a)(4)(ii)).

(8) A statement indicating that for objection eligibility each individual or representative from each organization submitting specific written comments regarding the proposed project or activity must either sign the comments or verify identity upon request.

(9) The acceptable format(s) for electronic comments.

(10) Instructions on how to obtain additional information on the proposed project or activity.

(c) *Publication.* (1) Through notice published annually in the **Federal Register**, each Regional Forester shall advise the public of the newspaper(s) of record utilized for publishing legal notices required by this part.

(2) Legal notice of the opportunity to comment on a proposed project or activity shall be published in the applicable newspaper of record identified in paragraph (c)(1) of this section for each National Forest System unit. When the Chief is the responsible official, notice shall also be published in the **Federal Register**. The publication date of the legal notice in the newspaper of record is the exclusive means for calculating the time to submit written comments on a proposed project or activity to be analyzed and documented in an EA. The publication date of the NOA in the **Federal Register** is the exclusive means for calculating the time to submit written comments on a proposed project or activity that is analyzed and documented in a draft EIS.

**§ 218.25 Comments on proposed projects and activities.**

(a) *Opportunity to comment.* (1) *Time period for submission of comments*—(i) *Environmental assessment.* Comments on the proposed project or activity shall be accepted for 30 days following the date of publication of the legal notice.

(ii) *Draft environmental impact statement.* Comments on the proposed project or activity shall be accepted for a minimum of 45 days following the date of publication in the **Federal Register** pursuant to 40 CFR parts 1500 through 1508.

(iii) *Comments.* It is the responsibility of all individuals and organizations to ensure that their comments are received in a timely manner as provided for in paragraph (a)(4) of this section.

(iv) *Extension.* The time period for the opportunity to comment on environmental assessments shall not be extended.

(2) *Computation of the comment period.* The time period is computed using calendar days, including Saturdays, Sundays, and Federal holidays. However, when the time period expires on a Saturday, Sunday, or Federal holiday, comments shall be accepted until the end of the next Federal working day (11:59 p.m.).

(i) *Environmental assessment (EA).* The 30-day comment period for proposed projects or activities to be analyzed and documented in an EA begins on the first day after publication of the legal notice.

(ii) *Draft environmental impact statement (EIS).* The 45-day comment period for proposed projects or activities that are analyzed and documented in a draft EIS begins on the first day after publication of the NOA in the **Federal Register**.

(3) *Requirements.* Individuals and entities wishing to be eligible to object must provide the following during the comment period:

(i) Name and address.

(ii) Title of the proposed project or activity.

(iii) Specific written comments as defined in § 218.2 regarding the proposed project or activity, along with supporting reasons that the responsible official should consider in reaching a decision.

(iv) Signature or other verification of identity upon request; identification of the individual or entity who authored the comment(s) is necessary for objection eligibility.

(A) For objections listing multiple entities or multiple individuals, a signature or other means of verification must be provided for the individual authorized to represent each entity and for each individual in the case of multiple names, to meet objection eligibility requirements.

(B) Those using electronic means may submit a scanned signature. Otherwise another means of verifying the identity of the individual or entity representative may be necessary for electronically submitted comments.

(v) Individual members of an entity must submit their own comments to meet the requirements of objection eligibility; comments received on behalf of an organization are considered as those of the organization only.

(4) Evidence of timely submission. When there is a question about timely submission of comments, timeliness shall be determined as follows:

(i) Written comments must be postmarked by the Postal Service, emailed, faxed, or otherwise submitted (for example, express delivery service) by 11:59 p.m. on the 30th calendar day following publication of the legal notice for proposed projects or activities to be analyzed and documented in an EA or the 45th calendar day following publication of the NOA in the **Federal Register** for a draft EIS.

(ii) Hand-delivered comments must be time and date imprinted at the correct responsible official's office by the close of business on the 30th calendar day following publication of the legal notice for proposed projects or activities to be analyzed and documented in an EA or the 45th calendar day following publication of the NOA in the **Federal Register** for a draft EIS.

(iii) For emailed comments, the sender should normally receive an automated electronic acknowledgment from the agency as confirmation of receipt. If the sender does not receive an automated acknowledgment of the receipt of the comments, it is the sender's responsibility to ensure timely receipt by other means.

(b) *Consideration of comments.* (1) The responsible official shall consider all written comments submitted in compliance with paragraph (a) of this section.

(2) All written comments received by the responsible official shall be placed in the project file and shall become a matter of public record.

### § 218.26 Objection time periods.

(a) *Time to file an objection.* Written objections, including any attachments, must be filed with the reviewing officer within 45 days following the publication date of the legal notice of the EA or final EIS in the newspaper of record or the publication date of the notice in the **Federal Register** when the Chief is the responsible official (see § 218.7(c)). It is the responsibility of objectors to ensure that their objection is received in a timely manner.

(b) *Time for responding to an objection.* The reviewing officer must issue a written response to the objector(s) concerning their objection(s) within 45 days following the end of the objection-filing period. The reviewing officer has the discretion to extend the time for up to 10 days when he or she determines that additional time is necessary to provide adequate response to objections or to participate in resolution discussions with the objector(s).

## Subpart C—Provisions Specific to Proposed Projects Authorized Under the Healthy Forests Restoration Act

### § 218.30 Applicability and scope.

This subpart includes provisions that are specific to proposed hazardous fuel reduction projects documented with a Record of Decision or Decision Notice, and authorized under the Healthy Forests Restoration Act (HFRA). The sections of this subpart must be considered in combination with the general provisions of subpart A for the full complement of regulatory direction pertaining to predecisional administrative review of the applicable projects and activities.

### § 218.31 Authorized hazardous fuel reduction projects subject to objection.

(a) Only authorized hazardous fuel reduction projects as defined by the HFRA, section 101(2), occurring on National Forest System land that have been analyzed in an EA or EIS are subject to this subpart. Authorized hazardous fuel reduction projects processed under the provisions of the HFRA are not subject to the requirements in subpart B of this part.

(b) When authorized hazardous fuel reduction projects are approved contemporaneously with a plan amendment that applies only to that project, the objection process of this part applies to both the plan amendment and the project.

### § 218.32 Objection time periods.

(a) *Time to file an objection.* Written objections, including any attachments, must be filed with the reviewing officer within 30 days following the publication date of the legal notice of the EA or final EIS in the newspaper of record or the publication date of the notice in the **Federal Register** when the Chief is the responsible official (see § 218.6(c)). It is the responsibility of objectors to ensure that their objection is received in a timely manner.

(b) *Time for responding to an objection.* The reviewing officer must issue a written response to the objector(s) concerning their objection(s) within 30 days following the end of the objection-filing period.

Dated: July 19, 2012.

**Thomas L. Tidwell,**

*Chief, Forest Service.*

[FR Doc. 2012–19302 Filed 8–7–12; 8:45 am]

BILLING CODE 3410–11–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 152, 158 and 161

**[EPA–HQ–OPP–2010–0427; FRL–9357–9]**

**RIN 2070–AJ26**

### Notification of Submission to the Secretaries of Agriculture and Health and Human Services; Declaration of Prion as a Pest Under FIFRA; Related Amendments; and Availability of Final Test Guidelines

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notification of submission to the Secretaries of Agriculture and Health and Human Services.

**SUMMARY:** This document notifies the public as required by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) that the EPA Administrator has forwarded to the Secretary of the United States Department of Agriculture (USDA) and the Secretary of the United States Department of Health and Human Services (HHS) a draft regulatory document concerning Declaration of Prion as a Pest Under FIFRA; Related Amendments; and Availability of Final Test Guidelines. The draft regulatory document is not available to the public until after it has been signed and made available by EPA.

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2010–0427, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

**FOR FURTHER INFORMATION CONTACT:** Jeff Kempter, Antimicrobials Division, 7510P, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: 703–305–5448; email address: *kempter.carlton@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. What action is EPA taking?

Section 25(a)(2)(B) of FIFRA requires the EPA Administrator to provide the Secretary of USDA with a copy of any draft final rule at least 30 days before signing it in final form for publication in the **Federal Register**. Similarly, FIFRA section 21(b) requires the EPA Administrator to provide the Secretary of HHS with a copy of any draft final rule pertaining to a public health pesticide at least 30 days before publishing it in the **Federal Register**. The draft final rule is not available to the public until after it has been signed by EPA. If either Secretary comments in writing regarding the draft final rule within 15 days after receiving it, the EPA Administrator shall include the comments of the Secretary, if requested by the Secretary, and the EPA Administrator's response to those comments with the final rule that publishes in the **Federal Register**. If either Secretary does not comment in writing within 15 days after receiving the draft final rule, the EPA Administrator may sign the final rule for publication in the **Federal Register** any time after the 15-day period.

#### II. Do any statutory and Executive order reviews apply to this notification?

No. This document is merely a notification of submission to the Secretaries of USDA and HHS. As such, none of the regulatory assessment requirements apply to this document.

#### List of Subjects in Parts 152, 158 and 161

Environmental protection, administrative practice and procedures, agricultural commodities, pesticides and pests, reporting and recordkeeping requirements, chemical testing, test guidelines.

Dated: August 2, 2012.

**Martha Morell,**

*Acting Director, Office of Pesticide Programs.*

[FR Doc. 2012–19406 Filed 8–7–12; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 168

**[EPA–HQ–OPP–2009–0607; FRL–9357–8]**

**RIN 2070–AJ53**

### Notification of Submission to the Secretary of Agriculture; Pesticides; Regulation To Clarify Labeling of Pesticides for Export

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notification of submission to the Secretary of Agriculture.

**SUMMARY:** This document notifies the public as required by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) that the EPA Administrator has forwarded to the Secretary of the U.S. Department of Agriculture (USDA) a draft final rule concerning the revision of regulations on the labeling of pesticide products and devices intended solely for export. The draft final rule is not available to the public until after it has been signed and is made available by EPA.

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2009–0607, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

**FOR FURTHER INFORMATION CONTACT:** Vera Au, Field and External Affairs Division (MC 7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington DC 20460–0001; telephone number: (703) 308–9069; email address: *au.vera@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. What action is EPA taking?

Section 25(a)(2)(B) of FIFRA requires the EPA Administrator to provide the Secretary of Agriculture with a copy of any draft final rule at least 30 days before signing it in final form for publication in the **Federal Register**. This notice announces the submission of a draft final rule to the Secretary of Agriculture concerning the revision of regulations clarifying the labeling of pesticide products and devices intended for export. The draft final rule is not available to the public until after it has been signed by EPA. If the Secretary comments in writing regarding the draft final rule within 15 days after receiving it, the EPA Administrator shall include the comments of the Secretary, if requested by the Secretary, along with the EPA Administrator's response to those comments with the final rule that

publishes in the **Federal Register**. If the Secretary does not comment in writing within 15 days after receiving the draft final rule, the EPA Administrator may sign the final rule for publication in the **Federal Register** any time after the 15-day period.

**II. Do any statutory and executive order reviews apply to this notification?**

No. This document is merely a notification of submission to the Secretary of USDA. As such, none of the regulatory assessment requirements apply to this document.

**List of Subjects in Part 168**

Environmental protection, Administrative practice and procedure, Advertising, Exports, Labeling, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 2, 2012.

**Marty Monell,**

*Acting Director, Office of Pesticide Programs.*

[FR Doc. 2012–19408 Filed 8–7–12; 8:45 am]

**BILLING CODE 6560–50–P**

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**[Docket No. FWS–R2–ES–2012–0047; 4500030113]**

## Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List *Graptopetalum bartramii* (Bartram Stonecrop) and *Pectis imberbis* (Beardless Chinch Weed) as Endangered or Threatened and Designate Critical Habitat

**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 *Graptopetalum bartramii* (Bartram stonecrop) and *Pectis imberbis* (beardless chinch weed) as endangered or threatened under the Endangered Species Act of 1973, as amended (Act), and to designate critical habitat. Based on our review, we find that the petition presents substantial scientific or commercial information indicating that listing Bartram stonecrop and beardless chinch weed may be warranted. Therefore, with the publication of this notice, we will initiate a review of the status of these species to determine if listing Bartram stonecrop or beardless chinch weed, or both, is warranted. To ensure that our status review is comprehensive, we request scientific and commercial data and other information regarding these species. Based on the status review, we will issue a 12-month finding on the petition, which will address whether the petitioned action is warranted, 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 October 9, 2012. The deadline for submitting an electronic comment using the Federal eRulemaking Portal (see **ADDRESSES** section, below) is 11:59 p.m. Eastern Time on this date. After October 9, 2012, you must submit information directly to the Division of Policy and Directives Management (see **ADDRESSES** section below). Please note that we might 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:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov* and Search for Docket No. FWS–R2–ES–2012–0047, which is the docket number for this action. If your submission will fit in the provided comment box, please use this feature of *http://www.regulations.gov,* as it is most compatible with our information collection procedures. If you attach your submission as a separate document, our preferred file format is Microsoft Word. If you attach multiple documents (such as form letters), our preferred format is a spreadsheet in Microsoft Excel.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R2–ES–2012–0047; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will post all information we receive on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Request for Information section below for more details).

**FOR FURTHER INFORMATION CONTACT:** Steve Spangle, Field Supervisor, U.S. Fish and Wildlife Service, Arizona Ecological Services Office, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021; by telephone (602–242–0210); or by facsimile (602–242–2513). If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### Request for Information

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted, we are required to promptly review the status of the species (status review). For the status review to be complete and based on the best available scientific and commercial information, we request information on Bartram stonecrop and beardless chinch weed from governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties. We seek information on:

(1) The species' biology, range, and population trends, including:

(a) Habitat requirements for reproduction, germination, and survival;

(b) Genetics and taxonomy;

(c) Historical and current range including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) The factors that are the basis for making a listing, delisting, or downlisting determination for a species under section 4(a) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), which are:

(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.

If, after the status review, we determine that listing Bartram stonecrop or beardless chinch weed, or both, is warranted, we will propose critical habitat (see definition in section 3(5)(A) of the Act), under section 4 of the Act, to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, we request data and information on:

(1) What may constitute ''physical or biological features essential to the conservation'' of each species within the geographical range currently occupied by the species;

(2) Where these features are currently found;

(3) Whether any of these features may require special management considerations or protection;

(4) Specific areas outside the geographical area occupied by the species that are ''essential for the conservation of the species;'' and

(5) What, if any, critical habitat you think we should propose for designation if the species is proposed for listing, and why such habitat meets the requirements of section 4 of the Act.

Please include sufficient information with your submission (such as scientific journal articles or other publications) 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 hardcopy 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 hardcopy submissions on *http://www.regulations.gov.*

Information and supporting documentation that we received and used in preparing this finding are available for you 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, Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

## Background

For the purposes of this document, we will refer to *Graptopetalum bartramii* as Bartram stonecrop and *Pectis imberbis* as beardless chinch weed.

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 conduct a species status review, which we subsequently summarize in our 12-month finding.

The ''substantial information'' standard for a 90-day finding differs from the Act's ''best scientific and commercial data'' standard that applies to a status review to determine whether a petitioned action is warranted. A 90-day finding does not constitute a status review under the Act. In a 12-month finding, we will announce our determination as to 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 findings and status reviews conducted for a 12-month finding on a petition are different, as described above, a substantial 90-day finding does not mean that our status review and resulting determination will result in a warranted finding.

### *Petition History*

On July 7, 2010, we received a petition dated July 7, 2010, from the Center for Biological Diversity, requesting that Bartram stonecrop and beardless chinch weed be listed as endangered or threatened and critical habitat be designated under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, as required by 50 CFR 424.14(a). In a December 1, 2011, letter to the Center for Biological Diversity, we responded that we reviewed the information presented in the petition and determined that issuing an emergency regulation temporarily listing the species under section 4(b)(7) of the Act was not warranted. We also stated that per the Multi-District Litigation Settlement Agreements (*WildEarth Guardians* v. *Salazar,* No. 1:10–mc–00377–EGS (D. D.C.), we are required to complete an initial finding in Fiscal Year 2012 as to whether this petition contains substantial information indicating that the action may be warranted. This 90-day finding addresses the July 7, 2010, petition.

### *Previous Federal Actions*

Initially, Bartram stonecrop and beardless chinch weed were included as Category 1 species in the 1980 Review of Plant Taxa for Listing as Endangered or Threatened Species (45 FR 82480, December 15, 1980). Category 1 candidates were defined as species for which the Service had sufficient information on hand to support the biological appropriateness of them being listed as endangered or threatened species. Subsequently, Bartram stonecrop and beardless chinch weed were included as Category 2 candidate species in the 1983 Supplement to Review of Plant Taxa for Listing as Endangered or Threatened Species (48 FR 53640, November 28, 1983). Category 2 species were taxa for which information in our possession indicated that proposing to list was possibly appropriate, but for which persuasive data on biological vulnerability and threats were not available to support a proposed listing rule. The designation of Category 2 species was discontinued in the 1996 Notice of Final Decision on Identification of Candidates for Listing as Endangered or Threatened (61 FR 64481, December 5, 1996); therefore, since that time, these species were not, and are not currently, considered candidates.

For each of the species, we provide a description of the species and its life history and habitat, followed by an evaluation of the information for each species, and our finding whether or not substantial information is presented to indicate that the petitioned action may be warranted for each species.

### *Species Information for Bartram Stonecrop*

#### Taxonomy and Description

The petition did not provide detailed information on taxonomy or a description of Bartram stonecrop; therefore, we used information readily available in our files. Bartram stonecrop was described by J. N. Rose in 1926 from specimens collected by E. Bartram. In 1936, T. H. Kearney and R. H. Peebles changed the name of all Arizona species in the genera *Graptopetalum* and *Dudleya* to the genus *Echeveria* (Kearney and Peebles 1951, pp. 358–362; Phillips *et al.* 1982a, p. 1). Although the *Flora of Arizona* (Kearney and Peebles 1951, p. 360) maintains *E. bartramii,* Phillips *et al.* (1982a, p. 2) note that most botanists recently concerned with this family separate the

genera *Graptopetalum* and *Dudleya.* Because botanists in recent decades accept the characterization of *Graptopetalum bartramii* as a species, we concur.

Bartram stonecrop is a small, succulent (fleshy), acaulescent (without a stem) perennial plant in the Crassulaceae or stonecrop family (Phillips *et al.* 1982a, p. 2). The plant has a basal rosette comprising 20 or more flat to concave, smooth, blue-green leaves (Phillips *et al.* 1982a, p. 2). Flower stalks up to 30.5 centimeters (cm) (12 inches (in)) in height and topped with panicles (equilaterally arranged flowering stems) are produced in late October to early November (Phillips *et al.* 1982a, pp. 2, 7). Each panicle produces one to three five-petaled, brown-to-red spotted flowers that are 2.54 cm (1.0 in) or more across (Phillips *et al.* 1982a, p. 3).

Habitat

The petition notes that Bartram stonecrop is found in rock crevices, ledges, and gravelly slopes from 1,113 to 2,042 meters (m) (3,652 to 6,700 feet (ft)) in elevation in southern Arizona and Mexico. The plant is typically found in the shade of Madrean evergreen woodland overstory and under dense litter (Phillips *et al.* 1982a, p. 4). The petition states that this species is known from 12 locations in Arizona, including the Baboquivari, Chiricahua, Dragoon, Mule, Patagonia, Rincon, Santa Rita, and Tumacacori Mountains in Cochise, Pima, and Santa Cruz Counties, as well as from one location in Mexico. The petition makes special note that populations are known to be very small, typically consisting of a few individuals, and widely scattered.

*Species Information for Beardless Chinch Weed*

Taxonomy and Description

The petition did not provide detailed information on taxonomy or a description of beardless chinch weed; therefore, we used information readily available in our files. Beardless chinch weed was first collected by Charles Wright in the early 1850s in Sonora, Mexico, and was described by Asa Gray in 1853 (Phillips *et al.* 1982b, p. 1). The name has remained unchanged since that time, and there are no known synonyms; therefore, we accept the characterization of beardless chinch weed as a valid species.

Beardless chinch weed is an erect, many-branched, perennial herb growing 3–12 decimeters (dm) (12 to 47 in) from a woody caudex (stem base) (Phillips *et al.* 1982b, p. 2). The glabrous (without hairs) leaves are 1 to 5 cm (0.4 to 2 in) in length and 1 to 2 millimeters (mm) (0.04 to 0.08 in) wide with pointed tips, becoming smaller toward the tips (Phillips *et al.* 1982b, p. 2). The leaves have a row of narrow, oval-shaped glands on the underside surface near each margin and a single, oval-shaped gland on the upper surface (Phillips *et al.* 1982b, p. 2). Daisy-like flower heads containing yellow ray and disk flowers are solitary or in open, flat-topped clusters at the tips of the branches (Phillips *et al.* 1982b, p. 2). The petals are also dotted with oil glands (Arizona Game and Fish Department 2003, p. 1). Flowering occurs from August to October when the plants are over 0.5 m (1.6 ft) in height (Kearney and Peebles 1951, p. 935; Phillips *et al.* 1982b, p. 8). Unlike other species in this genus, beardless chinch weed has no fine hairs fringing the base of the upper leaves; instead, it has a single pair of trichomes (hair-like growth) on the lower leaves (Fishbein and Warren 1994, p. 19).

Habitat

Beardless chinch weed is found in the Atascosa, Huachuca, Oro Blanco, Patagonia, and Santa Rita Mountains, and the Canelo Hills of Cochise, Pima, and Santa Cruz Counties, Arizona, as well as Chihuahua and Sonora, Mexico, from 1,150 to 1,725 m (3,773 to 5,660 ft) in elevation (Fishbein and Warren 1994, p. 19). All but two known populations in the United States occur on lands managed by the Coronado National Forest (Fishbein and Warren 1994, p. 20). While more typically found in tropical deciduous forests and oak woodlands at higher elevations, and grasslands at lower elevations, it has also been found on disturbed road cuts, arroyo cuts, and unstable rocky slopes, where it has little competition for sunlight (Phillips *et al.* 1982b, pp. 4, 6; Fishbein and Warren 1994, p. 19). Of the 24 beardless chinch weed collections and occurrence location information in our files, 5 are from road cuts, and 19 are from grasslands (Deecken 1991, p. 1; Deecken 1992, p. 1; Deecken 1994, p. 1; Fishbein and Warren 1994, pp. 22–24).

Abundance

There are 11 populations of beardless chinch weed in southern Arizona; all populations are considered small (Fishbein and Warren 1994, p. 19). The following is a summary of the locations and population estimates for beardless chinch weed in Arizona. A 1993 survey of Scotia Canyon found 125 individuals (Fishbein and Warren 1994, p. 22); surveys in the Canelo Hills from 1991, 1992, and 1994 located 15, 40, and 4 individuals, respectively (Deecken 1991, p. 1; Deecken 1992, p. 1; Deecken 1994, p. 1); and a 1980–1981 survey done along the Ruby Road found 100 plants in 4 different locations (Phillips *et al.* 1982b, p. 8). In addition, we have records of two herbarium collections—Peña Blanca Lake Recreation Area in 1975 (seven individuals) and the Santa Rita Mountains in 1981 (two individuals) (Fishbein and Warren 1994, p. 22). No other populations have recorded estimates, and no population estimates for known populations have been made since 1993. The petition states that surveys in potential habitat in the Huachuca Mountains and Canelo Hills in 1994 did not detect new populations and that the plant has not been seen in several Coronado National Forest sites since the late 1970s.

The distribution and abundance of the species in Mexico is unknown, though beardless chinch weed has been collected from the Distrito Alamos and the Region of the Rio Bavispe in Sonora and the upper Rio Mayo basin in Chihuahua and Sonora (Fishbein and Warren 1994, pp. 20, 24). The petition states that the plant has not been seen in Mexico since last collected there in 1936. The petition emphasizes that small population size exists across the species' range, warning that impacts to individual plants could result in population extirpation.

**Evaluation of Information for This Finding**

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR part 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 considering what factors might constitute threats we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response,

that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine how significant a threat it is. If the threat is significant, it may drive or contribute to the risk of extinction of the species such that the species may warrant listing as an endangered or threatened species as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively may not be sufficient to compel a finding that listing may be warranted. The information must contain evidence sufficient to suggest that these factors may be operative threats that act on the species to the point that the species may meet the definition of an endangered or threatened species under the Act.

In making this 90-day finding, we evaluated whether information regarding the status and threats to Bartram stonecrop and beardless chinch weed, as presented in the petition and other information readily available in our files, is substantial, thereby indicating that the petitioned action may be warranted. Our evaluation of this information is presented below.

*Evaluation of Petition Information and Finding for Bartram Stonecrop*

The petition presented information regarding the following factors as potential threats to the Bartram stonecrop: Mining, livestock grazing, recreation, road construction and maintenance, border patrol activities, exotic plant invasion and control, conversion of habitat for cultivation, overutilization, inadequacy of existing regulatory mechanisms, small population size, low reproductive rates, loss of protective cryptobiotic soils (a biological soil crust composed of living algae, fungi or lichens commonly found in arid regions) stochastic events, drought, and climate change. After reviewing the petition and other information presented by the petitioner and information readily available in our files, we have determined that there is substantial information to indicate that the Bartram stonecrop may warrant listing as a result of its apparently small population sizes that are subject to unauthorized collection. Following we present a discussion of these factors.

As discussed in the ''*Species Information for Bartram Stonecrop*'' section above, the petitioner notes that populations are known to be very small, typically consisting of a few individuals, and widely scattered. Because Bartram stonecrop populations are small and discrete, they are vulnerable to a variety of disturbances, especially collection (USDA Forest Service 1991). The petition presented information that Bartram stonecrop has been collected, and that declines in the known populations may be due to collection (USDA Forest Service 1991).

The petition also references Phillips *et al.* (1982a, p. 9), who report moderate to heavy recreational use near occupied sites, possibly increasing the likelihood of plant collection, especially when the plants are in bloom. Additional information readily available in our files states that stonecrop species in general are sometimes collected for the cactus and succulent trade, with rare species such as Bartram stonecrop, particularly sought (Coronado National Forest 2007, p. 13; USDA Forest Service 1991, p. 2). In addition, it is noteworthy that Phillips *et al.* (1982a, p. 4) did not provide specific locations in their report due to concern that plants of Bartram stonecrop might be targeted for collection. Van Devender (1981, pp. 3–4) mentions that collecting probably has an important impact, noting that Bartram stonecrop is attractive and often collected.

Small populations may not be able to recover from collection, especially if the mature, reproductive plants are removed. The removal of mature plants reduces the overall reproductive effort of the population, thereby reducing the overall resilience of the population. Collection may have a profound effect on Bartram stonecrop populations due to the small number of locations and small population size.

The information presented by the petitioner and readily available in our files suggests the Bartram stonecrop is subject to overutilization pressures and has apparently experienced declines in some populations as a result. This information is sufficient to suggest that this factor may be an operative threat that acts on the species to the point that it may meet the definition of an endangered or threatened species under the Act. Therefore, on the basis of our determination under section 4(b)(3)(A) of the Act, we find that the petition presents substantial scientific or commercial information indicating that listing Bartram stonecrop throughout its entire range may be warranted. Because we have found that the petition presents substantial information indicating that listing Bartram stonecrop may be warranted, we will be initiating a status review to determine whether listing Bartram stonecrop under the Act is warranted.

This finding was made primarily based on information related to small population size and collection. However, as noted above, the petitioners also presented information suggesting that mining, livestock grazing, recreation, road construction and maintenance, border patrol activities, exotic plant invasion and control, conversion of habitat for cultivation, inadequacy of existing regulatory mechanisms, low reproductive rates, loss of protective cryptobiotic soils, stochastic events, drought, and climate change may be threats to the Bartram stonecrop. We will fully evaluate these potential threats during our status review, pursuant to the Act's requirement to review the best available scientific information when making that finding. Accordingly, we encourage the public to consider and submit information related to these and any other threats that may be operating on the Bartram stonecrop (see Request for Information).

*Evaluation of Petition Information and Finding for Beardless Chinch Weed*

The petition presented information regarding the following factors as potential threats to the beardless chinch weed: Mining, livestock grazing, recreation, road maintenance, exotic plant invasion and control, conversion of habitat for cultivation, inadequacy of existing regulatory mechanisms, small population size, low reproductive rates, stochastic events, drought, and climate change. After reviewing the petition, information presented by the petitioner, and information readily available in our files, we have determined that substantial information was presented to indicate that the beardless chinch weed may warrant listing due to the present or threatened destruction, modification, or curtailment of its habitat or range as a result of livestock grazing. Following we present a discussion of these significant factors.

With regard to the destruction, modification, or curtailment of beardless chinch weed habitat or range, the petition cites the USDA Forest Service (2003, 2004, 2005, and 2006), which acknowledges there have been impacts to beardless chinch weed individuals due to livestock herbivory and trampling. The petition states that impacts on individuals may have population-level effects because some populations are very small and there are only 13 known populations in Arizona. Eight of the known populations occur within grazing allotments on the Coronado National Forest, which the petition claims are heavily grazed. The petition also references Phillips *et al.*

(1992b) and Fishbein and Warren (1994) who report that plants do not flower until they are over 0.5 m (1.6 ft) tall and, under heavy grazing pressure, beardless chinch weed plants may be unable to attain adequate size for reproduction. An inability of the plants to reproduce could affect the stability of the populations and lead to an overall decrease in the species' vigor within these populations.

Additional information readily available in our files states that grazing pressure may have contributed to the species' rareness; however, there is no evidence presented for this observation (Keil 1982, pers. comm.). Falk and Warren (1994, p. 157) state that the species is thought to be susceptible to impacts from grazing. Deecken (1992, p. 1) noted finding a population of 15 or more plants on the edge of a cattle trail. In addition, Deecken (1995, pers. comm.) described a Coronado National Forest project that realigned a fence to prevent cattle from moving downslope through beardless chinch weed sites. Of the 24 records in our files that provide any indication of habitat, 19 were from grasslands of varying slope and likely accessible to livestock. This information indicates that livestock grazing may affect the species and its habitat, but does not provide conclusive evidence.

The information presented by the petitioner and readily available in our files suggests that the beardless chinch weed is subject to livestock grazing pressures throughout much of its range and has apparently experienced declines in some populations as a result. This information is sufficient to suggest that this factor, exacerbated by the small population size, may be an operative threat that acts on the species to the point that it may meet the definition of an endangered or threatened species under the Act. Therefore, on the basis of our determination under section 4(b)(3)(A) of the Act, we find that the petition presents substantial scientific or commercial information indicating that listing beardless chinch weed throughout its entire range may be warranted. Because we have found that the petition presents substantial information indicating that listing beardless chinch weed may be warranted, we will initiate a status review to determine whether listing beardless chinch weed under the Act is warranted.

This finding was made primarily based on information related to the present or threatened destruction, modification, or curtailment of its habitat or range as a result of livestock grazing. However, as noted above, the petitioners also presented information suggesting that mining, livestock grazing, recreation, road maintenance, exotic plant invasion and control, conversion of habitat for cultivation, inadequacy of existing regulatory mechanisms, small population size, low reproductive rates, stochastic events, drought, and climate change may be threats to the beardless chinch weed. We will fully evaluate these potential threats during our status review, pursuant to the Act's requirement to review the best available scientific information when making that finding. Accordingly, we encourage the public to consider and submit information related to these and any other threats that may be operating on the beardless chinch weed (see **Request for Information**).

### References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

### Author

The primary authors of this notice are the staff of the U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

### Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 26, 2012.

**Thomas O. Melius,**

*Director, U.S. Fish and Wildlife Service.*

[FR Doc. 2012–19334 Filed 8–7–12; 8:45 am]

**BILLING CODE 4310–55–P**

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**RIN 0648–XA500**

## North Pacific Fishery Management Council; Essential Fish Habitat Amendments

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

**ACTION:** Notification of availability of fishery management plan amendments; request for comments.

**SUMMARY:** The North Pacific Fishery Management Council submitted the following essential fish habitat (EFH) amendments to NMFS for review: Amendment 98 to the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands Management Area; Amendment 90 to the FMP for Groundfish of the Gulf of Alaska; Amendment 40 to the FMP for Bering Sea/Aleutian Islands King and Tanner Crabs; Amendment 15 to the FMP for the Scallop Fishery off Alaska; and Amendment 1 to the FMP for Fish Resources of the Arctic Management Area. If approved, these amendments would update the existing EFH provisions based on a 5-year EFH review. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMPs, and other applicable laws.

**DATES:** Comments on the amendments must be submitted on or before October 9, 2012.

**ADDRESSES:** Send comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by FDMS Docket Number NOAA–NMFS–2011–0070, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal Web site at *www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, enter NOAA–NMFS–2011–0070 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Comment Now'' icon on the right of that line.
- *Mail:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.
- *Fax:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to 907–586–7557.
- *Hand delivery to the Federal Building:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9th Street, Room 420A, Juneau, AK.

Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other

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

Electronic copies of the environmental assessment prepared for this action are available from *www.regulations.gov* or from the NMFS Alaska Region Web site at *www.alaskafisheries.noaa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Sarah Ellgen, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Fishery Conservation and Management Act (MSA) requires that each regional fishery management council submit any FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce. The MSA also requires that NMFS, upon receiving an FMP amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment.

This notice announces proposed EFH Amendment 98 to the FMP for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI Groundfish FMP); Amendment 90 to the FMP for Groundfish of the Gulf of Alaska (GOA Groundfish FMP); Amendment 40 to the FMP for Bering Sea/Aleutian Islands King and Tanner Crabs (BSAI Crab FMP); Amendment 15 to the FMP for the Scallop Fishery off Alaska (Scallop FMP); and Amendment 1 to the FMP for Fish Resources of the Arctic Management Area (Arctic FMP). The North Pacific Fishery Management Council (Council) prepared the BSAI Groundfish FMP, the GOA Groundfish FMP, the BSAI Crab FMP, the Scallop FMP, the Arctic FMP, and the FMP for Salmon Fisheries in the EEZ Off the Coast of Alaska (Salmon FMP) under the authority of the MSA, 16 U.S.C. 1801 *et seq.*

The MSA includes provisions concerning the identification and conservation of EFH. The MSA defines EFH as ''those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.'' NMFS and regional fishery management councils must describe and identify EFH in FMPs. Each FMP contains the following EFH components: EFH descriptions and identification; fishing activities that may adversely affect EFH; non-fishing activities that may adversely affect EFH; cumulative impacts analysis; EFH conservation and enhancement recommendations; prey species list and locations; Habitat Areas of Particular Concern (HAPC) identification; research and information needs; and the requirement to review EFH every 5 years.

In 2005, the Council recommended amendments to address EFH requirements for the BSAI Groundfish FMP, the GOA Groundfish FMP, the BSAI Crab FMP, the Scallop FMP, and the Salmon FMP. The Arctic FMP approved by the Council in 2009 included EFH provisions. Regulations implementing EFH and HAPC conservation measures under Amendments 78 and 65 to the BSAI Groundfish FMP, Amendments 73 and 65 to the GOA Groundfish FMP, Amendments 16 and 12 to the BSAI Crab FMP, Amendments 7 and 9 to the Scallop FMP, and Amendments 7 and 8 to the Salmon FMP were published on June 28, 2006 (71 FR 36694). The FMP approval and implementing regulations for the Arctic FMP were published on November 3, 2009 (74 FR 56734).

In 2009 and 2010, a 5-year EFH review was conducted for the Council. The results of this review are documented in the Final EFH 5-year Review for 2010 Summary Report (*www.alaskafisheries.noaa.gov/habitat/efh/review/efh_5yr_review_sumrpt.pdf*). The Report reviewed EFH provisions in five of the Council's six FMPs: the BSAI Groundfish FMP, the GOA Groundfish FMP, the BSAI Crab FMP, the Scallop FMP, and the Salmon FMP. The Arctic FMP was approved by the Secretary of Commerce in August 2009 (74 FR 56734). Because a thorough assessment of EFH was included in the Arctic FMP, EFH descriptions for Arctic species were not addressed in the 5-year review report.

The 5-year review evaluated new information on EFH, assessed information gaps and research needs, and identified whether any revisions to EFH are needed or suggested. Based on the 5-year review and the summary report, the Council identified various elements of the EFH FMP text that merit revision. The proposed FMP amendments would revise the following components:

- Amend the EFH provisions of the BSAI and GOA Groundfish FMPs for 24 groundfish species or complexes.
- Amend the EFH provisions of the BSAI Crab FMP for five crab species or complexes.
- Amend the EFH provisions of the Scallop FMP for weathervane scallop.
- Amend the EFH conservation recommendations for non-fishing activities in all Council FMPs.
- Revise the timeline for considering HAPCs from 3 years to 5 years in all Council FMPs.
- Revise the research objectives for EFH in the five Council FMPs subject to the 2010 EFH 5-year review (excludes the Arctic FMP).

The 2010 EFH 5-year review concluded that no change to the 2005 conclusions on the evaluation of fishing effects on EFH was warranted based on a review of information from 2005 through 2010.

Several EFH revisions have been approved since the 2010 EFH review was conducted. Specifically, the Council recommended, and NMFS approved, Amendment 11 to the Salmon FMP regarding recommendations for non-fishing activities, HAPC timeline change, and EFH research objectives. Amendment 11 was proposed with Amendments 10 and 12 to the Salmon FMP (77 FR 19605, April 2, 2012). The Secretary of Commerce approved Amendments 10, 11, and 12 on July 2, 2012. NMFS is not proposing additional EFH amendments to the Salmon FMP at this time given the approval of Amendment 11.

Public comments are being solicited on the proposed amendments to the FMPs through the end of the comment period (see **DATES**). All comments received by the end of the comment period will be considered in the FMP approval/disapproval decision. To be considered, comments must be received, not just postmarked or otherwise transmitted, by 5 p.m., Alaska local time on the last day of the comment period. Comments received after that date will not be considered in the approval/disapproval decision on the amendments.

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

Dated: August 3, 2012.

**James P. Burgess,**

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

[FR Doc. 2012–19454 Filed 8–7–12; 8:45 am]

BILLING CODE 3510–22–P

# Notices

Federal Register

Vol. 77, No. 153

Wednesday, August 8, 2012

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

### Forest Service

### Withdrawal of Notice of Intent To Prepare an Environmental Impact Statement for Proposed Amendment of Rogue River, Umpqua and Winema National Forest Land and Resource Management Plans for the Pacific Connector Gas Pipeline

**AGENCY:** Forest Service, USDA.

**ACTION:** Withdrawal of notice of intent to prepare an EIS.

**SUMMARY:** In the Monday, June 15, 2009 **Federal Register** (FR) Vol. 74, No. 113, pages 28214–28217, the Forest Service announced its intention to prepare an Environmental Impact Statement (EIS) for amendment of land and resource management plans (LRMP) of the Rogue River, Umpqua and Winema National Forests to make provision for the Pacific Connector Gas Pipeline (PCGP) to cross national forest system lands. The Federal Energy Regulatory Commission (FERC) vacated the order that authorized the PCGP on April 16, 2012. With FERC's withdrawal of the current authorization for the PCGP, the proposal by the Forest Service to amend LRMPs to make provision for the PCGP is not ripe for decision. Therefore, the Forest Service is withdrawing the Notice of Intent to prepare an EIS published in 74 FR 28214, June 15, 2009.

**DATES:** This action is effective upon publication in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Pam Sichting at 541–957–3342 or by email at *psichting@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The PCGP has requested that FERC initiate pre-filing environmental review procedures for a new application to construct and operate a natural gas pipeline that crosses the Rogue River, Umpqua and Winema National Forests. Should FERC reinitiate environmental review under the procedures of the National Environmental Policy Act (NEPA), the Forest Service would cooperate with FERC in accordance with Section 313 of the 2005 Energy Policy Act and regulations for NEPA, 40 CFR 1501.6. Timely comments submitted by the public in response to the NOI published by the Forest Service in 74 FR 28214, June 15, 2009 would be considered as timely comments in any future scoping activity by the Forest Service for amendment of LRMPs in relation to the PCGP.

Dated: July 20, 2012.

**Alice Carlton,**

*Forest Supervisor, Umpqua National Forest.*

[FR Doc. 2012–19369 Filed 8–7–12; 8:45 am]

**BILLING CODE 3410–75–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### San Juan National Forest Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The San Juan National Forest Resource Advisory Council (RAC) will meet in Durango, Colorado. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 112–141) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. The meeting is open to the public. The purpose of the meeting is to review and recommend projects authorized under Title II of the Act.

**DATES:** The meeting will be held September 21, 2012, 9 a.m.–4 p.m.

**ADDRESSES:** The meeting will be held at the San Juan Public Lands Center, 15 Burnett Court, Durango, Colorado in the Sonoran Meeting Rooms. Committee members will be allowed to teleconference into the meeting to participate, if needed. The public is invited to attend the meeting in person.

Written comments may be submitted as described under Supplementary Information. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at *http://www.fs.usda.gov/sanjuan/* or the Public Reading Room, San Juan Public Lands Center Building, 15 Burnett Court, Durango, Colorado. Please call ahead to 970–247–4874 to facilitate entry into the building to view comments.

**FOR FURTHER INFORMATION CONTACT:** Ann Bond, San Juan National Forest RAC Coordinator, 970–385–1219 or email: *abond@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The following business will be conducted: The purpose of the meeting is to gather the Committee members together to monitor ongoing projects, elect a new committee Chairperson, review project proposals and recommend allocations of Title II funds within Archuleta, Dolores, La Plata, and Montezuma counties, Colorado and possibly additional counties depending on their election to participate under Title II. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 14, 2012 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Attn: San Juan National Forest RAC, 15 Burnett Court, Durango, CO 81301, or by email to *abond@fs.fed.us*, or via facsimile to Attn: Ann Bond, RAC Coordinator at 970–375–2331. A summary of the meeting will be posted at at *http://www.fs.usda.gov/sanjuan/* within 21 days of the meeting.

*Meeting Accommodations:* If you are a person requiring resonable accomodation, please make requests in advance for sign language interpreting,

assistive listening devices or other reasonable accomodation for access to the facility or procedings by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis. Attendees in wheelchairs or other special needs should enter the front of the building through the Visitor Information area.

Dated: August 2, 2012.

**Mark W. Stiles,**

*Forest Supervisor/San Juan National Forest, San Juan National Forest RAC DFO.*

[FR Doc. 2012–19372 Filed 8–7–12; 8:45 am]

**BILLING CODE 3410–11–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Huron Manistee Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Huron Manistee Resource Advisory Committee will meet in Mio, Michigan. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. The meeting is open to the public. The purpose of the meeting is to conduct committee business, monitor progress on project implementation and to recommend proposed projects for Fiscal Year 2013.

**DATES:** The meeting will be held Wednesday September 5, 2012 from 6 p.m. to 9:30 p.m.

**ADDRESSES:** The meeting will be held at the Mio Ranger Station, 107 McKinley Road, Mio, Michigan 48647. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Mio Ranger Station. Please call ahead to (989) 826–3252 to facilitate entry into the building to view comments.

**FOR FURTHER INFORMATION CONTACT:** Steven Goldman, Designated Federal Official or Carrie Scott, Natural Resource Planner, Huron-Manistee National Forests, Mio Ranger Station, 107 McKinley Road, Mio, MI 48647; (989) 826–3252.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday. Requests for reasonable accomodation for access to the facility or procedings may be made by contacting the person listed For Further Information.

**SUPPLEMENTARY INFORMATION:** The following business will be conducted: (1) Introductions and review of previous meeting; (2) Review project implementation of previously approved projects; (3) Presentation of Title II project proposals for Fiscal Year 2013; (4) RAC discussion and recommendation of Title II project proposals; and (5) Public comment. The full agenda may be previewed at: *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf*

Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by August 29, 2012 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Huron Manistee RAC, c/o Mio Ranger Station, 107 McKinley Road, Mio Michigan 48647 or by email to *cnscott@fs.fed.us* or via facsimile to (989) 826–6073.

A summary of the meeting will be posted at: *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf* within 21 days of the meeting.

*Meeting Accommodations:* If you are a person requiring reasonable accomodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accomodation for access to the facility or procedings by contacting the person listed under For Further Information Contact. All reasonable accommodation requests are managed on a case by case basis.

Dated: August 2, 2012.

**Steven A. Goldman,**

*Designated Federal Official.*

[FR Doc. 2012–19383 Filed 8–7–12; 8:45 am]

**BILLING CODE 3410–11–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Davy Crockett Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Davy Crockett Resource Advisory Committee will meet in Ratcliff, Texas. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 112–141) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to review, identify, prioritize and approve RAC Title II projects.

**DATES:** The meeting will be held August 30, 2012, 6 p.m.

**ADDRESSES:** The meeting will be held at the Davy Crockett Ranger Station conference room in Ratcliff, TX. The building address is: 18551 State Highway 7 East, Kennard, TX 75847. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Davy Crockett Ranger Station. Please call ahead to (936) 655–2299 ext. 230 and speak with the RAC Coordinator, Michelle Rowe, to facilitate entry into the building to view comments.

**FOR FURTHER INFORMATION CONTACT:** Gerald Lawrence, Jr., Designated Federal Officer, Davy Crockett National Forest, (936) 655–2299 ext. 225, *glawrence@fs.fed.us* .

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday. Requests for reasonable accommodation for access to the facility or procedings may be made by contacting the person listed For **FURTHER INFORMATION.**

**SUPPLEMENTARY INFORMATION:** The following business will be conducted: The purpose of this meeting is to bring the committee together to reaffirm the priority of their previously approved projects and/or initiate new projects to

be funded with the 2012 Payment, and to update the committee on the reauthorized Act (PL 112–141). Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by August 15, 2012 to be scheduled on the agenda.

Written comments and requests for time for oral comments must be sent to 18551 State Highway 7 East, Kennard, TX 75847 or by email to *glawrence@fs.fed.us* or via facsimile to (936) 655–2817.

Dated: July 31, 2012.

**Gerald Lawrence, Jr.,**

*Designated Federal Officer, Davy Crockett National Forest RAC.*

[FR Doc. 2012–19375 Filed 8–7–12; 8:45 am]

**BILLING CODE 3410–11–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Del Norte Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Del Norte Resource Advisory Committee (RAC) will meet in Crescent City, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 112–141) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to review 2011 project status and to discuss process the Committee will use to review and recommend fiscal year 2012 project proposals.

**DATES:** The meeting will be held August 20, 2012, 6 p.m.

**ADDRESSES:** The meeting will be held at the Del Norte County Unified School District, Redwood Room, 301 West Washington Boulevard, Crescent City CA 95531. Written comments may be submitted as described under Supplementary Information. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Six Rivers National Forest Supervisor's Office, 1330 Bayshore Way, Eureka, CA. 95501. Please call ahead to 707–442–1721 to facilitate entry into the building to view comments.

**FOR FURTHER INFORMATION CONTACT:** Lynn Wright, Committee Coordinator, (707)441–3562; email *hwright02@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The following business will be conducted: report on 2011 project status and discussion of process the Committee will use to review and recommend fiscal year 2012 project proposals. For more information contact Lynn Wright, Committee Coordinator, (707)441–3562; email *hwright02@fs.fed.us.* Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by August 15th, 2012 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Six Rivers National Forest Supervisor's Office, 1330 Bayshore Way, Eureka, CA. 95501, Attn. Lynn Wright, or by email to *hwright02@fs.fed.us,* or via facsimile to (707)445–8677. A summary of the meeting will be posted at *http://www.fs.usda.gov/main/srnf/home* within 21 days of the meeting.

*Meeting Accommodations:* If you are a person requiring reasonable accomodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accomodation for access to the facility or procedings by contacting the person listed under For Further Information Contact. All reasonable accommodation requests are managed on a case by case basis.

Dated: August 1, 2012.

**Tyrone Kelley,**

*Forest Supervisor.*

[FR Doc. 2012–19385 Filed 8–7–12; 8:45 am]

**BILLING CODE 3410–11–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Shoshone Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Shoshone Resource Advisory Committee (Committee) will hold a conference call on September 5, 2012. The Committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the conference call is to review the project proposals for 2012 Title II funds.

**DATES:** The conference call will be held September 5, 2012, at 9 a.m.

**ADDRESSES:** The meeting will be held via conference call.

**FOR FURTHER INFORMATION CONTACT:** Olga Troxel, Resource Advisory Committee Coordinator, Shoshone National Forest Supervisor's Office, (307) 578–5164.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. Members of the public who wish to participate may do so by calling Olga Troxel, Resource Advisory Committee Coordinator, for conference call information. The following business will be conducted: Discuss and review project submittals. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided.

Dated: July 31, 2012.

**Joseph G Alexander,**

*Forest Supervisor.*

[FR Doc. 2012–19428 Filed 8–7–12; 8:45 am]

**BILLING CODE 3410–11–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Yavapai County Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Yavapai County Resource Advisory Committee (RAC) will meet in

Prescott, Arizona. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is to discuss the 1-year extension and select projects for the Yavapai County RAC.

**DATES:** The meeting will be held September 13, 2012; 9 a.m. to 1 p.m.

**ADDRESSES:** The meeting will be held at the Prescott Fire Center, 2400 Melville Dr, Prescott, AZ 86301.

**FOR FURTHER INFORMATION CONTACT:** Debbie Maneely, RAC Coordinator, Prescott National Forest, 344 S. Cortez, Prescott, AZ 86301; (928) 443–8130 or *dmaneely@fs.fed.us.*

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. The following business will be conducted: (1) Review Agenda; (2) update on SRS/Funding; (3) Project Review; (4) Project Ranking; (5) Project Selection.

Dated: July 23, 2012.

**Betty A. Mathews,**

*Forest Supervisor.*

[FR Doc. 2012–19387 Filed 8–7–12; 8:45 am]

**BILLING CODE 3410–11–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Francis Marion Sumter National Forests Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Francis Marion Sumter Resource Advisory Committee will meet in Columbia, SC. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 112–141) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to review and recommend projects authorized under title II of the Act.

**DATES:** The meeting will be held September 6, 2012 and will begin at 9:30 a.m.

**ADDRESSES:** The meeting will be held at the Forest Service office, Large Conference Room, 4931 Broad River Road, Columbia, SC 29212.

Written comments may be submitted as described under Supplementary Information. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Francis Marion Sumter National Forests, 4931 Broad River Road, Columbia, SC 29212. Please call ahead to 803–561–4058 to facilitate entry into the building to view comments.

**FOR FURTHER INFORMATION CONTACT:** Mary Morrison, RAC coordinator, USDA, Francis Marion Sumter National Forests, 4931 Broad River Road, Columbia, SC 29212; (803) 561–4058; Email *mwmorrison@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The following business will be conducted: (1) Introductions of all committee members, replacement members and Forest Service personnel; (2) Receive materials explaining the process for considering and recommending Title II projects; (3) Review and recommend funding for Title II proposals; and (4) Public Comment. Additonal meeting information is available at *http://www.fs.usda.gov/scnfs/under* the link Working Together. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 3, 2012 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Mary Morrison, RAC coordinator, USDA, Francis Marion Sumter National Forests, 4931Broad River Road, Columbia, SC 29212, or by email to *mwmorrison@fs.fed.us* or via facsimile to (803) 561–4004. A summary of the meeting will be posted at *http://www.fs.usda.gov/main/scnfs/workingtogether/advisorycommittees* within 21 days of the meeting.

*Meeting Accommodations:* If you are a person requiring resonable accomodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accomodation for access to the facility or procedings by contacting the person listed under For Further Information Contact. All reasonable accommodation requests are managed on a case by case basis.

Dated: August 1, 2012.

**Paul L. Bradley,**

*Designated Federal Officer, Francis Marion Sumter Resource Advisory Committee.*

[FR Doc. 2012–19391 Filed 8–7–12; 8:45 am]

**BILLING CODE 3410–11–P**

## DEPARTMENT OF COMMERCE

### U.S. Census Bureau

### Proposed Information Collection; Comment Request; 2013 Alternative Contact Strategy Test

**AGENCY:** U.S. Census Bureau, Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** To ensure consideration, written comments must be submitted on or before October 9, 2012.

**ADDRESSES:** Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *jjessup@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Amy O'Hara, Census Bureau, CARRA Room 6H103, Washington, DC 20233, 301–763–5757 (or via the Internet at *amy.b.ohara@census.gov*).

**SUPPLEMENTARY INFORMATION**

#### I. Abstract

Decennial censuses have relied on primarily two modes of data collection, mail and in person interview. The Census Bureau seeks to explore alternative modes of contact and collection in an effort to reduce costs and increase self-response. This research will be conducted through a series of projects and tests throughout the decade. Contact involving cellular telephone numbers, text messages, and email are under investigation, extending the Census Bureau's existing knowledge

and use of mail, landline telephone, and internet modes. The 2013 Alternative Contact Strategy Test is the first test to support this research.

The Census Bureau will test alternate contact information through a self-response test. Telephone numbers obtained from commercial vendors will be used to contact 40,000 households. Information on the household's communication and contact modes will be collected. The information will be analyzed to inform future contact strategies for 2020 Research and Testing Project tests and design options for the 2020 Census.

**II. Method of Collection**

The Census Bureau will conduct the 2013 Alternative Contact Strategy Test with a national sample of 40,000 households, utilizing Computer Assisted Telephone Interviews. The Census Bureau estimates the response rate to be 65 percent. Interviewers will call households to confirm and collect contact information such as address, telephone, cell, and email.

The Census Bureau plans to conduct the 2013 Alternative Contact Strategy Test data collection in early winter of 2013. The specific data collection start and end dates along with the duration of the data collection period are still under consideration. The Census Bureau, however, expects that the duration of the data collection period will be about a month.

**III. Data**

*OMB Control Number:* None.

*Form Number:* To be determined.

*Type of Review:* Regular submission.

*Affected Public:* Individuals or Households.

*Estimated Number of Respondents:* 40,000.

*Estimated Time per Response:* 7 minutes.

*Estimated Total Annual Burden Hours:* 4666.7 hours (280,000 minutes).

*Estimated Total Annual Cost:* There is no cost to the respondent other than the time to answer the information request.

*Respondents Obligation:* Mandatory.

*Legal Authority:* Title 13 U.S.C. Sections 141 and 193.

**IV. Request for Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 2, 2012.

**Glenna Mickelson,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2012–19333 Filed 8–7–12; 8:45 am]

**BILLING CODE 3510–07–P**

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–900]**

### Diamond Sawblades and Parts Thereof From the People's Republic of China: Rescission of Antidumping Duty Administrative Review in Part

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On December 28, 2010, the Department initiated an administrative review of the antidumping duty order on diamond sawblades and parts thereof (diamond sawblades) from the People's Republic of China (the PRC). The period of review is January 23, 2009, through October 31, 2010. The Department is rescinding this review in part.

**DATES:** *Effective Date:* August 8, 2012.

**FOR FURTHER INFORMATION CONTACT:** Yang Jin Chun, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5760.

**SUPPLEMENTARY INFORMATION:**

**Rescission of Administrative Review in Part**

On December 28, 2010, based on timely requests for an administrative review, the Department published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on diamond sawblades from the PRC.[1] In accordance with 19 CFR 351.213(d)(1), the Department will rescind an administrative review ''if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.'' On March 28, 2011, the petitioner, Diamond Sawblades Manufacturers Coalition, withdrew its request for review of sales of subject merchandise with respect to Hebei Jikai Industrial Group Co., Ltd. (Hebei Jikai) and Jiangyin Likn Industry Co., Ltd. (Jiangyin Likn). These two companies have separate rates from a prior segment of this proceeding.[2] In *Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind Review in Part,* 76 FR 76135 (December 6, 2011), we inadvertently assigned the PRC-wide rate to these companies. However, it is the Department's practice to rescind an administrative review with respect to a company that has a separate rate from a prior segment of the proceeding where the only party that requested a review timely withdrew its request.[3]

On June 4, 2012, the Department deferred issuing the final results of this administrative review in order to investigate further serious allegations of fraud in the concurrent administrative review of diamond sawblades and parts thereof from Korea.[4] These allegations involve Korean affiliates of a Chinese mandatory respondent (Weihai Xiangguang Mechanical Industrial Co., Ltd.) and a Chinese separate-rate company (Qingdao Shinhan Diamond Industrial Co., Ltd.). That said, because we received letters withdrawing the requests for review of Hebei Jikai and Jiangyin Likn within the 90-day time limit, and we received no other requests for review of these companies, the Department is rescinding this review with respect diamond sawblades from the PRC exported by these two companies in accordance with 19 CFR 351.213(d)(1), The Department will issue appropriate assessment instructions to U.S. Customs and Border

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 75 FR 81565 (December 28, 2010).

[2] *See Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China,* 71 FR 29303 (May 22, 2006).

[3] *See, e.g., Certain Steel Threaded Rod From the People's Republic of China: Preliminary Results of the Administrative Review, Intent To Rescind, and Rescission, in Part,* 77 FR 27022, 27023 (May 8, 2012).

[4] *See* Memorandum from Gary Taverman to Paul Piquado titled ''Diamond Sawblades and Parts Thereof from the Republic of Korea and the People's Republic of China: Deferral of the Final Results of the First Antidumping Duty Administrative Reviews'' dated June 4, 2012.

Protection 15 days after publication of this notice.

**Notification to Importer**

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice is published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: August 2, 2012.

**Gary Taverman,**

*Senior Advisor for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2012–19447 Filed 8–7–12; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–952]**

### Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** In response to requests from interested parties, the Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on narrow woven ribbons with woven selvedge (''Ribbons'') from the People's Republic of China (''PRC''). The period of review (''POR'') is September 1, 2010, through August 31, 2011.

As discussed below, the Department preliminarily determines that the PRC-wide entity made sales in the United States at prices below normal value (''NV''). If the preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. Interested parties are invited to comment on the preliminary results.

We invite interested parties to comment on these preliminary results. Parties who submit comments are requested to submit with each argument a summary of the argument. We intend to issue the final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act'').

**DATES:** *Effective Date:* August 8, 2012.

**FOR FURTHER INFORMATION CONTACT:** Karine Gziryan or Robert Bolling, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4081 and (202) 482–3434 respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On September 1, 2010, the Department published in the **Federal Register** an antidumping duty order on NWR from the PRC.[1] On September 23, 2011, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on NWR from the PRC for the period September 1, 2010, through August 31, 2011.[2] On September 21, 29th, and 30th, 2011, the Department received timely requests in accordance with 19 CFR 351.213(b)(2) for an administrative review from Weifang Dongfang Ribbon Weaving Co., Ltd. (''Weifang Dongfang''), Stribbons (Guangzhou) Ltd. (''Stribbons Guangzhou''), Stribbons (Nanyang) MNC, Ltd. (''Stribbons MNC''), Yangzhou Bestpak Gifts & Crafts Col, Ltd. (''Bestpak''), and Precious Planet Ribbons & Bows Co., Ltd. (''Precious Planet''). On September 30, 2011, the Department also received a timely request from Berwick Offray LLC and its wholly-owned subsidiary Lion Ribbon Company, Inc. (collectively, ''Petitioners''), in accordance with 19 CFR 351.213(b)(1), for an administrative review of the antidumping duty order on NWR from the PRC for ten companies: Yama Ribbons and Bows Co., Ltd. (''Yama Ribbons''), Hubschercorp (Canada), Apex Ribbon (Canada), Pacific Imports (Canada), Supreme Laces Inc. (Canada), Multicolor Inc. (Canada), Apex Trimmings (Canada), Papillon Ribbon & Bow (Canada), FinerRibbon.com (Canada), and Intercontinental Skyline (Canada).

On October 31, 2011, the Department published a notice of initiation of an antidumping duty administrative review on NWR from the PRC, in which it initiated a review of Hubschercorp, Apex Ribbon, Pacific Imports, Supreme Laces Inc., Multicolor Inc., Apex Trimmings, Papillon Ribbon & Bow (Canada), FinerRibbon.com., Intercontinental Skyline, Weifang Dongfang, Stribbons Guangzhou, Stribbons MNC, Bestpak, Precious Planet, and Yama Ribbons.[3]

On November 16, 2011, the Department placed on the record CBP import data for certain Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings. On November 23, 2011, the Department received comments from Stribbons (Guangzhou) Ltd., Stribbons (Nanyang) MNC, Ltd., Bestpak and Petitioners. After examining the CBP data and the comments from the interested parties, the Department concluded that the import data was reported using inconsistent units of measurement. The Department was, therefore, unable to select mandatory respondents based soley on this data.

On December 6, 2011, to clarify the import data on the record, the Department issued quantity and value (''Q&V'') questionnaires to exporters who allegedly had imports of NWR during the POR according to the CBP import data on the record. The Department requested that the companies report the Q&V of their POR exports and/or shipments of NWR to the United States using specified units of measurement. The Department also received Q&V submissions from Hubscher Ribbon Corp., Ltd. (''Hubschercorp'') and Precious Planet on December 20, 2011.[4]

Because the PRC is a non-market economy (''NME''), companies wishing to receive a separate antidumping rate for purposes of this administrative review were required to file a timely separate rate application or separate rate certification. The separate rate application and/or certification in this case were due within 60 days from the initiation of the antidumping administrative review,[5] no later than

[1] *See Notice of Antidumping Duty Orders: Narrow Woven Ribbons With Woven Selvedge From Taiwan and the People's Republic of China: Antidumping Duty Orders,* 75 FR 53632 (September 1, 2010), as amended in *Narrow Woven Ribbons With Woven Selvedge From Taiwan and the People's Republic of China: Amended Antidumping Duty Orders,* 75 FR 56982 (September 17, 2010) (''*Orders*'').

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 76 FR 54735 (September 2, 2011).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 76 FR 67133 (October 31, 2011) (''*Initiation Notice*'').

[4] *See* Shanghai Dayspring Gifts Corp. Ltd. did not respond to the Department's Q&V questionnaire.

[5] *See Initiation Notice,* 76 FR at 67133–134

December 30, 2011. On November 26, 2011, December 22, 2011, December 29, 2011, and December 30, 2011, the Department received timely separate rate applications and/or certifications from Weifang Dongfang, Bestpak, Hubschercorp and Precious Planet in that respective order.

On January 4, 2012, five days after the due date had passed, Stribbons (Guangzhou) Ltd., Stribbons (Nanyang) MNC, Ltd. (collectively ''MNC Stribbons'') submitted an untimely request for a two-week extension to file a separate rate certification. Then, on January 9, 2012, ten days after the deadline for submitting the separate rate certification had passed, without receiving a response from the Department to its untimely extension request, MNC Stribbons attempted to file a separate rate certification for Stribbons (Guangzhou) Ltd. and Stribbons (Nanyang) MNC, Ltd. In accordance with 19 CFR 351.302(d)(2), on Janauary 13, 2012, the Department rejected MNC Stribbons' filings of January 4, 2012, and January 9, 2012 as untimely and returned those submissions to the company.[6]

On January 11, 2012, the Department exercised its authority to limit the number of respondents selected for individual examination pursuant to section 777A(c)(2)(B) of the Act.[7] The Department selected the two largest exporters by volume as our mandatory respondents for this review, Hubschercorp and Precious Planet.[8] On January 12, 2012, Bestpak timely withdrew its requests to the Department to conduct an administrative review of its sales.

On January 13, 2012, the Department issued the antidumping questionnaire to Hubschercorp and Precious Planet. On January 24, 2012, Precious Planet timely withdrew its request for an administrative review of its sales.[9]

Between January 13, 2012 and March 16, 2012, Hubschercorp responded to the Department's questionnaires. In its February 24, 2012, section D questionnaire response to the Department, Hubschercorp explained that it was not able to obtain the factors of production (''FOP'') information from its Chineese producer of NWR, Yama Ribbons. On March 1, 2012, the Department issued a section D questionnaire to Yama Ribbons, a producer of NWR for Hubschercorp during the POR. On March 16, 2012, Yama Ribbons provided its answer to the Department's section D questionnaire response explaining that it would not provide a response to the section D questionnaire.[10] On May 7, 2012, the Department issued sections A and C supplemental questionnaires to Hubschercorp. Between January and May 2012, Petitioners provided comments on Hubschercorp's questionnaire responses.

On May 25, 2012, the Department extended the time period for completion of the preliminary results of this review by 30 days until July 1, 2012.[11] On May 29, 2012, Hubschercorp indicated that it would no longer participate in this administrative review. On June 27, 2012, the Department extended the time period for completion of the preliminary results of this review by a further 30 days until July 31, 2012.[12]

## Period of Review

The POR is September 1, 2010 through August 31, 2011.[13]

## Scope of Order

The scope of the order covers narrow woven ribbons with woven selvedge, in any length, but with a width (measured at the narrowest span of the ribbon) less than or equal to 12 centimeters, composed of, in whole or in part, man-made fibers (whether artificial or synthetic, including but not limited to nylon, polyester, rayon, polypropylene, and polyethylene teraphthalate), metal threads and/or metalized yarns, or any combination thereof. Narrow woven ribbons subject to the order may:

- Also include natural or other non-man-made fibers;
- Be of any color, style, pattern, or weave construction, including but not limited to single-faced satin, double-faced satin, grosgrain, sheer, taffeta, twill, jacquard, or a combination of two or more colors, styles, patterns, and/or weave constructions;
- Have been subjected to, or composed of materials that have been subjected to, various treatments, including but not limited to dyeing, printing, foil stamping, embossing, flocking, coating, and/or sizing;
- Have embellishments, including but not limited to appliqué, fringes, embroidery, buttons, glitter, sequins, laminates, and/or adhesive backing;
- Have wire and/or monofilament in, on, or along the longitudinal edges of the ribbon;
- Have ends of any shape or dimension, including but not limited to straight ends that are perpendicular to the longitudinal edges of the ribbon, tapered ends, flared ends or shaped ends, and the ends of such woven ribbons may or may not be hemmed;
- Have longitudinal edges that are straight or of any shape, and the longitudinal edges of such woven ribbon may or may not be parallel to each other;
- Consist of such ribbons affixed to like ribbon and/or cut-edge woven ribbon, a configuration also known as an ''ornamental trimming;''
- Be wound on spools; attached to a card; hanked (*i.e.,* coiled or bundled); packaged in boxes, trays or bags; or configured as skeins, balls, bateaus or folds; and/or
- Be included within a kit or set such as when packaged with other products, including but not limited to gift bags, gift boxes and/or other types of ribbon.

Narrow woven ribbons subject to the order include all narrow woven fabrics, tapes, and labels that fall within this written description of the scope of the antidumping duty order.

Excluded from the scope of the order are the following:

[6] *See* Letter from Robert Bolling, Program Manager, AD/CVD Operations, Office 4 to Mr. James Cannon, Williams Mullen, representing Stribbons (Guangzhou) Ltd. and Stribbons (Nanyang) MNC Ltd., dated January 13, 2012 (''Rejection Letter'').

[7] *See* Memorandum to Abdelali Elouaradia, Director, AD/CVD Operations, Office 4, from Jonathan Hill, International Trade Compliance Analyst, AD/CVD Operations, Office 4, ''Respondent Selection in the First Administrative Review of Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China,'' dated January 11, 2012 (''Respondent Selection Memo'').

[8] *See* Respondent Selection Memo. Also, Hubschercorp and Precios Planet are collectively referred to as the ''mandatory respondents.''

[9] On January 31, 2012, MNC Stribbons filed a request to the Department to select MNC Stribbons as a mandatory respondent in the antidumping duty administrative review of Ribbons, however, for the reasons stated below under the *PRC-wide Entity* section, the Department did not grant that request.

[10] *See* Yama Ribbons' section D questionnaire response to the Department, dated March 16, 2012.

[11] *See* Memorandum to Abdelali Elouaradia, Director, AD/CVD Operations, Office 4, from Karine Gziryan, International Trade Compliance Analyst, AD/CVD Operations, Office 4: ''Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated May 25, 2012.

[12] *See* Memorandum to Abdelali Elouaradia, Director, AD/CVD Operations, Office 4, from Karine Gziryan, International Trade Compliance Analyst, AD/CVD Operations, Office 4: ''Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated June 27, 2012.

[13] The ITC made an affirmative determination in the Narrow Woven Ribbons investigation based on a threat of injury. *See Narrow Woven Ribbons with Woven Selvedge from China and Taiwan,* 75 FR 53711 (September 1, 2010). Under section 736(b)(2) of the Act, all subject merchandse entered, or withdrawn from warehouse on or after September 1, 2010, the date the ITC published its affirmative determination of threat of material injury in the **Federal Register**, are suspended and covered by the POR for the first administrative review. Entries before that date were liquidated without regard to antidumping duties.

(1) Formed bows composed of narrow woven ribbons with woven selvedge;

(2) ''Pull-bows'' (*i.e.,* an assemblage of ribbons connected to one another, folded flat and equipped with a means to form such ribbons into the shape of a bow by pulling on a length of material affixed to such assemblage) composed of narrow woven ribbons;

(3) Narrow woven ribbons comprised at least 20 percent by weight of elastomeric yarn (*i.e.,* filament yarn, including monofilament, of synthetic textile material, other than textured yarn, which does not break on being extended to three times its original length and which returns, after being extended to twice its original length, within a period of five minutes, to a length not greater than one and a half times its original length as defined in the (HTSUS, Section XI, Note 13) or rubber thread;

(4) Narrow woven ribbons of a kind used for the manufacture of typewriter or printer ribbons;

(5) Narrow woven labels and apparel tapes, cut-to-length or cut-to-shape, having a length (when measured across the longest edge-to-edge span) not exceeding eight centimeters;

(6) Narrow woven ribbons with woven selvedge attached to and forming the handle of a gift bag;

(7) Cut-edge narrow woven ribbons formed by cutting broad woven fabric into strips of ribbon, with or without treatments to prevent the longitudinal edges of the ribbon from fraying (such as by merrowing, lamination, sono-bonding, fusing, gumming or waxing), and with or without wire running lengthwise along the longitudinal edges of the ribbon;

(8) Narrow woven ribbons comprised at least 85 percent by weight of threads having a denier of 225 or higher;

(9) Narrow woven ribbons constructed from pile fabrics (*i.e.,* fabrics with a surface effect formed by tufts or loops of yarn that stand up from the body of the fabric);

(10) Narrow woven ribbon affixed (including by tying) as a decorative detail to non-subject merchandise, such as a gift bag, gift box, gift tin, greeting card or plush toy, or affixed (including by tying) as a decorative detail to packaging containing non-subject merchandise;

(11) Narrow woven ribbon that is (a) affixed to non-subject merchandise as a working component of such non-subject merchandise, such as where narrow woven ribbon comprises an apparel trimming, book marker, bag cinch, or part of an identity card holder, or (b) affixed (including by tying) to non-subject merchandise as a working component that holds or packages such non-subject merchandise or attaches packaging or labeling to such non-subject merchandise, such as a ''belly band'' around a pair of pajamas, a pair of socks or a blanket;

(12) Narrow woven ribbon(s) comprising a belt attached to and imported with an item of wearing apparel, whether or not such belt is removable from such item of wearing apparel; and

(13) Narrow woven ribbon(s) included with non-subject merchandise in kits, such as a holiday ornament craft kit or a scrapbook kit, in which the individual lengths of narrow woven ribbon(s) included in the kit are each no greater than eight inches, the aggregate amount of narrow woven ribbon(s) included in the kit does not exceed 48 linear inches, none of the narrow woven ribbon(s) included in the kit is on a spool, and the narrow woven ribbon(s) is only one of multiple items included in the kit.

The merchandise subject to the order is classifiable under the HTSUS statistical categories 5806.32.1020; 5806.32.1030; 5806.32.1050 and 5806.32.1060. Subject merchandise also may enter under subheadings 5806.31.00; 5806.32.20; 5806.39.20; 5806.39.30; 5808.90.00; 5810.91.00; 5810.99.90; 5903.90.10; 5903.90.25; 5907.00.60; and 5907.00.80 and under statistical categories 5806.32.1080; 5810.92.9080; 5903.90.3090; and 6307.90.9889. The HTSUS statistical categories and subheadings are provided for convenience and customs purposes; however, the written description of the merchandise covered by the order is dispositive.

**Partial Rescission of Antidumping Administrative Review**

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review, or withdraws its request at a later date if the Department determines that it is reasonable to extend the time limit for withdrawing the request. As indicated above, on January 12, 2012, and January 24, 2012, respectively, Bestpak and Precious Planet withdrew their requests for a review, which was within the 90-day deadline.

No other party has requested a review for Bestpak or Precious Planet, and no party has opposed their withdrawal requests. Additionally, Bestpak had a separate rate granted in a previously completed segment of this proceeding that was in effect during the instant review period.[14] Therefore, we are rescinding this administrative review with respect to Bestpak in accordance with 19 CFR 351.213(d)(1). However, Precious Planet has not established its eligibility for a separate rate; therefore, it will continue to be considered part of the PRC-wide entity. Because in this administrative review the PRC-wide entity is under review for these preliminary results, we are not rescinding this review with respect to Precious Planet.

**Non-Market Economy Country Status**

The Department has treated the PRC as a NME country in all past antidumping duty investigations and administrative reviews and continues to do so in this case.[15] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority.[16]

**Separate Rates**

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate.[17] It is the Department's policy to assign all exporters of subject merchandise in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* governmental control over export activities. The Department analyzes each entity exporting the subject merchandise under a test set out in the *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) (''*Sparklers''*), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (''*Silicon Carbide''*). However, if the Department determines that a company is wholly foreign-owned or located in an ME, then a separate rate

[14] *See Orders.*

[15] *See* section 771(18)(C) of the Act; *see, e.g., Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Final Results of the First Antidumping Duty Administrative Review,* 76 FR 9753 (February 22, 2011).

[16] *See* section 771(18)(C)(i) of the Act.

[17] *See* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries, available at *http://ia.ita.doc.gov/policy/bull05-1.pdf.*

analysis is not necessary to determine whether it is independent from government control.[18]

In its separate rate certification, Weifang Dongfang reported that it was wholly owned by a domestic entity located in the PRC.[19] Therefore, the Department must analyze whether Weifang Dongfang can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

*a. Absence of De Jure Control*

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.[20]

The evidence provided by Weifang Dongfang supports a preliminary finding of *de jure* absence of governmental control based on the following: (1) An absence of restrictive stipulations associated with the individual exporters' business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) there are formal measures by the government decentralizing control of companies.[21]

*b. Absence of De Facto Control*

Typically, the Department considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.[22]

For Weifang Dongfang, we determine that the evidence on the record supports a preliminary finding of *de facto* absence of government control based on record statements and supporting documentation showing the following: (1) Weifang Dongfang sets its own export prices independent of the government authority; (2) Weifang Dongfang retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; (3) Weifang Dongfang has the authority to negotiate and sign contracts and other agreements; and (4) Weifang Dongfang has autonomy from the government regarding the selection of management.[23]

The evidence placed on the record of this review by Weifang Dongfang demonstrates an absence of *de jure* and *de facto* government control with respect to its exports of the merchandise under review, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide.* Therefore, we are preliminarily granting Weifang Dongfang separate-rate status.

**Calculation of Separate Rate**

In accordance with section 777A(c)(2)(B) of the Act, the Department employed a limited examination methodology, as it did not have the resources to examine all companies for which a review request was made. In addition to the mandatory respondent, only Weifang Dongfang submitted timely information as requested by the Department and remains subject to the review as a cooperative separate rate respondent.

We note that the Act and the Department's regulations do not directly address the establishment of a rate to be applied to individual companies not selected for examination where the Department limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. The Department's practice in cases involving limited selection based on exporters accounting for the largest volumes of trade has been to look to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance. Section 735(c)(5)(A) of the Act instructs that we are not to calculate an all-others rate using any zero or *de minimis* margins or any margins based entirely on facts available. Section 735(c)(5)(B) of the Act also provides that, where all margins are zero rates, *de minimis* rates, or rates based entirely on facts available, we may use ''any reasonable method'' for assigning the rate to non-selected respondents. In this instance, we based the rate for the sole mandatory respondent, Hubscercorp, entirely on facts available.

In exercising this discretion to determine a non-examined rate, the Department considers relevant the fact that section 735(c)(5) of the Act: (a) Is explicitly applicable to the determination of an all-others rate in an investigation; and (b) articulates a preference that the Department avoid zero, *de minimis* rates or rates based entirely on facts available when it determines the all others rate. The Act's statement that averaging of zero/*de minimis* margins and margins based entirely on facts available may be a reasonable method, and the Statement of Administrative Action's (''SAA'') indication that such averaging may be the expected method, should be read in the context of an investigation.[24] First, if there are only zero or *de minimis* margins determined in the investigation (and there is no other entity to which a facts available margin has been applied), the investigation would terminate and no order would be issued. Thus, the provision necessarily only applies to circumstances in which there are either both zero/*de minimis* and total facts available margins, or only total facts available margins. Second, when such rates are the only rates determined in an investigation, there is little information on which to rely to determine an appropriate all-others rate. In this context, therefore, the SAA's stated expected method is reasonable: the zero/*de minimis* and facts available margins may be the only or best data the Department has available to apply to non-selected companies. We note that the Department has sought other reasonable means to assign separate-rate margins to non-reviewed companies in instances with calculated zero rates, *de minimis* rates, or rates based entirely on facts available for the mandatory respondents.[25]

In *Vietnam Shrimp AR3 Final,* the Department assigned to those separate rate companies with no history of an individually calculated rate the margin calculated for cooperative separate rate

[18] *See Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China,* 64 FR 71104, 71104–05 (December 20, 1999) (where the respondent was wholly foreign-owned and, thus, qualified for a separate rate).

[19] *See* Weifang Dongfang's Separate Rate Certification, dated November 26, 2011.

[20] *See Sparklers,* 56 FR at 20589.

[21] *See* Weifang Dongfang's Separate Rate Certification at questions 10–14.

[22] *See Silicon Carbide,* 59 FR at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995).

[23] *See* Weifang Dongfang's Separate Rate Certification at questions 15–20.

[24] *See* SAA accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316 at 872 (1994), reprinted in 1994 U.S.C.C.A.N. 4040, 4200.

[25] *See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review,* 74 FR 47191, 47194 (September 15, 2009) (''*Vietnam Shrimp AR3 Final*'').

respondents in the underlying investigation. However, for those separate rate respondents that had received a calculated rate in a prior segment, concurrent with or more recent than the calculated rate in the underlying investigation, the Department assigned that calculated rate as the company's separate rate in the review at hand.

Thus, we find that a reasonable method in the instant review is to assign to the separate rate company Weifang Dongfang with no history of an individually calculated rate, the margin calculated for cooperative separate rate respondents in the underlying investigation. Pursuant to this method, we are preliminarily assigning a rate of 123.83 percent to Weifang Dongfang, the margin calculated for cooperative separate rate respondents in the underlying investigation.[26] In assigning this separate rate, the Department did not impute the actions of any other companies to the behavior of the non-individually examined company, but based this determination on record evidence that may be deemed reasonably reflective of the potential dumping margin for the non-individually examined company, Weifang Dongfang, in this administrative review.

**The PRC-Wide Entity**

In addition to the separate-rate certification discussed above, there were two companies, Stribbons Guangzhou and Stribbons MNC (collectively ''MNC Stribbons'' [27]) for which we initiated a review in this proceeding and which previously had a separate rate. In accordance with the Department's established NME methodology, a party's separate rate status must be established in each segment of the proceeding in which the party is involved.[28] Because these companies did not file a timely (*i.e.,* within 60 calendar days after publication of Initiation Notice [29]) separate rate certification to demonstrate eligibility for a separate rate in this administrative review, or certify that they had no shipments,[30] we preliminarily determine that these companies are part of the PRC-wide entity.

We note that MNC Stribbons filed a request to be selected as a mandatory respondent after one of the selected mandatory respondents withdrew from the proceeding. However, MNC Stribbons made this request after it had missed the 60-day deadline to demonstrate its eligibility for a separate rate (*i.e.,* failed to provide a timely separate rate certification) and the Department returned its submissions in accordance with 19 CFR 351.302(d). The Department has not selected MNC Stribbons as a mandatory respondent because it failed to provide a timely separate rate certification in this administrative review.[31] Granting such a request to be a mandatory respondent after the company failed to provide a timely separate rate certification would seriously undermine our separate rate 60-day deadline. Moreover, companies, such as MNC Stribbons, which failed to provide a timely separate rate certification, and, therefore, lost their separate rate status would be subject to the review as the PRC-wide entity.

**Use of Facts Otherwise Available and AFA**

Section 776(a) of the Act provides that the Department shall apply ''facts otherwise available'' if: (1) Necessary information is not on the record; or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

As noted in the ''Background'' section above, Hubschercorp did not respond to the Department's Section D questionnaire, Sections A and C supplemental questionnaires in this administrative review and informed the Department that it would no longer participate in this review.[32] As a result, Hubschercorp failed to provide requested information that is necessary for the Department to calculate an antidumping duty rate for Hubschercorp in this administrative review. By only responding to certain parts of the Department's questionnaires and failing to respond to the Department's section D antidumping questionnaire and sections A and C supplemental questionnaires, Hubschercorp did not provide the Department with the information, such as, for example, complete product characteristics related to control numbers of products sold in the United States, FOPs, consumption rates of FOPs, and production processes data. Without this information, it is not possible for the Department to determine or calculate an antidumping margin.

Hubschercorp withheld requested information, significantly impeded this proceeding and did not provide the Department with sufficient information to calculate an antidumping duty margin. Therefore, pursuant to section 776(a)(1) and (2)(A) and (C) of the Act, the Department preliminarily finds that the use of total facts available is appropriate.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.[33] Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' [34] Furthermore, ''affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.'' [35] We preliminarily find that Hubschercorp did not act to the best of its ability in this administrative review, within the meaning of section 776(b) of the Act, because it failed to respond to the Department's requests for information and failed to provide timely information. Therefore, an adverse inference is warranted in selecting from the facts otherwise available with respect to this company.[36]

**Selection of the AFA Rate**

Section 776(b) of the Act provides that the Department may use as AFA information derived from: (1) The petition; (2) the final determination in

[26] *See Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 75 FR 49460, 49463 (August 13, 2010).

[27] MNC Stribbons filed their Separate Rate Certification on behalf of two companies under collective name MNC Stribbons, however, the Department initiated our administrative review on two companies Stribbons Guangzhou and Stribbons MNC, and we will continue to treat these two companies as two separate entities.

[28] *See Sigma Corp.* v. *United States,* 117 F.3d 1401, 1405–06 (Fed. Cir. 1997) (affirming the Department's presumption of State control over exporters in non-market economy cases).

[29] *See Initiation Notice,* 76 FR at 67134.

[30] *See id.*

[31] *See* Rejection Letter.

[32] *See* Hubschercorp's May 29, 2012, submission.

[33] *See Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India,* 70 FR 54023, 54025–26 (September 13, 2005); *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil,* 67 FR 55792, 55794–96 (August 30, 2002).

[34] *See* SAA at 870.

[35] *See Antidumping Duties; Countervailing Duties; Final rule,* 62 FR 27296, 27340 (May 19, 1997); *see also Nippon Steel Corp.* v. *United States,* 337 F.3d 1373, 1382–83 (Fed. Cir. 2003) (''*Nippon*'').

[36] *See Nippon,* 337 F.3d at 1382–83.

the investigation; (3) any previous review; or (4) any other information placed on the record.

The Department's practice, when selecting an AFA rate from among the possible sources of information, has been to select the highest rate on the record of the proceeding and to ensure that the margin is sufficiently adverse ''as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' [37]

As a result, we have preliminarily assigned to Hubschercorp a rate of 247.65 percent, which is the highest rate alleged in the petition, as noted in the initiation of the less-than-fair-value (''LTFV'') investigation, adjusted with the surrogate value for labor rate used in the final determination.[38]

**Corroboration of Secondary Information**

Information from prior segments of the proceeding constitutes secondary information and section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Department's regulations provide that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value.[39] To be considered corroborated, the Department must find the secondary information is both reliable and relevant.[40]

To determine whether the information is reliable, we placed information from the investigation on the record of this segment of the proceeding, and reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis for purposes of these preliminary results.[41] We examined evidence supporting the calculations in the petition to determine the probative value of the margins alleged in the petition for use as AFA for purposes of these preliminary results. Based on our examination of the information, as discussed in detail in *LTFV Initiation,* we consider petitioner's calculation of the export price and normal value to be reliable. Therefore, because we confirmed the accuracy and validity of the information underlying the calculation of margins in the petition by examining source documents as well as publicly available information, we preliminarily determine that the margins in the petition are reliable for the purposes of this administrative review.

To determine the relevance of the petition margin, we placed the model-specific rates calculated for the respondents in the LTFV investigation on the record of this segment of the proceeding and compared the 247.65 percent rate with those model-specific rates. We find that this margin is relevant because this is the first review under this order (*i.e.,* only one segment removed from the LTFV investigation), and the petition rate fell within the range of model-specific margins calculated for the mandatory respondent in the LTFV investigation.[42]

Further, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department may disregard the margin and determine an appropriate margin.[43] Therefore, we examined whether any information on the record would discredit the selected rate as reasonable facts available. We were unable to find any information that would discredit the selected AFA rate.

Based on the above, for these preliminary results, the Department finds the highest rate derived from the petition (*i.e.,* 247.65 percent) is, therefore, corroborated to the extent practicable, pursuant to Section 776(c) of the Act. Thus, we have assigned Hubschercorp this rate as AFA in this administrative review. For further discussion of the corroboration of this rate, *see* the Corroboration Memo.

[37] *See, e.g., Certain Steel Concrete Reinforcing Bars from Turkey; Final Results and Rescission of Antidumping Duty Administrative Review in Part,* 71 FR 65082, 65084 (November 7, 2006).

[38] *See Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China and Taiwan: Initiation of Antidumping Duty Investigations,* 74 FR 39291 (August 6, 2009) (''*LTFV Initiation*'') and *Notice of Final Determination of Sales at Less Than Fair Value: Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China,* 75 FR 41808 (July 19, 2010) (''*Narrow Woven Ribbons Final Determination*'') and accompanying Issues and Decision Memorandum at Comment 1.

[39] *See* 19 CFR 351.308(d); *see also* SAA at 870.

[40] *See, e.g.,* SAA at 870; *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part,* 62 FR 11825 (March 13, 1997).

[41] *See LTFV Initiation,* 74 FR at 39294–39296.

[42] *See, e.g., Certain Frozen Warmwater Shrimp From Thailand: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review,* 73 FR 12088, 12092 (March 6, 2008), unchanged in *Certain Frozen Warmwater Shrimp From Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review,* 73 FR 50933 (August 29, 2008). *See also* the Memorandum to the File from Karine Gziryan, Analyst, entitled, ''Placement of Proprietary Model-Specific Margins from the Less-Than-Fair-Value Investigation on the Record and Corroboration of Adverse Facts Available Rate for the Preliminary Results in the 2010–2011 Antidumping Duty Administrative Review of Narrow Woven Ribbons with Woven Selvedge from the PRC,'' dated July 31, 2012 (''Corroboration Memo'').

[43] *See, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review,* 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest calculated margin as AFA because the margin was based on a company's uncharacteristic business expense resulting in an unusually high margin).

## Weighted-Average Dumping Margin

The preliminary weighted-average dumping margin is as follows:

| Exporter | Weighted-average margin (percentage) |
|---|---|
| Hubscher Ribbon Corp., Ltd. (d/b/a Hubschercorp)[44] | 247.65 |
| Weifang Dongfang Ribbon Weaving Co., Ltd. | 123.83 |
| PRC-wide Entity[45] | 247.65 |

## Disclosure and Public Comment

The Department intends to disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication of these preliminary results.[46] If a hearing is requested, the Department will announce the hearing schedule at a later date. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of the preliminary results of review.[47] Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than five days after the time limit for filing the case briefs.[48] Parties submitting hearing requests or written argument should do so pursuant to the Department's electronic filing system, IA ACCESS.[49] The Department intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in all comments, and at a hearing, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

## Assessment Rates

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review and 19 CFR 351.212(b). In this case, because we have no calculated rate, we are applying as the assessment rate for the separate rate respondent, Weifang Dongfang Ribbon Weaving Co., Ltd., the rate from the previous period, and for Hubscher Ribbon Corp., Ltd., the AFA rate of 247.65 percent. Accordingly, we are adjusting the Weifang Dongfang Ribbon Weaving Co., Ltd. and Hubscher Ribbon Corp., Ltd. assessment rates for export subsidy in the same manner that we adjusted each company's cash deposit rate. (See Cash Deposit section below).

We intend to instruct CBP to liquidate entries of subject merchandise exported by the PRC-wide entity at the PRC-wide rate we determine in the final results of this review. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this review.

## Cash Deposit Requirements

While the Department did not conduct a companion countervailing duty (''CVD'') administrative review, in the final determination of the CVD investigation on narrow woven ribbons from the PRC, the Department determined that the product under investigation benefitted from an export subsidy.[50] Accordingly, we will instruct CBP to require an antidumping cash deposit equal to the weighted-average amount by which the NV exceeds the export price, as indicated above, reduced by an amount, as appropriate, determined to constitute an export subsidy in the final determination from the investigation, the most recently completed segment from the CVD proceeding. Therefore, for Hubscher Ribbon Corp., Ltd., and the separate rate respondent, Weifang Dongfang Ribbon Weaving Co., Ltd., we will instruct CBP to require an antidumping duty cash deposit—for each entry equal to the weighted-average margin indicated above adjusted for the export subsidy rate determined in the CVD final determination. The adjusted cash deposit rate for the separate rate respondent Weifang Dongfang Ribbon Weaving Co., Ltd., is 123.44 percent and for Hubscher Ribbon Corp., Ltd., is 247.26 percent.

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For Weifang Dongfang Ribbon Weaving Co., Ltd. which has a separate rate, the cash deposit rate will be that established in the final results of this review; (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the exporter-specific rate; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 247.65 percent[51]; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

## Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213(d).

Dated: July 31, 2012.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

[FR Doc. 2012–19299 Filed 8–7–12; 8:45 am]

BILLING CODE 3510–DS–P

[44] We note that Hubscher Ribbon Corp., Ltd. (d/b/a Hubschercorp) is not a separate rate company; it only appears in this table because this company is a third-country reseller from Canada.

[45] For the reasons stated above, the Department has concluded that the PRC-wide Entity includes Stribbons (Guangzhou) Ltd. and Stribbons (Nanyang) MNC Ltd.

[46] *See* 19 CFR 351.310(c).

[47] *See* 19 CFR 351.309(c); Parties submitting written comments must submit them pursuant to the Department's e-filing regulations.

[48] *See* 19 CFR 351.309(d).

[49] *See* 19 CFR 351.303; *https://iaaccess.trade.gov/help/IA%20ACCESS%20User%20Guide.pdf.*

[50] *See Notice of Final Affirmative Countervailing Duty Determination: Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China,* 75 FR 41801 (July 19, 2010) (''CVD final determination'').

[51] *See Notice of Final Determination of Sales at Less Than Fair Value: Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China,* 75 FR 41808 (July 19, 2010).

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–570–938]**

### Citric Acid and Certain Citrate Salts from the People's Republic of China: Intent To Rescind Countervailing Duty Administrative Review, in Part

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**DATES:** *Effective Date:* August 8, 2012.

**FOR FURTHER INFORMATION CONTACT:** Kristen Johnson, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Ave. NW., Washington, DC 20230, telephone: (202) 482–4793

**SUPPLEMENTARY INFORMATION:**

#### Background

On May 1, 2012, the Department of Commerce (the Department) published a notice of opportunity to request an administrative review of the countervailing duty (CVD) order on citric acid and certain citrate salts from the People's Republic of China.[1] On May 31, 2012, we received a request from Archer Daniels Midland Company, Cargill, Incorporated, and Tate & Lyle Ingredients Americas LLC, domestic producers of the subject merchandise and petitioners in the investigation (collectively, the Petitioners), to conduct an administrative review of Yixing-Union Biochemical Co., Ltd. (Yixing-Union).[2]

On July 10, 2012, the Department published the notice of initiation of the administrative review for the review period January 1, 2011, through December 31, 2011 (POR), which covered Yixing-Union.[3] On July 13, 2012, Yixing-Union submitted a letter to the Department certifying that it had no sales, shipments, or exports of subject merchandise to the United States during the POR. Petitioners did not comment on Yixing-Union's claim of no sales, shipments, or exports.

#### Scope of the Order

The scope of the order includes all grades and granulation sizes of citric acid, sodium citrate, and potassium citrate in their unblended forms, whether dry or in solution, and regardless of packaging type. The scope also includes blends of citric acid, sodium citrate, and potassium citrate; as well as blends with other ingredients, such as sugar, where the unblended form(s) of citric acid, sodium citrate, and potassium citrate constitute 40 percent or more, by weight, of the blend. The scope of the order also includes all forms of crude calcium citrate, including dicalcium citrate monohydrate, and tricalcium citrate tetrahydrate, which are intermediate products in the production of citric acid, sodium citrate, and potassium citrate. The scope of the order does not include calcium citrate that satisfies the standards set forth in the United States Pharmacopeia and has been mixed with a functional excipient, such as dextrose or starch, where the excipient constitutes at least 2 percent, by weight, of the product. The scope of the order includes the hydrous and anhydrous forms of citric acid, the dihydrate and anhydrous forms of sodium citrate, otherwise known as citric acid sodium salt, and the monohydrate and monopotassium forms of potassium citrate. Sodium citrate also includes both trisodium citrate and monosodium citrate, which are also known as citric acid trisodium salt and citric acid monosodium salt, respectively. Citric acid and sodium citrate are classifiable under 2918.14.0000 and 2918.15.1000 of the Harmonized Tariff Schedule of the United States (HTSUS), respectively. Potassium citrate and crude calcium citrate are classifiable under 2918.15.5000 and 3824.90.9290 of the HTSUS, respectively. Blends that include citric acid, sodium citrate, and potassium citrate are classifiable under 3824.90.9290 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

#### Intent To Rescind the 2011 Administrative Review, in Part

The Department conducted an internal customs data query for the POR and issued a ''no shipments inquiry'' message to U.S. Customs and Border Protection (CBP), which posted the message on July 17, 2012.[4] The results of the customs data query indicated that there were no entries of subject merchandise to the United States by Yixing-Union during the POR. We did not receive any information from CBP contrary to Yixing-Union's claim of no sales, shipments, or exports of subject merchandise to the United States during the POR.

Based on our analysis of the shipment data, we preliminarily determine that Yixing-Union had no entries of subject merchandise to the United States during the POR. Therefore, in accordance with 19 CFR 351.213(d)(3), and consistent with our practice,[5] we preliminarily determine to rescind the review for Yixing-Union. We will continue this administrative review with respect to the RZBC Companies.

#### Public Comment

The Department is setting aside a period for interested parties to raise issues regarding this preliminary determination. Interested parties may submit such comments within 20 calendar days of the publication of this notice. Comments must be filed electronically using IA ACCESS.

We are issuing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4) of the Department's regulations.

Dated: August 2, 2012.

**Christian Marsh,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2012–19451 Filed 8–7–12; 8:45 am]

**BILLING CODE 3510–DS–P**

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 77 FR 25679 (May 1, 2012).

[2] Petitioners also requested a review of RZBC Co., Ltd., RZCB Imp. & Exp. Co., Ltd., and RZBC (Juxian) Co., Ltd. (collectively, the RZBC Companies). *See* Letter from King & Spalding to the Department regarding ''Request for Administrative Review,'' dated May 31, 2012. This public document and all other public documents and public versions generated in the course of this review by the Department and interested parties are available to the public through Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS), located in Room 7046 of the main Department building.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 77 FR 40565, 40573 (July 10, 2012).

[4] *See* Memorandum to the File from Kristen Johnson, Trade Analyst, AD/CVD Operations, Office 3, regarding ''Release of Results of Query Performed on Customs and Border Protection Trade Data Base,'' (July 10, 2012) and Customs message number 2199302, available at *http://addcvd.cbp.gov* or IA ACCESS.

[5] *See, e.g., Welded Carbon Steel Standard Pipe and Tube from Turkey: Intent to Rescind Countervailing Duty Administrative Review, in Part,* 74 FR 39062 (August 5, 2009).

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Proposed Information Collection; Comment Request; Northeast Region Logbook Family of Forms

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA).

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing

effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before October 9, 2012.

**ADDRESSES:** Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Lindsey Feldman, (978) 675–2179 or *Lindsey.Feldman@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Abstract

This request is for a revision and extension of a currently approved information collection.

Under the Magnuson-Stevens Fishery Conservation and Management Act, the Secretary of Commerce (Secretary) has the responsibility for the conservation and management of marine fishery resources. Much of this responsibility has been delegated to the National Oceanic and Atmospheric Administration (NOAA)/National Marine Fisheries Service (NMFS). Under this stewardship role, the Secretary was given certain regulatory authorities to ensure the most beneficial uses of these resources. One of the regulatory steps taken to carry out the conservation and management objectives is to collect data from users of the resource. Thus, as regional Fishery Management Councils develop specific Fishery Management Plans (FMP), the Secretary has promulgated rules for the issuance and use of a vessel Interactive Voice Response (IVR) system, a Vessel Monitoring System (VMS), and vessel logbooks (VTR) to obtain fishery-dependent data to monitor, evaluate, and enforce fishery regulations.

Fishing vessels permitted to participate in Federally-permitted fisheries in the Northeast are required to submit logbooks containing catch and effort information about their fishing trips. Permitted vessels that catch halibut are also asked to voluntarily provide additional information on the estimated size of the fish and the time of day caught through vessel logbooks. Participants in the herring, tilefish, and red crab fisheries are also required to make weekly reports on their catch through IVR. In addition, vessels fishing under a days-at sea (DAS) management system can use the IVR system to request a DAS credit when they have canceled a trip for unforeseen circumstances. The information submitted is needed for the management of the fisheries.

This revision/renewal removes the VMS requirement for Northeast multispecies permit holders participating in the special access programs (SAPs), the Category B (regular) Days-at-Sea (DAS) program, and fishing in the United States/Canada Resource Sharing Understanding Area to avoid duplication, as this information collection is approved under another collection (0648–0605).

## II. Method of Collection

Most information is submitted on paper forms, although electronic means may be arranged. Vessels are permitted to submit 'did not fish' vessel logbooks electronically through their Fish-On-Line accounts. In addition, some vessels are participating in a pilot electronic vessel trip reporting system (EVTR). In the herring, tilefish, and red crab fisheries vessel owners or operators must provide weekly catch information to an IVR system. In the NE Multispecies fishery, vessel owners or operators must declare catch and discards of groundfish species of concern through VMS for all trips.

## III. Data

*OMB Control Number:* 0648–0212.

*Form Number:* NOAA Forms 88–30 and 88–40.

*Type of Review:* Regular submission (revision and extension of a current information collection).

*Affected Public:* Business and other for-profit organizations.

*Estimated Number of Respondents:* 4,721.

*Estimated Time per Response:* 5 minutes per Fishing Vessel Trip Report (FVTR); 12.5 minutes per response for the Shellfish Log; 4 minutes for a herring or red crab report to the IVR system; 2 minutes for a tilefish report to the IVR system; 30 seconds for voluntary additional halibut information; and 5 minutes for each DAS credit request.

*Estimated Total Annual Burden Hours:* 15,227.

*Estimated Total Annual Cost to Public:* $75,814.

## IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 3, 2012.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2012–19414 Filed 8–7–12; 8:45 am]

BILLING CODE 3510–22–P

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Proposed Information Collection; Comment Request; Alaska Interagency Electronic Reporting System (IERS)

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before October 9, 2012.

**ADDRESSES:** Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Patsy A. Bearden, 907–586–7008 or *patsy.bearden@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Abstract

This request is for an extension of a current information collection.

eLandings and seaLandings are data entry components of the Alaska Interagency Electronic Reporting System (IERS) which is a collaborative program run by National Marine Fisheries Service (NMFS) Alaska Regional Office, Alaska Department of Fish and Game (ADF&G), and the International Pacific Halibut Commission (IPHC). eLandings and seaLandings provide the Alaska fishing industry with a consolidated electronic means of reporting production and landings of commercial fish and shellfish to multiple management agencies with a single reporting system. NMFS collects groundfish harvest and production data for Fishery Management Plan species in the Exclusive Economic Zone (EEZ). ADF&G collects harvest data for groundfish species taken in the State of Alaska waters, and has responsibility for some fisheries in the EEZ, such as lingcod and black rockfish. ADF&G and NMFS cooperatively manage the Crab Rationalization Program (CR) fisheries in the Bering Sea and Aleutian Islands Management Area. NMFS and IPHC cooperatively manage Individual Fishing Quota (IFQ) for Pacific halibut and sablefish in both State waters and in the EEZ.

Using the eLandings Web-based application, shoreside processors report groundfish, crab, Pacific halibut, and sablefish production and landings data (*http://www.elandings.alaska.gov*). Processors with no Web access, such as the at-sea fleet, use eLandings client desktop software named seaLandings, provided by NMFS, and submit landing reports as email attachments. Once data are entered and submitted, the User daily must print onsite through eLandings each landing report, production report, and if an IFQ delivery, each IFQ receipt. The parties to the information must acknowledge the accuracy of the printed reports by signing them and entering date signed. In addition, the User must make the printed copies available upon request of NMFS observers and authorized officers.

Some of the benefits of IERS include: improved data quality, automated processing of data, improved process for correcting or updating information, availability of more timely data for fishery managers, and reduction of duplicative reporting of similar information to multiple agencies.

## II. Method of Collection

Methods of submittal include online and email. Clients with no Web access, such as the at-sea fleet, use seaLandings client desktop software and submit landing reports as email attachments. The vessels use satellite communications which may or may not include telephone, Internet, text messaging, email, and email attachment capabilities.

## III. Data

*OMB Control Number:* 0648–0515.

*Form Number:* None.

*Type of Review:* Regular submission (extension of a current information collection).

*Affected Public:* Individuals or households; business or other for-profit organizations.

*Estimated Number of Respondents:* 272.

*Estimated Time per Response:* 15 minutes for eLandings processor registration; 35 minutes for eLandings landing report; 35 minutes for backup manual eLandings report; 35 minutes for eLandings production report; 15 minutes for electronic logbook (eLog) registration; and 41 minutes for active response and 5 minutes for inactive response for longline or pot gear catcher/processor eLog.

*Estimated Total Annual Burden Hours:* 23,610.

*Estimated Total Annual Cost to Public:* $11,212.

## IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 3, 2012.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2012–19401 Filed 8–7–12; 8:45 am]

**BILLING CODE 3510–22–P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XC150**

### New England Fishery Management Council; Public Meeting

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

**ACTION:** Notice; public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a public meeting of its Habitat Oversight Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** This meeting will be held on Thursday, August 23, 2012 at 9:30 a.m.

**ADDRESSES:** The meeting will be held at the Hotel Providence, 139 Mathewson Street, Providence, RI 02903; telephone: (401) 861–8000; fax: (401) 454–4306.

*Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

**SUPPLEMENTARY INFORMATION:** There are three topics related to adverse effects and Dedicated Habitat Research Areas (DHRA) for Habitat Committee consideration at this meeting. First, the Committee will review updated DHRA recommendations from the Habitat Plan Development Team (PDT) and provide feedback to the PDT for further work. Next, the Committee will discuss PDT recommendations regarding ground cable length options. Finally, the Committee will review species and area-based 'extra-SASI' materials intended to support decision making related to adverse effects minimization and DHRA alternatives, and provide any feedback as to how this information can be made more useful.

There are three topics related to deep-sea corals for Habitat Committee consideration at this meeting. First, the

Committee will review a Memorandum of Understanding about coordination on deep-sea coral issues with the other Atlantic coast Councils, particularly MAFMC. This will include a presentation from the PDT on fishing effort in coral zones. Second, they will review comments received to date on a **Federal Register** notice indicating that the Council is exploring the possibility of splitting corals from the EFH Omnibus Amendment, 77 FR 44214, July 27, 2012 (comment period closes on August 27). Finally, the Committee will discuss work plans and timelines under various scenarios (i.e. corals split or not).

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at 978–465–0492, at least 5 days prior to the meeting date.

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

Dated: August 3, 2012.

**Tracey L. Thompson,**

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

[FR Doc. 2012–19367 Filed 8–7–12; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XC151**

### New England Fishery Management Council; Public Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a public meeting of its Scientific and Statistical Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** This meeting will be held on Friday, August 24, 2012 at 8:30 a.m.

**ADDRESSES:** The meeting will be held at the Seaport Hotel, One Seaport Lane, Boston, MA 02210; telephone: (617) 385–4000; fax: (617) 385–4001.

*Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

**SUPPLEMENTARY INFORMATION:** The Scientific and Statistical Committee will meet to review groundfish stock assessments and develop ABC recommendations for fishing years 2013 through 2015 for Gulf of Maine haddock, Cape Cod/Gulf of Maine yellowtail flounder, Southern New England/Mid-Atlantic yellowtail flounder, Georges Bank yellowtail flounder, witch flounder, plaice and Georges Bank/Gulf of Maine white hake. The committee may not develop all the recommendations for these stocks at this meeting. Other business may be discussed.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: August 3, 2012.

**Tracey L. Thompson,**

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

[FR Doc. 2012–19368 Filed 8–7–12; 8:45 am]

**BILLING CODE 3510–22–P**

## DENALI COMMISSION

### Fiscal Year 2012 Draft Work Plan; Correction

**AGENCY:** Denali Commission.

**ACTION:** Notice; second correction.

**SUMMARY:** The Denali Commission (Commission) published a document in the **Federal Register** of May 23, 2012, concerning request for comments on the Draft Work Plan for Federal Fiscal Year 2012. This revision to Fiscal Year 2012 Work Plan is to provide clarifying edits. In particular, Section 304(b)(3) of the Denali Commission Act, as amended (Title III of Pub. L. 105–277, 42 U.S.C. 3121) outlines the process for approval of the Work Plan by the Secretary of Commerce. The aforementioned edits are included as recommendations from the Department of Commerce to make the Work Plan subject to approval. This **Federal Register** notice serves to announce the 15-day opportunity for public comment on the Denali Commission Draft Work Plan for Federal Fiscal Year 2012. The Commission will hold a public hearing via teleconference on the FY 2012 Work Plan within 15 days after the publication date of this second correction. Please check *www.denali.gov* for details on this public hearing including the date, time, and teleconference number.

**DATES:** Comments and related material to be received by August 20, 2012.

**ADDRESSES:** Submit comments to the Denali Commission, Attention: Sabrina Hoppas, 510 L Street, Suite 410, Anchorage, AK 99501.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sabrina Hoppas, Denali Commission, 510 L Street, Suite 410, Anchorage, AK 99501. Telephone: (907) 271–1414. Email: *shoppas@denali.gov*

**SUPPLEMENTARY INFORMATION:**

### Correction

In the **Federal Register** of May 23, 2012, in FR Doc. 2012–12462, make the following corrections:

1. On page 30511, in the first column, removal of paragraph;

''The FY 2011 Work Plan outlines a strategy to balance the Energy Program in both legacy and renewable components, providing up to $2.4 million of available program funds specifically toward the emerging technology program pending state match. If match for this program is not provided, this funding shall be reallocated to legacy projects.''

2. On page 30511, in the third column, include in the heading ''Transportation'' caption to read:

''Section 309 of the Denali Commission Act 1998 (amended), created the Commission's Transportation Program, including the Transportation Advisory Committee (TAC).''

3. On page 30512, in the first column, line 39, correct to read: ''totaling $24,700,000.''

4. On page 30510, in the Denali Commission FY 2012 Funding Table, correct to read:

| Denali Commission FY 2012 funding table | Totals |
|---|---|
| FY 2011/2012 (combined) Federal Highway Administration (FHWA)—Estimate ..... *For necessary, expenses for the Denali Access System Program as authorized under Section 1960 of Public Law 109–59* | $0–$24,700,000 |

5. On Page 30510, after the Denali Commission FY 2012 Funding Table, include table to read:

| Proposed energy projects | FY12 funding |
|---|---|
| Nunam Iqua Bulk Fuel Facility | $2,700,000 |
| Perryville Bulk Fuel Facility | 1,172,000 |
| Shishmaref Bulk Fuel Facility | 2,517,778 |
| St. George Rural Power System Upgrade | 2,100,000 |
| Alakanuk/Emmonak Power Plant Bulk Fuel Storage Facility | 2,700,000–4,355,284 |
| Stebbins/St. Michael Intertie | 2,610,000 |
| Holy Cross Bulk Fuel Facility Business Plan | 20,000 |
| St. Mary's Bulk Fuel Facility or Rural Power System Upgrade Design | 250,000 |
| Alaska Energy Authority Project Management | 269,138 |
| Alaska Village Electric Cooperative Project Management | 334,800 |
| Strategic Technical Assistance Response Team (START) Program | 300,000 |
| Total FY12 Energy Program | 16,629,000 |

6. On page 30512, after the last paragraph, include to read:

Update on the Commission's Transportation Program

As stated in the May 23, 2012 **Federal Register** notice, the Commission's Transportation Advisory Committee met on June 6 and 7, 2012. The TAC rated and ranked 43 surface road projects and recommended 23 projects for funding. These 23 road projects, if funded, have an aggregate need of approximately $14 million. Coupled with the previously rated, ranked and recommended FY11 road projects (10 projects with an aggregate need of approximately $6 million), the Commission stands ready to obligate up to $20 million in FY12. However, the Commission is still awaiting a decision by the Government Accountability Office on whether the FY11 and FY12 Federal Highways Administration funding for the Denali Access Program (i.e. the Commission's Transportation Program) will be provided to the Commission. Therefore, there are no grant actions by the Commission, yet, on the agency's surface road program.

**Joel Neimeyer,**

*Federal Co-Chair.*

[FR Doc. 2012–19245 Filed 8–7–12; 8:45 am]

**BILLING CODE 3300–01–P**

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests; Federal Student Aid; William D. Ford Federal Direct Loan (Direct Loan) Program/Federal Family Loan (FFEL) Program: Deferment Request Forms

**AGENCY:** Department of Education.

**ACTION:** Notice.

**SUMMARY:** This form serves as the means by which borrowers in the William D. Ford Federal Direct Loan (Direct Loan) and Federal Family Education Loan (FFEL) Programs may request an Income-Based or Income-Contingent Repayment Plans if they meet certain statutory and regulaotry criteria.

**DATES:** Interested persons are invited to submit comments on or before October 9, 2012.

**ADDRESSES:** Written comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 04906. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. 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:* William D. Ford Federal Direct Loan (Direct Loan) Program/Federal Family Loan (FFEL) Program: Deferment Request Forms.

*OMB Control Number:* 1845–0102.

*Type of Review:* Revision.

*Total Estimated Number of Annual Responses:* 3,159,132.

*Total Estimated Number of Annual Burden Hours:* 1,042,514.

*Abstract:* The U.S. Department of Education uses the information collected on these forms to determine whether a borrower meets the eligibility requirements for the specific Income-Based or Income-Contingent Repayment Plan that the borrower has requested. The burden hours associated with this collection is increasing for one reason; namely, that the collection is being combined with all Income-Based or Income-Contingent materials contained in the soon-to-be revised 1845–0014 (Direct Loan Repayment Plan Selection Form), so that the forms associated with this collection may be used in both the FFEL and Direct Loan Program.

Dated: August 3, 2012.

**Kate Mullan,**

*Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.*

[FR Doc. 2012–19403 Filed 8–7–12; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

## Applications for New Awards; Assistive Technology Alternative Financing Program

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

**ACTION:** Notice.

### Overview Information

*Assistive Technology Alternative Financing Program Notice Inviting Applications for New Awards for Fiscal Year (FY) 2012*

Catalog of Federal Domestic Assistance (CFDA) Number: 84.224D

**DATES:**

*Applications Available:* August 8, 2012.

*Deadline for Transmittal of Applications:* September 7, 2012.

### Full Text of Announcement

### I. Funding Opportunity Description

*Purpose of Program:* Many individuals with disabilities do not have the private financial resources to purchase the assistive technology (AT) they need. In addition, programs such as Medicaid, Medicare, and vocational rehabilitation cannot meet the growing demand for AT. Financial loan services, such as alternative financing programs (AFPs), offer individuals with disabilities affordable options that can significantly enhance their access to AT. These programs offer alternatives to the traditional payment options of public assistance and out-of-pocket financing and maximize independence and participation in society by individuals with disabilities through the acquisition of AT.

Between 2000 and 2006, the Office of Special Education and Rehabilitative Services (OSERS) awarded competitive one-year grants to 33 States under title III of the Assistive Technology Act of 1998 (AT Act of 1998) for the establishment, maintenance, or expansion of AFPs. The AFPs featured one or more alternative financing mechanisms that provided loans for individuals with disabilities and their family members, guardians, advocates, and authorized representatives to purchase AT devices and services.

Although only funded for one year, these AFPs were required to implement a sustainability plan and maintain permanent programs that continue project activities after the end of the project period. The AFPs are still operating. The 33 States that currently operate a title III AFP received a cumulative total of $60,285,260 in Federal funding during fiscal years 2000 through 2006. From FY 2000 through the end of FY 2011, AFPs, using alternative financing mechanisms such as a revolving loan or partnership loan program, have processed 12,341 loans totaling $135,199,949 in financial assistance for the purchase of AT devices and services, an amount more than twice the original Federal funding.

To build upon the success of these AFPs, the Consolidated Appropriations Act, 2012 (Pub. L. 112–74) provided OSERS an additional $1,996,220 for competitive grants to support AFPs that help individuals with disabilities purchase assistive technology devices. The AFPs may include a low-interest loan fund, an interest buy-down program, a revolving loan fund, a loan guarantee or an insurance program, or another mechanism that is approved by the Secretary.

As stated in the conference report accompanying the FY 2012 appropriations bill (House Report 112–331), the conferees' goal in providing these funds is to allow greater access to affordable financing to help people with disabilities purchase the specialized technologies needed to live independently, to succeed at school and work, and to otherwise live active and productive lives.

The conference report also states the conferees' intent that applicants should incorporate credit-building activities in their programs, including financial education and information about other possible funding sources. The conference report further states that successful applicants should emphasize consumer choice and control and build programs that will provide financing for the full array of AT devices and services and ensure that all people with disabilities, regardless of type of disability or health condition, age, level of income, and residence have access to the program.

*Priority:* This priority is established under section 437(d)(1) of the General Education Provisions Act (Pub. L. 112–123).

*Absolute Priority:* For FY 2012, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

*Assistive Technology Alternative Financing Program*

This priority is for one-year grant awards to support AFPs that assist individuals with disabilities to obtain funding for AT devices and services.

In order to meet this priority, the applicant must establish or expand one or more of the following types of AFPs:

(1) A low-interest loan fund.

(2) An interest buy-down program.

(3) A revolving loan fund.

(4) A loan guarantee or insurance program.

(5) Another mechanism that is approved by the Secretary.

AFPs must be designed to allow individuals with disabilities and their family members, guardians, advocates, and authorized representatives to purchase AT devices or services. If family members, guardians, advocates, and authorized representatives (including employers who have been designated by an individual with a disability as an authorized representative) receive AFP support to

purchase AT devices or services, the purchase must be on behalf of an individual with a disability, i.e., the AT device or service that is purchased must be solely for the benefit of that individual.

To be considered for funding, an applicant must identify the type or types of AFP to be supported by the grant and submit all of the following assurances:

(1) *Permanent Separate Account:* An assurance from the applicant that—

(a) All funds that support the AFP, including funds repaid during the life of the program, will be deposited in a permanent separate account and identified and accounted for separately from any other funds;

(b) If the grantee administering the program invests funds within this account, the grantee will invest the funds in low-risk securities in which a regulated insurance company may invest under the law of the State; and

(c) The grantee will administer the funds with the same judgment and care that a person of prudence, discretion, and intelligence would exercise in the management of the financial affairs of that person.

(2) *Permanence of the Program:* An assurance that the AFP will continue on a permanent basis.

An applicant's obligation to implement the AFP consistent with all of the requirements, including reporting requirements, continues until there are no longer any funds available to operate the AFP and all outstanding loans have been repaid. If a grantee decides to terminate its AFP while there are still funds available to operate the program, the grantee must return the funds remaining in the permanent separate account to the U.S. Department of Education except for funds being used for grant purposes, such as loan guarantees for outstanding loans. However, before closing out its grant, the grantee also must return any principal and interest remitted to it on outstanding loans and any other funds remaining in the permanent separate account, such as funds being used as loan guarantees for those loans.

(3) *Consumer Choice and Control:* An assurance that, and information describing the manner in which, the AFP will expand and emphasize consumer choice and control.

(4) *Supplement-Not-Supplant:* An assurance that the funds made available through the grant to support the AFP will be used to supplement and not supplant other Federal, State, and local public funds expended to provide alternative financing mechanisms.

(5) *Use and Control of Funds:* An assurance that—

Funds comprised of the principal and interest from the account described in paragraph (1) *Permanent Separate Account* of this priority will be available solely to support the AFP.

This assurance regarding the use and control of funds applies to all funds derived from the AFP including the original Federal award, AFP funds generated by either interest bearing accounts or investments, and all principal and interest paid by borrowers of the AFP who are extended loans from the permanent separate account.

(6) *Indirect Costs:* An assurance that the percentage of the funds used for indirect costs will not exceed 10 percent of the portion of the grant award that is used annually for program administration (excluding funds used for loan activity).

For each 12-month budget period, grantees must recalculate their allowable indirect cost rate, which may not exceed 10 percent of the portion of the grant award that is used annually for program administration.

(7) *Administrative Policies and Procedures:* An assurance that the applicant receiving a grant under this priority will submit to the Secretary for review and approval within the 12 month project period the following policies and procedures for administration of the AFP:

(a) A procedure to review and process in a timely manner requests for financial assistance for immediate and potential technology needs, including consideration of methods to reduce paperwork and duplication of effort, particularly relating to need, eligibility, and determination of the specific AT device or service to be financed through the program.

(b) A policy and procedure to ensure that individuals are allowed to apply for financing regardless of type of disability or health condition, age, income level, location of residence in the State, or type of AT device or service for which financing is requested through the program. It is permissible for programs to target individuals with disabilities who would have been denied conventional financing as a priority for AFP funding.

(c) A procedure to ensure consumer choice and consumer-controlled oversight of the program.

(8) *Data Collection:* An assurance that the applicant will collect and report data requested by the Secretary in the format, with the frequency, and using the method established by the Secretary until there are no longer any funds available to operate the AFP and all outstanding loans have been repaid.

(9) *Credit Building Activities:* An assurance that the AFP will incorporate credit-building activities into their programs, including financial education and information about other possible funding sources.

*Competitive Preference Priorities:* Within this absolute priority, we give competitive preference to applications that address the following priorities. Under 34 CFR 75.105(C)(2)(i), we award up to an additional 10 points to an application that proposes to establish an AFP or up to an additional 5 points to an application that proposes to expand an existing AFP, depending on how well the application meets these priorities.

These priorities are:

*Need to Establish an AFP (10 additional points.):* This applies to an applicant located in a State or outlying area where an AFP grant has not been previously awarded under title III of the AT Act of 1998: Alaska, American Samoa, California, Colorado, Connecticut, District of Columbia, Hawaii, Idaho, Indiana, Mississippi, Montana, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Puerto Rico, Rhode Island, South Dakota, Tennessee, Texas, and West Virginia.

*Need to Expand an AFP (5 additional points.):* This applies to an applicant located in a State or outlying territory where an AFP grant has been previously awarded under title III of the AT Act of 1998, but the State or territory has received less than a total of $1 million in Federal grant funds under title III of the AT Act of 1998 during fiscal years 2000 through 2006 for the operation of its AFP: Arizona, Delaware, Iowa, Maine, Montana, Nevada, South Carolina, Vermont, Washington, Wyoming, Guam, Commonwealth of the Northern Mariana Islands, and Virgin Islands.

*Waiver of Proposed Rulemaking*

Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities. Section 437(d)(1) of GEPA, however, allows the Secretary to exempt from rulemaking requirements and regulations governing the first grant competition under a new or substantially revised program authority. This is the first grant competition for this program, as authorized under the Fiscal Year 2012 Consolidated Appropriations Act, and therefore qualifies for this exemption. In order to ensure timely grant awards, the

Secretary has decided to forego public comment on the proposed absolute and competitive preference priorities under section 437(d)(1)of GEPA. The absolute and competitive preference priorities will apply to the FY 2012 grant competition only.

**Program Authority:** Consolidated Appropriations Act, 2012 (Pub. L. 112–74).

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 86, 97, 98, and 99. (b) The Education Department suspension and debarment regulations in 2 CFR part 3485. In general, EDGAR applies to these grants except to the extent it is inconsistent with the purpose and intent of the requirements in this notice. Specifically, grantees are exempt from § 80.25(i) regarding interest earned on advances, and the addition method in § 80.25(g)(2) applies to program income rather than the deduction method in § 80.25(g)(1). Also, §§ 75.560–75.564 do not apply to the extent that these sections of EDGAR are inconsistent with the AFP requirement that indirect costs cannot exceed 10 percent of the costs to administer the program.

**Note:** The regulations in 34 CFR part 86 apply to institutions of higher education only.

## II. Award Information

*Type of Award:* Discretionary grants.

*Estimated Available Funds:* $1,986,000.

*Estimated Range of Awards:* Up to $993,000.

*Estimated Number of Awards:* 2 to 5.

*Maximum Award:* We will reject any application that proposes a budget exceeding $993,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 12 months.

## III. Eligibility Information

1. *Eligible Applicants:* State and outlying area agencies; community-based organizations that are operated for individuals with disabilities and have a board of directors on which a majority of the members are individuals with disabilities or the family members, guardians, advocates, or authorized representatives of the individuals.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

## IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *www.ed.gov/fund/grant/apply/grantapps/index.html.* To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program as follows: CFDA Number 84.224D.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative [Part III] to the equivalent of no more than 24 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the Application for Federal Assistance; Part IV, the assurances and certifications; or the one-page abstract, the eligibility statement, the curriculum vitae, the bibliography, the letters of recommendation, or the information on the protection of human subjects. However, the page limit does apply to all of the application narrative section [Part III].

We will reject your application if you exceed the page limit or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

*Applications Available:* August 8, 2012.

*Deadline for Transmittal of Applications:* September 7, 2012.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition. The Secretary has decided to waive the full 60-day review period for State comments on new applications because there would not be enough time after the end of the 60-day comment period for the Secretary to make awards before the end of the fiscal year, when the funds appropriated to this program would no longer be available for obligation by the Department.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, Central Contractor Registry, and System for Award Management:* To

do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR)—and, after July 24, 2012, with the System for Award Management (SAM), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR or SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR or SAM registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days to complete. Information about SAM is available at SAM.gov.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/applicants/get_registered.jsp.*

7. *Other Submission Requirements:*

Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

*a. Electronic Submission of Applications*

Applications for grants under the Assistive Technology Alternative Financing program, CFDA Number 84.224D, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Assistive Technology Alternative Financing program at *www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.224, not 84.224D).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

If you submit your application electronically, you must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material.

- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

*Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System:* If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

**Note:** The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

*Exception to Electronic Submission Requirement:* You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; *and*
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Robert Groenendaal, U.S. Department of Education, 400 Maryland Avenue SW., Room 5025, Potomac Center Plaza (PCP), Washington, DC 20202–2800. FAX: (202) 245–7590.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

*b. Submission of Paper Applications by Mail*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.224D), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

**Note:** The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

*c. Submission of Paper Applications by Hand Delivery*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.224D), 550 12th Street SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

**Note for Mail or Hand Delivery of Paper Applications:** If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

## V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

## VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Government Performance and Results Act of 1993 (GPRA) directs Federal departments and agencies to improve the effectiveness of their programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals. The goal of the AFP is to reduce cost barriers to obtaining AT devices and services by providing alternative financing mechanisms that allow individuals with disabilities and their family members, guardians, advocates, and authorized representatives to purchase AT devices and services. The following measure has been developed for evaluating the overall effectiveness of the AFP: The cumulative amount loaned to individuals with disabilities per $1 million in cumulative Federal investment. Grantees will report data for use in calculating these measures through the data collection system required by the Secretary as stated in paragraph (8) in the list of required assurances in the absolute priority in this notice.

## VII. Agency Contact

*For Further Information Contact:* Robert Groenendaal, U.S. Department of Education, 400 Maryland Avenue SW., Room 5025, PCP, Washington, DC 20202–2800. Telephone: (202) 245–7393 or by email: *robert.groenendaal@ed.gov.*

If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

## VIII. Other Information

*Accessible Format:* Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

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

Dated: August 3, 2012.

**Alexa Posny,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 2012–19477 Filed 8–7–12; 8:45 am]

BILLING CODE 4000–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9713–5]**

## Final National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges From the Oil and Gas Extraction Point Source Category to Coastal Waters in Texas (TXG330000)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of NPDES General Permit Renewal.

**SUMMARY:** EPA Region 6 today announces issuance of the final NPDES general permit for the Coastal Waters of Texas (No. TXG330000) for discharges from existing and new dischargers and New Sources in the Coastal and Stripper Subcategories of the Oil and Gas Extraction Point Source Category as authorized by section 402 of the Clean Water Act, (CWA). This permit renewal authorizes discharges from exploration, development, and production facilities discharging to the coastal waters of Texas. The draft permit was proposed in the **Federal Register** on March 30, 2012. EPA Region 6 has considered all comments received and makes few changes to the proposed permit: pH limit for formation test fluids and fecal coliform limit only for oyster water.

**DATES:** This permit was issued and effective on July 31, 2012 and expires July 30, 2017. This effective date is necessary to provide dischargers with the immediate opportunity to comply with Clean Water Act requirements in light of the expiration of the 2007 permit on July 6, 2012. In accordance with 40 CFR 23, this permit shall be considered issued for the purpose of judicial review on August 22, 2012. Under section 509(b) of the CWA, judicial review of this general permit can be held by filing a petition for review in the United States Court of Appeals within 120 days after the permit is considered issued for judicial review. Under section 509(b)(2) of the CWA, the requirements in this permit may not be challenged later in civil or criminal proceedings to enforce these requirements. In addition, this permit may not be challenged in other agency proceedings. Deadlines for submittal of notices of intent are provided in Part I.A.2 of the permit.

**ADDRESSES:** A copy of the Region's responses to comments and the final permit may be obtained from the EPA Region 6 Internet site: *http://www.epa.gov/region6/water/npdes/genpermit/index.htm.*

**FOR FURTHER INFORMATION CONTACT:** Ms. Diane Smith, Region 6, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202–2733. Telephone: (214) 665–2145.

**SUPPLEMENTARY INFORMATION:** The permit prohibits the discharge of drilling fluid, drill cuttings, produced sand and well treatment, completion and workover fluids. Discharges of dewatering effluents from reserve pits are also prohibited. Produced water discharges are prohibited, except from wells in the Stripper Subcategory located east of the 98th meridian whose produced water comes from the Carrizo/Wilcox, Reklaw or Bartosh formations in Texas as authorized by the previous permit. Discharges of produced waters from new stripper wells to an impaired waterbody that is impaired for dissolved oxygen are prohibited. The discharge of deck drainage, formation test fluids, sanitary waste, domestic waste and miscellaneous discharges is authorized. More stringent requirements are established to regulate discharges to water quality-impaired waterbodies. Pursuant to section 316(b) of the Clean Water Act (CWA), requirements for new facilities are also established in the final permit. Major changes also include definition of ''operator'', acute toxicity test for produced water, spill prevention best management practices, and electronic reporting requirements. To obtain discharge authorization, operators of such facilities must submit a new Notice of Intent (NOI). To determine whether your facility, company, business, organization, etc. is regulated by this action, you should carefully examine the applicability criteria in Part I, Section A.1 of this permit.

*Other Legal Requirements:* State certification under section 401 of the CWA; consistency with the Texas Coastal Management Program; and compliance with National Environmental Policy Act, Endangered Species Act, Magnuson-Stevens Fishery Conservation and Management Act, Historic Preservation Act, Paperwork Reduction Act, and Regulatory Flexibility Act requirements are discussed in the Region's responses to comments.

Dated: July 31, 2012.

**William K. Honker,**

*Acting Director, Water Quality Protection Division, EPA Region 6.*

[FR Doc. 2012–19398 Filed 8–7–12; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9713–6]**

## Proposed Settlement Agreement, Clean Air Act Citizen Suit

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Proposed Settlement Agreement; Request for Public Comment.

**SUMMARY:** In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement to address a lawsuit filed in the United States District Court for the Middle District of Louisiana: *Louisiana Environmental Action Network* v. *EPA,* No. 3:12–cv–00088–JTT–JDK (M.D. La). On or about February 15, 2012, Louisiana Environmental Action Network filed a complaint that EPA failed to perform its nondiscretionary duty pursuant to section 505(b)(2) of the Act, 42 U.S.C. 7661d(b)(2), to grant or deny, within 60 days after it was filed, a petition requesting that EPA object to a proposed title V operating permit for the Noranda Alumina, LLC alumina processing facility in Gramercy, St. John the Baptist Parish, Louisiana issued by the Louisiana Department of Environmental Quality (''LDEQ''). Under the terms of the proposed settlement agreement, EPA would be required to sign its response to Plaintiff's petition by December 15, 2012.

**DATES:** Written comments on the proposed settlement agreement must be received by September 7, 2012.

**ADDRESSES:** Submit your comments, identified by Docket ID number EPA–HQ–OGC–2012–0573, online at *www.regulations.gov* (EPA's preferred method); by email to *oei.docket@epa.gov;* mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

**FOR FURTHER INFORMATION CONTACT:** Gretchen Graves, Esq., Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone: (202) 564–5581; fax number (202) 564–5603; email address: *graves.gretchen@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Additional Information About the Proposed Consent Decree

The proposed settlement agreement would settle Plaintiff's claims in a title V deadline suit concerning a petition to object to a permit issued by the Louisiana Department of Environmental Quality for the Noranda alumina processing facility. The proposed settlement agreement would require EPA to sign its response to Plaintiff's petition by December 15, 2012. Once EPA grants or denies the petition, EPA would be required to expeditiously deliver notice of its response to Plaintiff. Under the settlement agreement, once EPA has met these obligations, Plaintiff shall file a motion for voluntary dismissal, with prejudice.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement agreement from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to the settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

### II. Additional Information About Commenting on the Proposed Settlement Agreement

*A. How can I get a copy of the settlement agreement?*

Direct your comments to the official public docket for this action under Docket ID No. EPA–HQ–OGC–2012–0573 which contains a copy of the settlement agreement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 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,

and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *www.regulations.gov.* You may use the *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

*B. How and to whom do I submit comments?*

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (email) system is not an ''anonymous access'' system. If you send an email comment directly to the Docket without going through *www.regulations.gov,* your email address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: August 1, 2012.

**Lorie J. Schmidt,**

*Associate General Counsel.*

[FR Doc. 2012–19427 Filed 8–7–12; 8:45 am]

**BILLING CODE 6560–50–P**

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## EXPORT-IMPORT BANK OF THE UNITED STATES

**[Public Notice 2012–0345]**

## Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of $100 Million; 25 Day Comment Period

**AGENCY:** Export-Import Bank of the U.S.

**ACTION:** Notice.

**SUMMARY:** This Notice is to inform the public, in accordance with Section 3(c)(10) of the Charter of the Export-Import Bank of the United States (''Ex-Im Bank''), that Ex-Im Bank has received an application for final commitment for a long-term loan or financial guarantee in excess of $100 million (as calculated in accordance with Section 3(c)(10) of the Charter). Comments received within the comment period specified below will be presented to the Ex-Im Bank Board of Directors prior to final action on this Transaction.

**DATES:** Comments must be received on or before September 4, 2012 to be assured of consideration before final consideration of the transaction by the Board of Directors of Ex-Im Bank.

**ADDRESSES:** Comments may be submitted through *WWW.REGULATIONS.GOV.*

**SUPPLEMENTARY INFORMATION:**

*Reference:* AP084728XX.

*Purpose and Use:*

Brief description of the purpose of the transaction:

To support the export of US manufactured nuclear reactor components and US supplied engineering services to the United Arab Emirates.

Brief non-proprietary description of the anticipated use of the items being exported:

To generate electrical power in Abu Dhabi, United Arab Emirates, for the national grid.

To the extent that Ex-Im Bank is reasonably aware, the items being exported are not expected to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry.

*Parties:*

*Principal Supplier:* Westinghouse Electric Company LLC.

*Obligor:* Barakah One Project Co.

*Guarantors:* Emirates Nuclear Energy Corporation (backed by the Government of Abu Dhabi, acting through the Abu Dhabi Department of Finance) and Korea Electric Power Corporation.

*Description of Items Being Exported:* Component design and equipment supply for the Nuclear Steam Supply System, including reactor coolant pumps, reactor vessel internals, control element drive mechanism and man-machine interface system; licensing support; training; and technical support services.

*Information on Decision:* Information on the final decision for this transaction will be available in the ''Summary Minutes of Meetings of Board of Directors'' on *http://www.exim.gov/articles.cfm/board%20minute.*

*Confidential Information:* Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

**Sharon A. Whitt,**

*Agency Clearance Officer.*

[FR Doc. 2012–19388 Filed 8–7–12; 8:45 am]

**BILLING CODE 6690–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[MB Docket No. 12–203; FCC 12–80]**

## Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is required to report annually to Congress on the status of competition in markets for the delivery of video programming. This document solicits data, information, and comment on the status of competition in the market for the delivery of video programming for the Commission's Fifteenth Report (15th Report). The 15th Report will provide updated information and metrics regarding the video marketplace in 2011 and 2012. Comments and data submitted in response to this document in conjunction with publicly available information and filings submitted in relevant Commission proceedings will be used for the report to Congress.

**DATES:** Interested parties may file comments, on or before September 10, 2012, and reply comments on or before October 10, 2012.

**ADDRESSES:** Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Johanna Thomas, Media Bureau (202) 418–7551, or email at *johanna.thomas@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming,* Notice of Inquiry (NOI), in MB Docket No. 12–203, FCC 12–80, released July 20, 2012. The complete text of the document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street SW., Washington, DC 20554, and may also be purchased from the Commission's copy contractor, BCPI, Inc., Portals II, 445 12th Street SW., Washington, DC 20054. Customers may contact BCPI, Inc. at their Web site *http://www.bcpi.com* or call 1–800–378–3160.

### Synopsis of Notice of Inquiry

1. Section 628(g) of the Communications Act of 1934, as amended (the Communications Act) requires the Commission to report annually on ''the status of competition in the market for the delivery of video programming.'' This NOI solicits data, information, and comment on the state of competition in the delivery of video programming for the Commission's Fifteenth Report (''15th Report''). We seek to update the information and metrics provided in the Fourteenth Report (''*14th Report''*) and report on the state of competition in the video marketplace in 2011 and 2012. Using the information collected pursuant to this NOI, we seek to enhance our analysis of competitive conditions, better understand the implications for the American consumer, and provide a solid foundation for Commission policy making with respect to the delivery of video programming to consumers.

2. We invite all interested parties to provide input for the 15th Report. We seek to collect data to gain further insight into such areas as the deployment of new technologies and services, as well as innovation and investment in the video marketplace. The entry of each new delivery technology provides consumers with increasing options in obtaining video content. We therefore request comment on industry structure, market conduct and performance, consumer behavior, urban-rural comparisons, and key industry inputs for video programming. To the extent possible, we request commenters to provide information and insights on competition using this framework.

3. In particular, we request data, information, and comment from entities that provide delivered video programming directly to consumers. These entities include multichannel video programming distributors (MVPDs), broadcast television stations, and online video distributors (OVDs). We also seek data, information, and comment from entities that provide key inputs into video programming distribution. These include content creators and aggregators as well as manufacturers of consumer premises equipment, including equipment that enables consumers to view programming on their television sets and on other devices (*e.g.,* smartphones and tablets). In addition, we request data, information, and comment from consumers and consumer groups. The accuracy and usefulness of the 15th Report will depend on the quality of the data and information we receive from commenters in response to this NOI. We encourage thorough and substantive submissions from industry participants, as well as state and local regulators with knowledge of the issues raised. When possible, we will augment reported information with submissions in other Commission proceedings and from publicly available sources.

4. We expect to use the revised analytical framework adopted in the *14th Report.* Under this framework, first we categorize entities that deliver video programming into one of three groups: MVPDs, broadcast television stations, or OVDs. Entities delivering video content are assigned to these strategic groups based on similar business models or combination strategies. Second, we examine industry structure, conduct, and performance, considering factors such as: (1) The number and size of firms in each group, horizontal and vertical integration, merger and acquisition activity, and conditions affecting entry and the ability to compete; (2) the business models and competitive strategies used by firms that directly compete as video programming distributors, including product differentiation, advertising and marketing, and pricing; and (3) the improvements in the quantity, quality, and delivery methods of programming to subscribers, subscriber and penetration rates, financial indicators (e.g., revenue and profitability), and investment and innovation activities. Third, we look upstream and downstream to examine the influence of industry inputs and consumer behavior on the delivery of video programming. In the *14th Report,* we discussed two key industry inputs: video content creators and aggregators and consumer premises equipment.

5. We seek comment on whether the analytic framework adopted in the *14th Report* is a useful way for the Commission to evaluate and report on the status of video programming competition or whether modifications are needed for the 15th Report. Do the three strategic group classifications allow us to adequately assess the interaction across these groups? Are an entity's business incentives or competitive concerns affected by operating in more than one group? How does the placement of entities into strategic groups affect by their ability to offer multiple services (*i.e.,* video, voice and broadband)? What influence do industry structure, conduct, and performance have on one another?

6. The data reported in previous reports on the status of competition for the delivery of video programming were derived from various sources, including data the Commission collects in other contexts (*e.g.,* FCC Form 477 and FCC Form 325), comments filed in response to notices of inquiry and other Commission proceedings; publicly available information from industry associations; company filings and news releases; Security and Exchange Commission filings; data from trade

associations and government entities; data from securities analysts and other research companies and consultants; company news releases and Web sites; corporate presentations to investors, newspaper and periodical articles; scholarly publications; vendor product releases; white papers; and various public Commission filings, decisions, reports, and data. We seek comment on whether there are additional data sources available for our analysis. What other sources of data, especially quantitative data, should we use to perform a comprehensive analysis of the market for the delivery of video programming? Are there certain stakeholders we should reach out to in order to diversify the data and further supplement the record?

7. In previous Notices of Inquiry, we have requested data as of June 30 of the relevant year to monitor trends on an annual basis. To continue our time-series analysis, we request data as of June 30, 2011, and June 30, 2012. We also recognize that a significant amount of data and information are reported on a calendar year basis, and as such, we ask commenters to provide year-end 2011 data when readily available and relevant.

**Providers of Delivered Video Programming**

8. We seek information and comment that will allow us to analyze the structure, conduct, and performance of MVPDs, broadcast television stations, and OVDs. To improve our description and analysis of the video products within each group, we seek specific and granular quantitative and qualitative data as well as information from companies in each group. In addition, we request comment from the perspective of consumers, advertisers, content aggregators, content creators, and/or consumer premises equipment manufacturers on whether and to what extent MVPDs, broadcast stations, and OVDs consider the other two groups' offerings to be complements and/or substitutes for one another.

**Multichannel Video Programming Distributors**

9. *MVPD Structure.* MVPDs include all entities that make available for purchase multiple channels of video programming. In our *14th Report,* we determined that most MVPD subscribers use cable, DBS, or telephone MVPDs for their video service. Fewer than one percent of MVPD subscribers use other types of MVPDs (*e.g.,* home satellite dishes (HSD), open video systems (OVS), wireless cable systems, and private cable operators (PCOs). We also found that little reliable data is available for these other types of MVPDs. We request comment on the extent to which these other types of MVPDs should be included in the 15th Report.

10. For each type of MVPD, we seek data on the number of MVPD providers, the number of homes passed, the number of subscribers for delivered video programming, the number of linear channels and amount of non-linear programming offered, the ability of subscribers to watch programming on multiple devices, and the geographic area in which individual providers offer service. In addition, we seek comment on the most appropriate unit of measurement for assessing geographic coverage. We note that different types of MVPDs may report data regarding availability and use that is not standardized to a common geographic unit. This greatly hinders our ability to assess the competitive alternatives available to homes and to identify where MVPDs are engaged in head-to-head competition. In the *14th Report,* we addressed this concern in the context of estimating the number of homes with access to multiple MVPDs. We therefore seek data and information on the number of homes that are passed by one MVPD, two MVPDs, and three or more MVPDs. We wish to identify those markets and geographic areas where head-to-head competition exists, where entry is likely in the near future, and where competition once existed but failed. What factors influence a subscriber's decision to switch from one type of MVPD service to another, for instance from cable MVPD service to DBS MVPD service or vice versa?

11. We request information identifying differences between cable, DBS, and telephone MVPD subscribers. Are DBS subscribers more likely to reside in rural areas or areas not served by cable systems? What percentage of homes cannot receive DBS service because they are not within the line-of-site of the satellite signal? In addition, we request updated information on the number of markets where DBS operators provide local-into-local broadcast service. Particular MVPD providers offer bundles of multiple services, including broadband, voice, and mobile wireless services. How, if at all, do these bundled offerings affect competition? For example, what affect, if any, does the inability of DBS operators to directly provide broadband, voice, and mobile wireless services along with their video service have on competition among and the financial performance of MVPDs?

12. With respect to non-contiguous states, do DBS MVPDs offer the same video packages at the same prices in Alaska and Hawaii as they offer in the 48 contiguous states? Do subscribers need different or additional equipment to receive video services in these states?

13. We seek comment on other MVPDs such as HSD and PCOs. Are these technologies still relevant today? If so, how are they relevant and to what extent are they available?

14. The Commission has not addressed the extent to which wireless providers offering video programming to mobile phones and other wireless devices should be classified as MVPDs under the Act, and we do not intend to do so within the context of this proceeding. We note that, in past reports, the Commission considered certain of these providers in its analysis of video competition. For the 15th Report, we request information on the extent to which mobile wireless providers continue to offer video programming to their customers. How has this changed during 2011 and the first half of 2012, and what are the reasons for such changes? How and to what extent do mobile wireless providers and MVPDs use wireless technologies, including Wi-Fi and wireless broadband, to provide video programming today, and what trends should we anticipate for the future? How do these services compete with or complement the traditional video programming services offered by MVPDs and by other providers of video programming?

15. In the *14th Report,* we did not directly measure horizontal concentration for video distribution. Rather, we estimated the number of homes on a nationwide basis that have access to two, three, or four MVPDs. We seek comment on the value of our approach. We also seek data or comment on what information we can acquire to assist us in performing this analysis. Likewise, we invite analysis regarding the relationship between horizontal concentration and competition. To what extent does horizontal concentration affect price or quality of service?

16. In merger reviews, the Commission routinely examines horizontal concentration. It has classified MVPD service as a distinct product market and found individual homes to be the appropriate focus regarding competitive choices. In the *15th Mobile Wireless Report,* the Commission applied the Herfindahl-Hirshman Index (HHI) to shares of mobile wireless connections held by facilities-based wireless providers at the level of Economic Areas, calculating shares of connections from the providers' number of connections.

These Economic Areas are compiled based on census block data. For purposes of the 15th Report, we seek comment on the appropriate methodology for calculating concentration in delivered video services. Should we continue to consider MVPDs a separate product market, or are there narrower or broader product segments we should consider? What are the appropriate geographic markets associated with these product markets (*e.g.,* individual households, census tracts, or cable franchise areas)?

17. In 1992, Congress enacted provisions related to common ownership between cable operators and video programming networks. In the *14th Report,* we discussed vertical integration in terms of affiliations between programming networks and MVPDs. Specifically, we identified the number of national video programming networks affiliated with one or more MVPDs. Similarly, we reported on regional programming networks affiliated with MVPDs. We also differentiated between the availability of standard definition (SD) and high definition (HD) versions of individual networks consistent with recent Commission decisions.

18. We anticipate reporting this type of information again in the 15th Report. We therefore request data, information, and comment on vertical integration between MVPDs and video programming networks. In particular, we request information on satellite and terrestrially delivered national and regional networks. How should we measure such vertical integration? For purposes of analyzing vertical integration, how should we determine affiliation? Should we use a minimum ownership share or apply standards similar to those contained in our attribution rules rather than report on any known affiliations as we have done in the past?

19. Underlying regulatory, technological, and market conditions affect market structure and influence the total number of firms that can compete successfully in the market. We invite comments and information regarding the conditions that affect the entry into MVPD markets and rivalry among MVPDs.

20. A number of provisions of the Communications Act and the Commission's rules affect MVPD operators in the market for the delivery of video programming. These include, for example, regulations governing program access, program carriage, must carry, retransmission consent, franchising, effective competition, access to multiple dwelling units, exclusivity, inside wiring, leased access, ownership, over-the-air reception devices, and public interest programming. We seek comment on the impact of these regulations and other Commission rules on entry and rivalry among MVPDs. Are MVPDs identifying the costs attributed to any of these regulations (*e.g.,* retransmission consent) on the bills of their subscribers?

21. We also request data on the number of channels MVPDs dedicate on their respective systems to must-carry; public, educational, and governmental (PEG); and leased access programming. On which tier are these channels placed and is extra equipment required to view them? Are there more or fewer PEG and leased access channels carried on MVPD systems than were carried as of June 2010? What data sources exist to track the availability of PEG and leased access programming? We recognize that the regulations applicable to cable operators may differ from the regulations applicable to DBS systems and other MVPD operators. How do regulatory disparities affect MVPD rivalry? We also solicit comment on specific actions the Commission can take to facilitate MVPD entry and rivalry with the intent to increase consumer choice in the delivery of video programming. In addition, we request comment on any state or local regulations that affect entry and rivalry among MVPDs.

22. We seek information and comment on non-regulatory conditions affecting MVPD entry and rivalry, including the availability of programming. Do these conditions include economies of scale, where large MVPDs can spread fixed costs over more subscribers or negotiate lower prices for video content? Do these conditions also include expected retaliation, where potential MVPD entrants believe incumbents will lower prices to any home considering switching to the new MVPD entrant? What other non-regulatory conditions influence MVPD entry and rivalry?

23. *MVPD Conduct.* MVPDs may choose from a variety of business models and competitive strategies to attract and retain subscribers and viewers. MVPDs decide, for example, the type of delivered video services they will offer, the programming they offer consumers, and how they package the programming (*i.e.,* the number of tiers of video programming and the specific programming carried on each tier); the complementary product features they will offer (*e.g.,* HD, DVR (digital video recorder), video-on-demand (VOD), online video programming to PCs and mobile devices, and bundled services where telephony and/or broadband is packaged with video service). MVPDs also decide the level of advertising, the degree of vertical integration with suppliers of video programming, whether to initiate or respond to price discounting, and their approach to customer service.

24. We seek descriptions of the varied business models and strategies used by MVPDs for the delivery of video programming. What are key differences among the business models and strategies in terms of services offered to consumers? How do providers distinguish their delivered video services from their rivals? Do cable, DBS, and telephone MVPDs offer comparable video services? Does DBS ''local-into-local'' delivery of broadcast television signals make it a closer substitute for cable than it would be otherwise? We note that content creators have negotiated ''TV Everywhere'' agreements in which MVPD subscribers receive access to programming via VOD, online, and mobile wireless devices. To what extent do MVPDs view VOD and TV Everywhere service offerings, both online and on mobile wireless devices, as ways to retain existing subscribers and attract new ones? How extensively do MVPDs offer specialized services to consumers (*e.g.,* multi-room DVR service, more channels, more HD, video content online, access to content on mobile devices, and/or a variety of bundles)? How do MVPDs advertise their services to existing and potential subscribers? What delivered video services do they feature in their advertising?

25. We also seek information regarding the pricing behavior of MVPDs. How does the price MVPDs pay for programming, including sports programming, impact the prices they charge to consumers? Are the prices of MVPD video packages and services easily identifiable and well-explained on consumers' monthly bill and/or MVPDs' web sites and other promotional materials? To what extent do providers of MVPD service reduce prices or offer promotion pricing to attract new subscribers and/or retain existing subscribers? Do providers negotiate with individual subscribers over prices before and after introductory periods? Do homes that subscribe to the same delivered video services, from the same provider, in the same geographic area, pay different prices? How do bundles of service (*i.e.,* packages that combine video, voice, equipment, and/or Internet service) affect the price charged for video services? To what extent have MVPDs been raising prices?

26. We are interested in learning whether an increase in the number of MVPD rivals affects pricing strategies. Do MVPDs charge lower prices (or use different pricing strategies) to homes that have access to multiple MVPDs? For its Annual Cable Price Survey, the Commission collects price data from a sample of cable systems, but does not collect price data for other types of MVPDs (*e.g.,* DBS and AT&T U-verse). We seek price data for MVPDs not included in the Annual Cable Price Survey, such as the monthly rate for both the lowest programming package and any equipment needed to access the video service. What additional data sources on MVPD prices are available for our 15th Report?

27. We also seek information on the competitive strategies of MVPDs in providing VOD and TV Everywhere programming on fixed and mobile devices. In particular, we are interested in learning what competitive issues MVPDs encounter when acquiring content for VOD and TV Everywhere from content creators and aggregators. Does the horizontal or vertical integration of content creators or aggregators, particularly companies that own broadcast television stations as well as broadcast and cable networks and studios, impact the ability of MVPDs to acquire rights to programming or the price of the programming? How does the size of an MVPD impact its bargaining power in such negotiations?

28. We seek data and comment on the provision of local news and sports by MVPDs as a competitive strategy in the delivery of video programming. What other types of local programming do MVPDs offer? What data sources are available to help in our analysis of MVPD provision of local news and sports, as well as other local programming?

29. As discussed above, we seek data, information, and comment on trends in horizontal and vertical mergers and acquisitions. Has any MVPD acquired sufficient market power to impair competition? If so, how has competition been impaired? What consumer benefits, if any, have recent horizontal and vertical mergers achieved? In addition, we invite comment on any other issues concerning MVPD conduct that will assist our analysis of competition in the delivery of video programming by MVPDs.

30. *MVPD Performance.* We seek comment on the information and time-series data we should collect for the analysis of various MVPD performance metrics. In the *14th Report,* we considered performance metrics such as subscribership and penetration rates, financial performance, and investment and innovation. We expect to continue to report on these metrics in the 15th Report. Are there other metrics that would enhance our analysis of MVPD performance? To the extent commenters suggest other metrics, we request data for their use in preparation of the 15th Report.

31. We seek data, information, and comment on trends in the number of linear video channels as well as VOD and TV Everywhere video content offered by MVPDs to fixed and mobile devices. Has the number of linear channels and/or the number of VOD and TV Everywhere programs available increased? What are the most popular MVPD programming packages? Describe these packages in terms of the total number of analog and SD channels, number of HD channels, and number of VOD and TV Everywhere offerings. Are there geographic differences with respect to programming choices? How is the deployment of next-generation MVPD technologies affecting the amount of programming MVPDs offer subscribers on a linear and non-linear basis? What effect has the entry of additional MVPDs had on programming choices and improvements in the delivery of video programming? What impact has the growth in OVD services had on MVPD services, in particular the deployment of VOD and TV Everywhere services? What are the subscription levels for DVR and HD services? How many VOD titles are viewed per system?

32. We seek data and information regarding the number of homes passed nationally, the number of subscribers, and the resulting penetration rate for MVPD service. We also request data regarding trends in the number of new homes that subscribe to MVPD services. In addition, we solicit subscription data for the channel lineup packages (including international, other specific genres, and premium) and other delivered video programming services that MVPDs currently market to consumers. What percentage of customers subscribe to these video packages and other delivered video programming services? How does subscription and penetration data vary by geographic region for MVPDs? What is the level of ''churn'' (*i.e.,* consumer switching among MVPDs) and is it increasing or decreasing?

33. We request information on various measures of MVPD financial performance, including data on MVPD revenues, cash flows, and margins. To the extent possible, we seek five-year time-series data to allow us to analyze trends. We are interested in the performance of the MVPD industry as a whole as well as the performance of individual MVPDs. What is the average revenue per MVPD subscriber? What are the major sources of video-related revenue for MVPDs? What percentage of total revenue is derived from each of these sources? What are the major video-related drivers of revenue growth? What are the major sources of costs for MVPDs, including programming costs? What is the impact of such costs on MVPDs? We seek data, information, and comments regarding profitability. What metrics and data should we use to measure profitability (*e.g.,* return on invested capital, operating margins)? Are there any other quantitative or qualitative metrics that would add to our analysis of MVPD financial performance? We recognize that many MVPDs also provide non-video services, such as voice and high-speed Internet services, along with video service often offered on a bundled basis. We also note that MVPDs may cross-subsidize services. Our focus, however, is delivered video programming, and commenters submitting financial data should separate video from non-video services. Commenters should specify the methodology each firm uses for allocating joint and common costs. Likewise, commenters should explain the methodology each firm uses for allocating bundled revenue.

34. We ask commenters to provide information concerning MVPDs' investments in the market for video programming, including investment levels over time, investment per subscriber, investment as a percentage of revenue, and capital expenditures by individual MVPDs. Does investment vary by geographic region or between national and regional providers? What innovative services or technologies are MVPDs currently deploying? What is driving this deployment? In addition, we seek comment on how investment and innovation affect competition among MVPDs and other providers of delivered video programming. Have OVDs spurred investment and innovation by MVPDs? To what extent do content aggregators and creators as well as manufacturers of consumer premises equipment influence MVPD investment and innovation?

35. We also request information on the pace at which MVPDs are deploying, or have plans to deploy, new technologies, including transitioning from analog, or hybrid analog/digital, to all-digital distribution, adding IP-delivered video programming, deploying more efficient video encoding technologies (*e.g.,* MPEG–4), deploying enhanced transmission technologies

(*e.g.,* DOCSIS 3.0) and expanding 3–D services. To the extent that MVPDs are migrating to digital or otherwise repurposing spectrum, we seek comment on what new or additional services are they providing to consumers (*e.g.,* more HD channels, broadband, VOD, etc.).

**Broadcast Television Stations**

36. *Broadcast Television Structure.* Providers of broadcast television service include both individual and group owners that hold licenses to broadcast video programming to consumers. Consumers who do not subscribe to an MVPD service may rely on over-the-air distribution of broadcast televisions for their video programming. Also, many MVPD homes receive broadcast television stations over-the-air on television sets that they have chosen not to connect to MVPD service. The Commission already collects data on the number of broadcast television stations in each designated market area (DMA) and ownership of broadcast television stations using our CDBS database, and purchases data from BIA/Kelsey and The Nielsen Company. We seek additional data concerning the number of households that rely on over-the-air broadcast television service, either exclusively or supplemented with OVD service, rather than receiving broadcast programming from an MVPD. In addition to the number of homes relying on over-the-air broadcast service, we request information regarding any demographic and geographic characteristics of such households. We also seek data on the percentage of households that own television sets, i.e., the total number of television households. We also seek data regarding the number of households with DVRs and HD sets. How many households routinely view broadcast programming over-the-air in addition to subscribing to an MVPD?

37. We are interested in tracking common ownership of broadcast stations nationally and by DMA. Commission rules limit the number of broadcast television stations an entity can own in a DMA, depending on the number of independently owned stations in the market. The Commission already collects data that we can use to assess the horizontal structure of broadcast television stations, including the number of stations in each DMA and the ownership of each station. Is there other available data that may better inform our assessment of horizontal concentration in the broadcast station industry?

38. The Commission has collected data that we can use to analyze trends in vertical integration, including data on the number of broadcast stations owned by or affiliated with video content creators and aggregators. For the 15th Report, we seek to report on the vertical integration of broadcast television stations with broadcast networks and cable networks as we have done in the past. As such, we seek data on the vertical structure of the broadcast television industry. How many broadcast television stations, nationally and within each DMA, are vertically integrated with a broadcast network or a cable network? What, if any, trends exist with respect to the vertical integration between television stations and broadcast networks or cable networks? How does the vertical integration of television stations with broadcast networks, cable networks, and studios affect their ability to negotiate with MVPDs and OVDs for carriage rights? We also seek comment on ways to improve our analysis of vertical integration.

39. We also request data, information, and comment on the impact of horizontal and vertical combinations on the competitive condition of broadcast television stations with respect to the delivery of video programming. Does group ownership of broadcast stations within a DMA and/or across DMAs affect advertising revenue? Does group ownership within a DMA or across DMAs affect the price paid for video content? Are broadcast television stations that are vertically integrated with broadcast television networks better able to compete in the delivery of video programming? Do joint sales agreements (JSAs), local marketing agreements (LMAs), and shared services agreements (SSAs) impact the provision of programming to the public? Do these types of sharing arrangements affect the competitiveness of independent stations?

40. The Commission's spectrum allocation and licensing policies affect the structure of broadcast television by limiting the number of stations located in a given geographic area. Other Commission rules limit the number of broadcast television stations an entity can own in a DMA as well as limit the national audience reach of commonly owned broadcast television stations. Congress recently enacted legislation that provides for voluntary participation of broadcast station licensees in ''reverse auctions'' in which they may offer to relinquish some or all of their licensed spectrum usage rights in exchange for a share of the proceeds from a ''forward auction'' of licenses for the use of any reallocated TV broadcast spectrum. In the *14th Report,* we noted that these statutory and regulatory actions may affect the entry and rivalry of broadcasters. We seek data, information, and comment on the impact of these requirements on entry and rivalry in the broadcast television industry. Are there other regulations that affect entry and rivalry of broadcast television stations? We ask commenters to provide data and examples for each regulation that affects entry and rivalry.

41. We seek information and comment on non-regulatory conditions affecting entry and rivalry, including access to capital and programming. For example, are there supply-side economies of scale that enable commonly owned broadcast television stations to spread fixed costs over greater audiences? Are there demand-side economies of scale that enable commonly owned broadcast television stations to negotiate lower prices for video programming? We invite analysis of the relationship between the advertising market and entry and exit in broadcast television. What other non-regulatory conditions influence entry and rivalry and to what extent? Which broadcast station licensees have entered or exited the broadcast televisions industry and why?

42. *Broadcast Television Conduct.* Because broadcast television stations do not charge consumers directly for the delivery of their signals, they do not compete on price in the traditional sense. Broadcast television is free to consumers who receive it over-the-air. Nevertheless, since about 90 percent of all television households receive broadcast stations from an MVPD, most consumers pay for broadcast stations as part of their MVPD service. In the case of cable, broadcast television stations are part of the basic service package, which is generally a low price offering. What price do MVPDs charge to consumers to receive broadcast television stations on their basic tier of service?

43. Commercial broadcast television stations earn revenue from advertising. We seek data, information, and comment on the business strategies of broadcast television stations as they confront changes in the advertising market, both long-term changes and those changes brought on by the economic downturn. In particular, we seek data on trends in prices for spot and local advertising on broadcast television stations. How does revenue from political advertising affect broadcasters' business strategies? To what extent has offering video content online increased the advertising revenue of broadcast stations?

44. Some commercial broadcast television stations also earn revenue in the form of retransmission consent fees from MVPDs in return for carriage of their stations. We seek information regarding the types and characteristics of stations seeking retransmission consent fees. We also request comment on the types and characteristics of stations choosing MVPD carriage under the must-carry regime. In addition, we request information regarding any business strategies aimed at increasing revenue from retransmission consent fees. What prices (per subscriber) are broadcast stations receiving from MVPDs for retransmission consent?

45. Broadcast stations compete with each other for viewers and advertisers on two major non-price criteria—programming and the ability to view such programming in multiple formats. As a result of the digital transition, each broadcast television station has been allotted 6 MHz of spectrum permitting multiple linear program streams, HD broadcasts, and/or the delivery of programming to mobile devices. We seek data, information, and comment on the use of multiple program streams as a business strategy to enhance a broadcaster's competitive position in the delivery of video programming. What types of programming are broadcasters carrying on their multiple streams? Does the ability to offer multiple programming streams since the digital transition enhance the ability of broadcasters to attract viewers to over-the-air video service and to compete against MVPDs? We also seek data, information, and comment on the number of broadcast television channels available in each DMA, counting both primary stations and additional multicast programming streams. Has the amount of programming increased since the digital transition?

46. Are broadcasters using HD programming as a strategy to attract viewers? How many broadcast television stations offer video content in HD? What percentage of their programming is in HD? Has this percentage increased over time? What effect does the ability to offer video programming in HD have on broadcast stations' ability to compete against other broadcasters and attract viewers? Are broadcasters using their ability to deliver programming to mobile devices as a competitive strategy? How many broadcasters are currently delivering programming to mobile devices? Do broadcasters have business plans to use some of their digital capacity for a subscription service or to lease a portion of their digital spectrum capacity to others for a subscription service?

47. Broadcasters remain important providers of local news. We seek data and comment on the provision of local news as a competitive strategy in the delivery of video programming and the geographic availability of local news programming. We also request comment on the strategies and partnerships broadcasters are using to deliver news online. Does the ability to distribute programming online lead some broadcasters to increase their investment in news and information programming or provide news to consumers that might not otherwise be available?

48. For many years, broadcast television networks have used their local broadcast television affiliated stations as their primary distributor of programming. We solicit comment on whether and how broadcast television stations position themselves to remain the primary distributor of broadcast television network programming. To what extent is local broadcast programming available online, either on their own Web sites or through licensing agreements with OVD aggregators, such as Hulu and iTunes? What effect does the availability of broadcast programming online have on broadcast stations? Are there benefits to broadcasters of making video content available online and on devices other than a television set? If so, what are those benefits?

49. Finally, what competitive strategies do broadcast television stations use to distinguish themselves from other broadcast television stations? For example, are broadcasters investing in local programming, other than news, to enhance the competitive position of their stations? We also seek data, information, and comment on the additional business strategies broadcast television stations use in competing against each other.

50. *Broadcast Television Performance.* We seek information and time-series data for the analysis of various performance metrics for broadcast television. These metrics include the improvements in quantity and quality of broadcast television station programming, over-the-air viewership, viewership from carriage on MVPDs, revenue from advertising, revenue from retransmission consent fees, other revenue, investment and innovation, and rate of return/profitability.

51. We seek data, information, and comment on the viewership of broadcast television stations both from over-the-air reception and MVPD carriage. What is the trend in total viewership in total household terms? What is the trend in the share of the total audience that broadcast television stations receive either over-the-air or via MVPD carriage relative to the share received by cable networks carried by MVPDs? How many households view broadcast television stations online rather than over-the-air?

52. We seek data on broadcast television station revenues, cash flows, and profit margins. We are interested in the performance of the broadcast television industry as a whole as well as the performance of broadcast television stations, on average.

53. In the *14th Report,* we provided information regarding the major sources of revenue for broadcast stations—advertising, network compensation, retransmission consent, and ancillary DTV revenues. We seek data on each of these revenue sources. What percentage of total revenue is derived from each of these sources? How are these revenue sources and their relative shares of total revenue changing? Are there changes to the network/affiliate relationships that affect broadcast stations' revenues? We specifically seek information regarding the extent to which network affiliated broadcast stations now pay ''reverse compensation'' to their networks and/or share retransmission consent revenues with the network. We realize that some broadcast stations are integrated with other businesses but we are primarily interested in financial data related directly to the video programming of broadcast television stations, such as the local and national advertising revenue, retransmission consent fees, and revenue from stations' Web sites.

54. We also seek data regarding the profitability of broadcast television stations. In the *14th Report,* we assessed profitability by examining both financial reports and data on a station-level and company-level basis. What metrics and data should we use in the 15th Report to measure profitability (*e.g.,* return on invested capital and operating margins)? What are the major expenses for broadcast television stations? We are particularly interested in the impact of programming costs on broadcast television stations. Has the financial performance of broadcast stations improved given the broader distribution of broadcast stations' video programming through nonlinear formats, such as OVDs, VOD, and TV Everywhere services? Are there any other quantitative or qualitative metrics that would add to our analysis of broadcast television stations' financial performance?

55. We seek comment on how investment in digital television affects competition among broadcast television stations and in the larger market for the delivery of video programming. We

request data on broadcast television stations' investment in digital television and innovative technologies for distributing traditional programming, as well as on the financial returns of these investments. What has investment in digital television done to enhance the competitive position of broadcast television stations in the delivery of video programming? Are there geographic differences in the amount of investment?

**Online Video Distributors**

56. *OVD Structure.* OVDs are entities that distribute video content over the Internet to consumers. To receive video content distributed by an OVD, a consumer must subscribe to a high-speed Internet access service. The Commission already collects data on entities that provide fixed and mobile high-speed Internet access services. We therefore have significant information regarding the structure, conduct, and performance of the broadband markets, including the number and size of participants, the number of homes that have access to each provider's high-speed Internet service, the download and upload speeds, the services offered by broadband providers, and the prices charged for broadband service. With respect to the delivery of video content by OVDs, we seek comment on the best available sources of information to enable us to analyze OVDs. The *14th Report* surveyed some of the major players in the OVD marketplace, but lacked data and information covering the OVD industry as a whole. To the extent they are available, we ask commenters to provide data and information regarding the OVD marketplace for the 15th Report.

57. The OVD marketplace has grown substantially over the last few years. Today, OVDs include programmers and content producers/owners (*e.g.,* broadcast and cable networks, sports leagues, and movie studios), video sharing sites and social network services (*e.g.,* YouTube and Facebook), and affiliates of manufacturers, retailers, and other businesses (*e.g.,* Amazon.com and Wal-Mart's Vudu service). We request data, information, and comment on the number, size, and types of OVDs. Are OVDs typically affiliated with other businesses or are they stand-alone entities? To what extent do individual OVDs compete with other OVDs? What data sources are available to analyze the structure of the OVD marketplace? What entities do OVDs view as direct competitors? For instance, do OVDs compete with MVPDs and/or broadcast television stations? Is OVD service a substitute or complement for MVPD service? What data are available and what metrics should we use to analyze the extent to which OVDs' services are a substitute or complement to MVPD service?

58. We request input about issues relating to horizontal concentration and vertical integration in the OVD marketplace. In the *14th Report,* we noted that it is difficult to measure horizontal concentration in the OVDs market due to continual entry and exit of industry participants, inability to access necessary data, and lack of established metrics to measure OVD performance. Are there any new data sources available that would help the Commission undertake a horizontal concentration analysis in the 15th Report? What methodologies might the Commission employ? What metrics could the Commission use?

59. We also seek comment and data that would permit us to assess vertical integration in the OVD marketplace. We note that many OVDs are vertically integrated with other businesses. How do these relationships affect competition in OVD marketplace? For example, do affiliations between OVDs and content owners impact the availability of specific online content via multiple OVDs? Do affiliations between OVDs and equipment retailers and/or manufacturers have an impact on the ability of consumers to access OVD content via multiple devices, including mobile devices?

60. We further request comment on conditions that affect entry into the OVD marketplace and rivalry among OVDs. What legal and regulatory barriers to entry do OVDs face? What non-regulatory barriers exist? For example, OVDs often depend on unaffiliated ISPs to deliver content to their customers. What affect does the need to rely on third parties to deliver their video content to consumers have on the ability of entities to enter and compete in the OVD marketplace? What percentage of a typical ISP's traffic is due to OVD content? Do difficulties in acquiring content rights, or the costs of acquiring such rights, act as a significant barrier to entry? Does the increasing cost of programming content have the potential to drive OVDs out of business? What other non-regulatory barriers to entry are there? What are the trends in recent OVD entry or exit, and what specific factors contribute to OVD entry or exit?

61. *OVD Conduct.* What business models and competitive strategies do OVDs use to compete in the delivery of video content? What are the key differences among the business models and strategies in terms of services offered to consumers? Some OVDs provide content to users for free, while others charge users a fee to access content. Some OVDs charge a monthly fee, while others charge separately for each television program or movie. We seek comment on the factors that affect an OVD's choice of business models. Are OVDs increasingly inclined to charge consumers for access to their content? To what extent do OVDs rely on advertising, subscription fees, per-program fees, or other sources of revenue? Are OVDs implementing additional revenue strategies? We also seek information on the prices OVDs charge for access to video content over the Internet. What prices are consumers currently paying for OVD service? Have these prices changed over the last few years, and if so, why? In addition, we request information on whether OVDs are implementing business models that are not free, subscription, or transaction based. For example, to what extent are OVDs entering partnerships with MVPDs or other entities to provide bundled, exclusive, or otherwise enhanced access to the OVD service for subscribers of MVPDs or other entities?

62. In the last few years, OVDs have made an increasing amount of video content available to consumers over the Internet. What are the types of business arrangements OVDs use to acquire distribution rights for content? What strategies are OVDs implementing to obtain video content for their libraries? How does the decision to charge customers affect an OVD's ability to deliver additional content to consumers? To what extent are producers and owners of highly desirable content willing to make that content available to consumers online? What other factors have an impact on the ability of OVDs to secure the rights to compelling content?

63. OVDs increasingly make their video content available to subscribers via multiple devices, including mobile devices such as smartphones and tablets. To what extent must OVDs make content available via multiple devices, including mobile devices, in order to compete in the OVD marketplace? What costs or difficulties do OVDs face when attempting to make content available via multiple devices?

64. How is OVD service advertised? What media do OVDs use to advertise their service? Do OVDs highlight the availability of increasing amounts of online video content to attract more viewers and/or subscribers? Do OVDs use the ability to access content via multiple devices, including mobile devices, as a means to attract and retain

subscribers? What other factors do OVDs stress in advertisements?

65. Currently, most OVD services allow viewers to search for content (e.g., video clips, episodes of TV shows, or movies) within the OVD's library and to view such content whenever the customer wishes. To what extent have OVDs begun to produce or acquire original content? What are the costs of producing or acquiring such content and does such content attract additional viewers? Are those OVDs offering original content more competitive with MVPDs and broadcasters? Are OVDs providing live and local content as a means to attract viewers (*e.g.,* local news and sporting events)? What additional strategies are OVDs using to differentiate themselves from competitors? To what extent do OVDs provide data on content availability to third parties for inclusion in their content directories?

66. *OVD Performance.* We seek input concerning OVD viewership, revenue, investment, and profitability. In order to measure viewership, we seek information concerning the type of video content available online, particularly television programs, movies, and sports, as well as the extent to which consumers are viewing such content. How many consumers viewed content online as of June 30, 2011 and June 30, 2012? We also seek other metrics that might be used to measure OVD viewership, such as hits/views, subscribership numbers, and consumer purchase transactions. Have these numbers increased over the last few years, and if so, why? Has the entry of OVDs in the marketplace resulted in reduced viewership of video programming from MVPDs and broadcast television stations? What metrics should we use to compare OVD viewership, MVPD viewership, and broadcast television station viewership? How have the windowing strategies of video content aggregators and creators impacted OVDs? How have OVDs increased the quantity and improved the delivery of their video content since the *14th Report*? Is the OVD market affected by the ability of MVPDs to increase their capacity to offer video content using digital and IP-based technologies?

67. The *14th Report* identified several possible revenue sources for OVDs, including fees from consumers; in-video advertising; display advertising around the video; product placement; and advergaming. We seek updated revenue data for these sources, as well as any other revenue sources available to OVDs. What revenue sources are the most lucrative for OVDs?

68. We also request information and comment on investments and innovations in the OVD marketplace. What types of entities are investing in new and existing OVDs? What financial returns do OVDs earn on their investments? What types of investments are OVDs making to enhance their growth? Are OVDs increasingly entering into joint ventures or partnerships to increase investment opportunities? What innovative services or technologies are OVDs currently deploying? How should we measure profitability for OVDs given that many operate within multimedia conglomerates or other large, diversified businesses? Are there additional performance metrics we should consider for OVDs? We seek comment on suggested ways to measure OVD performance and relevant data that will allow us to perform such analysis.

**Rural Versus Urban Comparison**

69. Section 628(a) of the Communications Act sets as a goal increasing the availability of video programming to persons in rural and underserved areas. As in previous reports, we expect to compare competition in the market for the delivery of video in rural markets with that in urban markets. The Communications Act does not include a definition of what constitutes a rural area, and the Commission has used various proxies to define rural areas, including Economic Area (EA) Nodal versus Non-nodal counties and Metropolitan Statistical Area (MSA) counties versus Rural Service Areas (RSA) counties. In the *14th Report,* the Commission opted to use its definition of the term ''rural,'' which it defines as a county with a population density of 100 persons or fewer per square mile. Is this a satisfactory definition for the purpose of measuring the availability of and competition among providers of video programming? Are there other alternatives we should consider based on zip codes, census tracts, or some other geographic unit to compare competition among video programming distributors in rural and urban areas?

70. We seek data, information, and comment to assess whether there are differences in the delivery of video programming between rural and urban areas, and the factors that account for any differences. Are there differences between the quantity and types of video programming offered to rural consumers versus urban consumers? How does competition between MVPDs, broadcast stations, and OVDs differ in rural and urban areas? Are there demographic, geographic, and economic factors driving competitive differences in rural and urban markets? Which, if any, delivered video programming services are most often lacking in rural areas? We recognize that most homes have access to two DBS services—DIRECTV and DISH Network—that provide national service. How many homes in rural and urban areas lack access to a cable system or another wireline MVPD? Is the percentage of these homes greater in rural areas? How does access to broadcast television stations differ between rural and urban areas? Are there any distinctions between rural and urban areas in the reliance of over-the-air broadcast signals? Do rural areas have less access to high-speed Internet service and, therefore, less access to OVD services relative to urban areas? How has the growth of online video increased the buildout of broadband in rural areas?

71. We also request information, data, and comment regarding the differences in the prices of delivered video service in rural areas relative to urban areas. Are MVPDs operating in rural areas charged similar rates for content as MVPDs in urban areas? How do the retransmission rates in rural areas compare to those in urban areas? When MVPD service is available in rural areas, are prices higher or quality lower relative to urban markets? Are there examples of rural areas that receive delivered video programming service similar in price and quality to those found in urban areas?

**Key Industry Inputs**

*Video Content Creators and Aggregators*

72. Creators of video programming are major production studios and independent production companies. Video content aggregators are entities that combine video content into packages of video programming for distribution. Video content aggregators include broadcast networks (*e.g.,* ABC), cable networks (*e.g.,* ABC Family), and broadcast stations (*e.g.,* WJLA–TV, Washington, DC). Many of the large entertainment conglomerates include subsidiaries that are both video content creators and aggregators. We request data, information, and comment that will help us analyze the number and size of content creators and aggregators and the relationships between the content creators and aggregators and the firms that distribute video content. Do independent production entities face any barriers in obtaining carriage on all or some delivery systems (including broadcast, MVPDs, and OVDs)? In addition, we are interested in information regarding entities, local and

national, creating news, public interest programming and/or sports and the relationships between the content creators and those that deliver video programming. We are also interested in trends in vertical integration among studios and networks. What effect, if any, does vertical integration have on their willingness and ability to make programming available to MVPDs, broadcast television stations, or OVDs on a linear and nonlinear basis? Are there any differences for MVPDs, broadcasters, or OVDs with respect to their relationships with independent content creators in comparison to vertically integrated content creators? If so, what is the impact of these differences?

73. We also seek data, information, and comment on the business strategies of content creators and aggregators regarding the selling and licensing of video content and the effect on video distribution. In recent years, some content owners have altered their business strategies with respect to the type of video content created, the timing of release of specific video content through the various delivery windows (''windowing''), and the prices charged for content in each window. How have these changes affected competition between distributors of video programming or the growth of OVDs? Have there been significant changes in the bargaining power between content owners and distributors of video programming since the *14th Report*? How have changes in content creation altered investment in the distribution of video programming? How do the windowing strategies of video content owners affect the distribution of video programming through VOD and over the Internet? How do the business models of OVDs (*i.e.,* electronic sell-through, advertising-supported, and/or subscription-based models) alter the windowing strategies of content aggregators and creators? Have business strategies changed for creators of news programming, especially local news programming? Do the delivery strategies for the creators of sports programming differ from other video content creators? Have the business strategies of sports leagues evolved and, if so, how? Has the entry or growth of new video content aggregators lead to an expanded number of MVPD channel offerings or additional programming on broadcast television stations using multiple digital streams? Are new entrants or established video content aggregators driving the creation of additional programming networks and/or packages?

**Consumer Premises Equipment**

74. Consumer premises equipment traditionally refers to devices that enable consumers to watch video content from MVPDs and broadcast stations on televisions. Such devices include televisions, antennas, cable and satellite set-top boxes, DVD players, and recording equipment (*e.g.,* DVRs). Today, however, consumer premises equipment also includes devices (*e.g.,* video game consoles and media streaming devices) that permit video content delivered by MVPDs and OVDs to be viewed on a television, as well as allow video content delivered by broadcast television stations and MVPDs to be viewed on personal computers or mobile devices.

75. Recently, the term ''consumer premises equipment'' has come to include devices, such as ''connected-TVs,'' that receive video content directly from the Internet. Similarly, in addition to enabling users to watch videos on computers, several set-top boxes (*e.g.,* Roku, Boxee, and Apple TV) deliver online video directly to viewers' televisions. With connected-TVs, game consoles (*e.g.,* Microsoft's Xbox and Sony's PlayStation), or Blu-Ray players, consumers can also watch certain television programs, movies, and sporting events online. DVR manufacturer TiVo enables consumers to purchase movies and television programs from online stores, stream movies and content from subscription services like Hulu Plus and Netflix, and, in certain areas, access cable-provided video-on-demand. Likewise, mobile devices, such as Apple's iPad, enable consumers to watch some television programs and movies using broadband wireless connections. These and other devices allow consumers to purchase and download online video content.

76. In the 15th Report, we plan to discuss the devices that facilitate the delivery of video programming and their effect on competition in the delivery of video programming. We recognize the costs of consumer premises equipment may hinder competition by, among other things, raising consumers' switching costs. We therefore request information on developments relating to consumer premises equipment and the services providing options to consumers for viewing video programming. In particular, we seek information on the retail market for set-top boxes, including set-top boxes that do not use CableCARDs, such as those sold at retail for use with DBS services or for use with OVD services. What are the challenges that manufacturers face in investing and innovating in consumer equipment? What are the different types of consumer premises equipment—both MVPD supplied and non-MVPD supplied—used to access video content and the capabilities thereof? What prices do MVPDs typically pay for those devices? To what extent do MVPDs offer different equipment options at different price points on their systems, and what is the overall lease cost of such equipment to subscribers? To the extent that consumers can purchase comparable devices, what price would a consumer pay for such a device?

77. We also seek information and comment on how competition among MVPDs affects the deployment of new CPE and delivery technologies to improve the subscriber experience, such as through improved search and navigation capabilities. In particular, we seek information on the extent to which MVPDs are using managed IP clouds to deliver network-based DVRs, interactive programming guides, IP video streaming, VOD and other interactive applications. In addition, we request information regarding the impact of digital rights management technology and conditional access technology (and associated patent or content licensing terms) on the availability of video programming to consumers. What are the adoption trends among consumers for these types of equipment? To what extent are CPE manufacturers partnering with OVDs, MVPDs, content aggregators, and content creators to offer linear or non-linear video programming to consumer devices?

78. We understand that there are certain things MVPDs must coordinate with electronics manufacturers (*e.g.,* DRM, codecs, and connectors) in order to deliver video programming to consumers. We seek comment on other technical specifications that MVPDs, content owners, and consumer electronics manufacturers coordinate. How do these parties agree on the devices that are used? How much interaction is there between MVPDs delivering video programming and manufacturers of consumer premises equipment, especially manufacturers of cable and DBS set-top boxes and devices enabling consumers to view online video on their televisions?

**Consumer Behavior**

79. We seek information about how trends in consumer behavior affect the products and services of providers of delivered video programming. For instance, we seek data on trends that compare consumer viewing of regularly scheduled video programming with viewing of time-shifted programming using DVRs, VOD content, and OVD

content. Video content available online is increasing, and reports indicate that an increasing number of consumers are viewing videos online. To what extent are consumers becoming ''cord avoiders'' and dropping MVPD service in favor of OVDs or a combination of OVDs and over-the-air television? Are consumers reducing their MVPD subscriptions by, for example, substituting Netflix for premium channels or VOD services? Do consumers view OVD services separately or in conjunction with over-the-air broadcast television service as a potential substitute for MVPD service? What impact do ''cord-nevers'' have on the market for delivered video programming?

80. Video distributors advertise their services on television, in newspapers, and through mailings, as well as offer Internet sites where potential consumers can find information about services, equipment, prices, and the cost of installation. We seek data, information, and comment on the consumer information sources for delivered video programming services and equipment. Do consumers have sufficient information to compare the prices, services, and equipment that video distributors offer? What do consumers consider most important when choosing a provider? What do consumers say are the main reasons for switching providers (*e.g.,* price, program packages, and customer service)?

**Procedural Matters**

81. *Ex Parte Rules.* There are no ex parte or disclosure requirements applicable to this proceeding pursuant to 47 CFR 1.204(b)(1).

82. *Comment Information.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

▪ *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/* or the Federal eRulemaking Portal: *http://www.regulations.gov.*

▪ For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet email. To get filing instructions, filers should send an email to *ecfs@fcc.gov,* and include the following words in the body of the message ''get form.'' A Sample form and directions will be sent in response.

▪ *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

▪ All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

▪ Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

▪ U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington DC 20554.

▪ *People with Disabilities:* Contact the FCC 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).

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 2012–19107 Filed 8–7–12; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL MARITIME COMMISSION

### Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

*Agreement No.:* 010099–056.

*Title:* International Council of Containership Operators.

*Parties:* A.P. Moller-Maersk A/S; China Shipping Container Lines Co., Ltd.; CMA CGM, S.A.; Compañía Chilena de Navegación Interoceánica S.A.; Compania SudAmericana de Vapores S.A.; COSCO Container Lines Co. Ltd; Crowley Maritime Corporation; Evergreen Marine Corporation (Taiwan), Ltd.; Hamburg-Süd KG; Hanjin Shipping Co., Ltd.; Hapag-Lloyd AG; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mediterranean Shipping Co. S.A.; Mitsui O.S.K. Lines, Ltd.; Neptune Orient Lines, Ltd.; Nippon Yusen Kaisha; Orient Overseas Container Line, Ltd.; Pacific International Lines (Pte) Ltd.; United Arab Shipping Company (S.A.G.); Wan Hai Lines Ltd.; Yang Ming Transport Marine Corp.; and Zim Integrated Shipping Services Ltd.

*Filing Party:* John Longstreth, Esq.; K & L Gates LLP; 1601 K Street NW.; Washington, DC 20006–1600.

*Synopsis:* The amendment deletes Regional Container Lines Public Company Limited from the agreement.

*Agreement No.:* 011284–071.

*Title:* Ocean Carrier Equipment Management Association Agreement.

*Parties:* APL Co. Pte. Ltd.; American President Lines, Ltd.; A.P. Moller-Maersk A/S; CMA CGM, S.A.; Atlantic Container Line; China Shipping Container Lines Co., Ltd; China Shipping Container Lines (Hong Kong) Co., Ltd.; Companhia Libra de Navegacao; Compania Libra de Navegacion Uruguay S.A.; Compania Sud Americana de Vapores, S.A.; COSCO Container Lines Company Limited; Evergreen Line Joint Service Agreement; Hamburg-Süd; Hapag-Lloyd AG; Hapag-Lloyd USA LLC; Hanjin Shipping Co., Ltd.; Hyundai Merchant Marine Co. Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mediterranean Shipping Company, S.A.; Mitsui O.S.K. Lines Ltd.; Nippon

Yusen Kaisha Line; Norasia Container Lines Limited; Orient Overseas Container Line Limited; Yang Ming Marine Transport Corp.; and Zim Integrated Shipping Services, Ltd.

*Filing Party:* Jeffrey F. Lawrence, Esq. and Donald J. Kassilke, Esq.; Cozen O'Connor; 1627 I Street NW.; Suite 1100; Washington, DC 20006.

*Synopsis:* The amendment deletes Crowley Maritime Corporation, Crowley Latin America Services, LLC, and Crowley Caribbean Services, LLC as parties to the agreement.

By Order of the Federal Maritime Commission.

Dated: August 3, 2012.

**Rachel E. Dickon,**

*Assistant Secretary.*

[FR Doc. 2012–19443 Filed 8–7–12; 8:45 am]

BILLING CODE P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Reissuances

The Commission gives notice that the following Ocean Transportation Intermediary licenses have been reissued pursuant to section 40901 of the Shipping Act of 1984 (46 U.S.C. 40101).

*License No.:* 000347F.
*Name:* T. A. Provence and Company, Incorporated.
*Address:* 154 State Street, Mobile, AL 36603.
*Date Reissued:* June 30, 2012.

*License No.:* 016914F.
*Name:* Air Sea Cargo Network, Inc.
*Address:* 6345 Coliseum Way, Oakland, CA 94621.
*Date Reissued:* June 6, 2012.

**Vern W. Hill,**

*Director, Bureau of Certification and Licensing.*

[FR Doc. 2012–19407 Filed 8–7–12; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Applicants

The Commission gives notice that the following applicants have filed an application for an Ocean Transportation Intermediary (OTI) license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF) pursuant to section 40901 of the Shipping Act of 1984 (46 U.S.C. 40101). Notice is also given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a licensee.

Interested persons may contact the Office of Ocean Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by email at *OTI@fmc.gov.*

A & E Logistics, Inc. (NVO & OFF), 3011 S. Poplar Avenue, Chicago, IL 60608, Officer: Alison Chan, President (Qualifying Individual), Application Type: New NVO & OFF License.

American International Shipping (NVO), 1811 West Katella Avenue, #121, Anaheim, CA 92804, Officers: Azita Fetanat, Vice President (Qualifying Individual), Mahmood Ansari, President, Application Type: QI Change.

Baggio USA, Inc. (NVO & OFF), 150 SE. 2nd Avenue, Suite 1010, Miami, FL 33131, Officers: Marco Maraschin, Assistant Secretary (Qualifying Individual), Paolo M. Baggio, President, Application Type: New NVO & OFF License.

Bonaberi Shipping & Moving, Inc. (NVO & OFF), 6917 Kent Town Drive, Hyattsville, MD 20785, Officer: Tse E. Bangarie, President (Qualifying Individual), Application Type: New NVO & OFF License.

C & C Group, Inc. (NVO & OFF), 1409 NW. 84th Avenue, Doral, FL 33126, Officer: Claudia E. Quintero, President (Qualifying Individual), Application Type: New NVO & OFF License.

Carex Shipping, LLC (NVO), 442 Greg Avenue, #106, Santa Fe, NM 87501, Officer: Michael Sekirin, President (Qualifying Individual), Application Type: Add Trade Name International Shipping Services, LLC.

Hyun Dae Trucking Co., Inc. (NVO), 3022 S. Western Avenue, Los Angeles, CA 90018, Officers: Sang B. Lee, President (Qualifying Individual), Diane Kook, Vice President, Application Type: License Transfer to Hyundae Global Express, Inc./QI Change.

RDD Freight International (Atlanta), Inc. (NVO & OFF), 7094 Peachtree Industrial Boulevard, Suite 188, Norcross, GA 30071, Officers: Bill Lou, President (Qualifying Individual), Hongyi Chen, Secretary, Application Type: License Transfer to Winwell Logistics, Inc.

Translogistic USA Service, Inc. (NVO & OFF), 7950 NW. 53rd Street, Suite 214, Miami, FL 33166, Officers: Claudia Gonzalez, Treasurer (Qualifying Individual), Pedro Lares, Director, Application Type: New NVO & OFF License.

By the Commission.

Dated: August 3, 2012.

**Rachel E. Dickon,**

*Assistant Secretary.*

[FR Doc. 2012–19412 Filed 8–7–12; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Revocations

The Commission gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 40901 of the Shipping Act of 1984 (46 U.S.C. 40101) effective on the date shown.

*License No.:* 002391F.
*Name:* Silva, Leonel dba Best Forwarders.
*Address:* 411 North Oak Street, Inglewood, CA 90302.
*Date Revoked:* July 27, 2012.
*Reason:* Failed to maintain a valid bond.

*License No.:* 003180NF.
*Name:* Seajet Express Inc. dba Seajet Express Container Line Ltd. dba Gateway Container Line.
*Address:* 46 Arlington Street, Chelsea, MA 02150.
*Date Revoked:* July 5, 2012.
*Reason:* Voluntary surrender of license.

*License No.:* 004638F.
*Name:* Fits Limited Liability Company.
*Address:* 3702 Wildwood Ridge Drive, Kingwood, TX 77339.
*Date Revoked:* July 20, 2012.
*Reason:* Failed to maintain a valid bond.

*License No.:* 009709N.
*Name:* Zonn Agency.
*Address:* 1335 Oakhurst Avenue, Los Altos, CA 94024.
*Date Revoked:* August 1, 2012.
*Reason:* Voluntary surrender of license.

*License No.:* 12454N.
*Name:* Federation Exports-Imports Inc.
*Address:* 747 Glasgow Avenue, Unit 1, Inglewood, CA 90301.
*Date Revoked:* July 9, 2012.
*Reason:* Voluntary surrender of license.

*License No.:* 014040N.
*Name:* Gulf South Forest Products, Inc.
*Address:* 3038 North Federal Highway, Building L, Fort Lauderdale, FL 33306
*Date Revoked:* July 28, 2012.
*Reason:* Failed to maintain a valid bond.

*License No.:* 014807N.

*Name:* Ape Freight International Inc.
*Address:* 167–10 South Conduit Avenue, Suite 202, Jamaica, NY 11434
*Date Revoked:* July 9, 2012.
*Reason:* Failed to maintain a valid bond.

*License No.:* 015255F.
*Name:* Triways Shipping Lines, Inc.
*Address:* 11938 S. La Cienega Blvd., Hawthorne, CA 90250.
*Date Revoked:* July 18, 2012.
*Reason:* Failed to maintain a valid bond.

*License No.:* 017524F.
*Name:* Natco International Transports USA, L.L.C.
*Address:* 12415 SW 136th Avenue, Bay 4, Miami, FL 33186
*Date Revoked:* July 1, 2012.
*Reason:* Failed to maintain a valid bond.

*License No.:* 017994NF.
*Name:* Standard Overseas, Inc.
*Address:* 8616 La Tijera Blvd., Suite #500, Los Angeles, CA 90045
*Date Revoked:* July 25, 2012.
*Reason:* Failed to maintain valid bonds.

*License No.:* 018629NF.
*Name:* Zust Bachmeier International, Inc. dba Z Lines.
*Address:* 6201 Rankin Road, Humble, TX 77396.
*Date Revoked:* July 5, 2012.
*Reason:* Voluntary surrender of license.

*License No.:* 019986N.
*Name:* Evox Logistics, Inc.
*Address:* 700 El Tesorito, South Pasadena, CA 91030–4224.
*Date Revoked:* July 9, 2012.
*Reason:* Voluntary surrender of license.

*License No.:* 021706N.
*Name:* Unity Vanlines, Inc.
*Address:* 455 Barell Avenue, Carlstadt, NJ 07072.
*Date Revoked:* July 19, 2012.
*Reason:* Failed to maintain a valid bond.

*License No.:* 022748NF.
*Name:* Transglad, Inc.
*Address:* 525 Neptune Avenue, Suite 20G, Brooklyn, NY 11224.
*Date Revoked:* July 12, 2012.
*Reason:* Voluntary surrender of license.

*License No.:* 022773F.
*Name:* WLI (USA) Inc.
*Address:* 175–01 Rockaway Blvd., Suite 228, Jamaica, NY 11434.
*Date Revoked:* July 15, 2012.
*Reason:* Failed to maintain a valid bond.

*License No.:* 022992N.
*Name:* Westwind Shipping and Logistics, Inc.
*Address:* 38 West 32nd Street, Suite 1309–B, New York, NY 10001
*Date Revoked:* July 7, 2012.
*Reason:* Failed to maintain a valid bond.

**Vern W. Hill,**
*Director, Bureau of Certification and Licensing.*

[FR Doc. 2012–19409 Filed 8–7–12; 8:45 am]

**BILLING CODE 6730–01–P**

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License; Rescission of Order of Revocation

The Commission gives notice that it has rescinded its Order revoking the following license pursuant to section 40901 of the Shipping Act of 1984 (46 U.S.C. 40101).
*License No.:* 015187N.
*Name:* Gage Shipping Lines, Ltd.
*Address:* 23 South Street, Baltimore, MD 21202.
*Order Published:* July 18, 2012 (Volume 77, No. 138, Pg. 4231)

**Vern W. Hill,**
*Director, Bureau of Certification and Licensing.*

[FR Doc. 2012–19411 Filed 8–7–12; 8:45 am]

**BILLING CODE 6730–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60-Day–12–12QP]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 and send comments to Kimberly S. Lane, CDC Reports Clearance Officer, 1600 Clifton Road MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

**Proposed Project**

Development of an Evaluation Plan to Evaluate Grantee Attainment of Selected Activities of Comprehensive Cancer Control Priorities—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

Comprehensive Cancer Control (CCC) is a collaborative process through which a community and its partners pool resources to reduce the burden of cancer. The concept is built on the premise that effective cancer prevention and control planning should address the cancer continuum (defined as prevention, diagnosis, treatment, survivorship, and palliative care), and include: The integration of many disciplines, major cancers, all populations, all geographic areas, a diverse group of stakeholders who must coordinate their efforts to assess and address the cancer burden in a jurisdiction. The National Comprehensive Cancer Control Program (NCCCP) is administered by the Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Division of Cancer Prevention and Control (DCPC). Through NCCCP, CDC supports sixty-nine comprehensive cancer control programs in 50 states, the District of Columbia, seven tribes and tribal organizations, and seven U.S. Associated Pacific Islands/territories with a goal of establishing coalitions, assessing the burden of cancer, determining intervention priorities, and developing and implementing CCC plans. The NCCCP is authorized under sections 317(k)(2) and (e) of the Public Health Service Act (42 U.S.C. section 247b[e] and [k][2]).

In 2009 and 2010, CDC developed six priorities to guide the work of grantees of the CDC-funded National Comprehensive Cancer Control Program: (1) Emphasize primary prevention of cancer; (2) support early detection and treatment activities; (3)

address public health needs of cancer survivors; (4) implement policies, systems, and environmental changes to guide sustainable cancer control; (5) promote health equity as it relates to cancer control; and (6) demonstrate outcomes through evaluation. In the summer of 2010, the six priorities were shared with the CCC program directors, and they were asked to integrate and emphasize the priorities in their updated cancer plans. The six priorities were also incorporated in the new five-year coordinated cooperative agreement, Cancer Prevention and Control Programs for State, Territorial and Tribal Organizations.

CDC is requesting information needed to (1) evaluate the extent to which CCC programs are implementing the six NCCCP priorities, and (2) evaluate existing evaluation capacity building tools and revise tools as needed to support the implementation of NCCCP priorities. The information collection will include a web-based survey of NCCCP grantee program directors, as well as multiple focus groups with NCCCP grantee program directors and evaluators.

The planned information collection activities are designed to address specific evaluation questions, including: What factors facilitate implementation of the NCCCP priorities?; What common barriers do grantees experience in efforts to implement the NCCCP priorities?; How has CDC supported grantee efforts to implement the NCCCP priorities?; and What additional resources are needed to support grantees' efforts to implement the NCCCP priorities?

CDC plans to conduct a web survey of all 69 NCCCP grantee program directors from the 50 states, the District of Columbia, seven tribes and tribal organizations, and seven U.S. Associated Pacific Islands/territories. The survey will include questions that address both evaluation focus areas: (1) NCCCP priorities and (2) CCCB capacity building tools. The program directors will be asked to provide information about the utilization and usefulness of the Comprehensive Cancer Control Branch (CCCB) Program Evaluation Toolkit, a capacity building tool developed and disseminated to NCCCP grantees in 2010. Program directors will also be asked to provide information about their efforts to implement the NCCCP priorities. The estimated burden per response is 30 minutes.

As part of the NCCCP evaluation, up to four focus groups will be conducted with a maximum of 10 respondents per group. Focus groups may include NCCCP program directors, designated NCCCP staff members, and stakeholders, such as program evaluators and coalition leaders. The purpose of the focus groups is to gather more in-depth information about ways in which CCCB capacity building tools can be improved to better support implementation of the NCCCP priorities. The estimated burden per response is 90 minutes.

The planned survey and focus groups are key components of CDC's evaluation of the extent to which grantees are implementing NCCCP priorities, as well as the extent to which selected CDC capacity building tools support implementation of the priorities. Information to be collected will inform the development of technical assistance for NCCCP grantees and enhancements to existing capacity building tools. OMB approval is requested for one year. Participation is voluntary and there are no costs to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondent | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hr) | Total burden (in hr) |
|---|---|---|---|---|---|
| NCCCP State Grantee Program Director | CCC Web Survey | 69 | 1 | 30/60 | 35 |
| NCCCP State Grantee Program Project Director or Designated CCC Staff Member. | CCC Focus Group | 40 | 1 | 1.5 | 60 |
| Total | | | | | 95 |

Dated: August 2, 2012.

**Ron A. Otten,**

*Director, Office of Scientific Integrity (OSI), Office of the Associate Director for Science (OADS), Office of the Director, Centers for Disease Control and Prevention.*

[FR Doc. 2012–19390 Filed 8–7–12; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Proposed Information Collection Activity; Comment Request

### Proposed Projects

*Title:* ORR–3 Placement Report and ORR–4 Outcomes Report for Unaccompanied Refugee Minor.

*OMB No.:* 0970–0034.

*Description:* As required by section 412(d) of the Immigration and Nationality Act, the Administration for Children and Families (ACF), Office of Refugee Resettlement (ORR), is requesting the information from report Form ORR-3 and ORR–4 to administer the Unaccompanied Refugee Minor (URM) program. The ORR–3 (Placement Report) is submitted to the Office of Refugee Resettlement (ORR) by the State agency at initial placement within 30 days of the placement, and whenever there is a change in the child's status, including termination from the program, within 60 days of the change or closure of the case. The ORR–4 (Outcomes Report) is submitted within approximately 12 months of the initial placement and each subsequent 12 months to record outcomes of the child's progress toward the goals listed in the child's case plan and particularly for youth 17 years of age and above related to independent living and/or educational plans. ORR–4 is also submitted along with the initial ORR–3 report for 17 year old youth. ORR regulation at 45 CFR 400.120 describes specific URM program reporting requirements.

*Respondents:* State governments.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| ORR–3 | 15 | Estimate responses 75 | 0.25 | Estimated 281.25 |
| ORR–4 | 15 | Estimate responses 119 | 1.25 | Estimated 2231.25 |

*Estimated Total Annual Burden Hours:* 2512.5.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 2012–19418 Filed 8–7–12; 8:45 am]

**BILLING CODE 4184–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Community Living

### Agency Information Collection Activities; Proposed Collection; Comment Request; Semi-Annual and Final Reporting Requirements for Discretionary Grant Programs

**AGENCY:** Administration for Community Living, HHS.

**ACTION:** Notice.

**SUMMARY:** The Administration for Community Living (ACL) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements relating to the continuation of an existing collection for Performance Progress Reports previously approved for discretionary grants funded by the U.S. Administration on Aging (AoA), which is now a part of ACL.

**DATES:** Submit written or electronic comments on the collection of information by October 9, 2012.

**ADDRESSES:** Submit electronic comments on the collection of information to: *lori.stalbaum@aoa.hhs.gov.* Submit written comments on the collection of information to Lori Stalbaum, Administration on Aging, Washington, DC 20201 or by fax to Lori Stalbaum at 202–357–3469. .

**FOR FURTHER INFORMATION CONTACT:** Lori Stalbaum at 202–357–3452 or *lori.stalbaum@aoa.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency request or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, ACL is publishing notice of the proposed collection of information set forth in this document. With respect to the following collection of information, ACL invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of ACL's functions, including whether the information will have practical utility; (2) the accuracy of ACL's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

The Administration for Community Living (ACL) plans to continue an existing approved collection of information for semi-annual and final reports pursuant to the requirements of its discretionary grant programs. Through its discretionary grant programs, ACL supports projects for the purpose of developing and testing new knowledge and program innovations with the potential for contributing to the independence, well-being, and health of older adults, people with disabilities across the lifespan, and their families and caregivers. Deliverables required by ACL of all Title IV grantees are semi-annual and final reports, as provided for in the Department of Health and Human Services regulations, 45CFR Part 74, Section 74.51. These Title IV grantee performance reporting requirements can be found on ACL's Web site at *http://*

*www.aoa.gov/AoARoot/Grants/Reporting_Requirements/docs/FinalReportHandbook.doc.* ACL estimates the burden of this collection of information as follows: *Frequency:* Semi-annually with the Final report taking the place of the semi-annual report at the end of the final year of the grant. *Respondents:* States, public agencies, private nonprofit agencies, institutions of higher education, and organizations including tribal organizations. *Estimated Number of Responses:* 600. *Total Estimated Burden Hours:* 12,000.

Dated: August 3, 2012.

**Kathy Greenlee,**

*Administrator and Assistant Secretary for Aging.*

[FR Doc. 2012–19453 Filed 8–7–12; 8:45 am]

**BILLING CODE 4154–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2011–N–0608]**

### Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; MedWatch: The Food and Drug Administration Medical Products Reporting Program

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''MedWatch: The Food and Drug Administration Medical Products Reporting Program'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** Jonna Capezzuto, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3794, *Jonnalynn.Capezzuto@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** On June 28, 2012, the Agency submitted a proposed collection of information entitled ''MedWatch: The Food and Drug Administration Medical Products Reporting Program'' to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0291. The approval expires on June 30, 2015. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: August 3, 2012.

**David Dorsey,**

*Acting Associate Commissioner for Policy and Planning.*

[FR Doc. 2012–19377 Filed 8–7–12; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2012–N–0793]**

### Request for Nominations of Specific Drug/Biologic Product(s) That Could Be Brought Before the Food and Drug Administration's Pediatric Subcommittee of the Oncologic Drugs Advisory Committee

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; request for product nominations.

**SUMMARY:** The Food and Drug Administration's (FDA) Office of Hematology and Oncology Products invites the public to suggest one or more specific drug or biologic products that could be brought before the December 4, 2012, Pediatric Subcommittee of the Oncologic Drugs Advisory Committee (ODAC). The number of drugs studied for use in pediatric patients is growing, and we see a reduction in off-label use. However, we would like to improve current and future pediatric product development by focusing on products whose development would benefit the most from the attention of an advisory committee. The company developing a product that is brought before the committee will be given the unique opportunity to present proposed pediatric studies in the United States, share their plans for global pediatric development, and hear discussions by the Pediatric Subcommittee on possible directions for their current or future pediatric oncology product development.

**DATES:** Nominations must be received by September 4, 2012, to receive consideration for inclusion. Nominations received after this date will receive consideration for future meetings of the Pediatric Subcommittee of the ODAC.

**ADDRESSES:** Email nominations to *Christine.Lincoln@fda.hhs.gov,* and please include the subject line ''Suggested Product for 2012 Pediatric Oncology Subcommittee of ODAC.''

**FOR FURTHER INFORMATION CONTACT:** Christine Lincoln, RN, MS, MBA, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 2206, Silver Spring, MD 20993, 301–796–4117, *Christine.Lincoln@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** The Food and Drug Administration (FDA) Advisory Committees are an important, transparent interface that allows the Agency to include the public in its decision-making processes. Significant public health and safety issues are brought before these committees for deliberation, and the meetings bring together both experts with state-of-the-art knowledge and members of the public with relevant personal experiences. This broad participation gives FDA a unique perspective as it seeks to assure the safety, efficacy, and security of FDA-regulated products.

Additional information about the prior November 2, 2011, Pediatric Oncology Subcommittee of the Oncologic Drugs Advisory Committee may be found on FDA's Web site at: *http://www.fda.gov/AdvisoryCommittees/Calendar/ucm274396.htm.*

Dated: August 2, 2012.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2012–19330 Filed 8–7–12; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Statement of Organization, Functions and Delegations of Authority

This notice amends Part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (HHS), Health Resources and Services Administration (HRSA) (60 FR 56605, as amended November 6, 1995; as last amended at 77 FR 46098–46099 dated August 2, 2012).

This notice reflects organizational changes in the Health Resources and Services Administration (HRSA). Specifically, this notice updates the functional statement for both the Office of Operations (RB) and the Office of Management (RB4) to include the human resources function for HRSA;

transfers the records management function from the Division of Policy and Information Coordination (RB41) to the Immediate Office of the Director, Office of Management (RB4); transfers the personnel security function from the Division of Workforce Management (RB42) to the Division of Management Services (RB43); transfers the workforce planning function from the Division of Workforce Management (RB42) to the Division of Workforce Development (RB44); and renames the Division of Workforce Management (RB42) to the Division of Human Resources Management (RB42).

**Chapter RB—Office of Operations**

*Section RB–20, Functions*

(1) Delete the functional statement for the Office of Operations in its entirety and replace with the following:

The Office of Operations: provides leadership for operational activities, interaction and execution of Agency initiatives across the Health Resources and Services Administration; (2) plans, organizes and manages annual and multi-year budgets and resources and assures that the conduct of Agency administrative and financial management activities effectively support program operations; (3) provides an array of Agency-wide services including information technology, procurement management, facilities, human resources, workforce management, and budget execution and formulation; (4) maintains overall responsibility for policies, procedures, and monitoring of internal controls and systems related to payment and disbursement activities; (5) provides management expertise, staff advice, and support to the Administrator in program and policy formulation and execution; (6) provides leadership in the development, review and implementation of policies and procedures to promote improved information technology management capabilities and best practices throughout HRSA; (7) coordinates IT workforce issues and works closely with the Department on IT recruitment and training issues; and (8) administers functions of the Chief Financial Officer.

**Chapter RB4—Office of Management**

*Section RB4–10, Organization*

Delete in its entirety and replace with the following:

The Office of Management (RB4) is headed by the Director, Office of Management within the Office of Operations, Health Resources and Services Administration, who reports directly to the Chief Operating Officer. The Office of Management includes the following components:

(1) Immediate Office of the Director (RB4);

(2) Division of Policy and Information Coordination (RB41);

(3) Division of Human Resources Management (RB42);

(4) Division of Management Services (RB43); and

(5) Division of Workforce Development (RB44).

*Section RB4–20, Functions*

(1) Delete the functional statement for the Office of Management (RB4) and replace in its entirety; (2) transfer the records management function from the Division of Policy and Information Coordination (RB41) to the Immediate Office of the Director (RB4); transfer the personnel security function from the Division of Workforce Management (RB42) to the Division of Management Services (RB43); transfer the workforce planning function from the Division of Workforce Management (RB42) to the Division of Workforce Development (RB44); and rename the Division of Workforce Management (RB42) to the Division of Human Resources Management (RB42).

*Office of Management (RB4)*

Provides HRSA-wide leadership, program direction, and coordination of all phases of administrative management. Specifically, the Office of Management: (1) Provides management expertise, staff advice, and support to the Administrator in program and policy formulation and execution; (2) provides administrative management services including human resources, property management, space planning, safety, physical security, and general administrative services; (3) conducts HRSA-wide workforce analysis studies and surveys; (4) plans, directs, and coordinates HRSA's activities in the areas of human resources management, including labor relations, personnel security, and performance; (5) coordinates the development of administrative policies and regulations; (6) oversees the development of annual operating objectives and coordinates HRSA work planning and appraisals; (7) directs and coordinates HRSA's organizations, functions and delegations of authority programs; (8) administers the Agency's Executive Secretariat and committee management functions; (9) provides staff support to the Agency Chief Travel Official; (10) provides staff support to the Deputy Ethics Counselor; (11) directs, coordinates, and conducts workforce development activities for HRSA; and (12) manages and maintains a records management program for the Agency.

*Division of Policy and Information Coordination (RB41)*

(1) Advises the Administrator and other key Agency officials on cross-cutting policy issues and assists in the identification and resolution of cross-cutting policy issues and problems; (2) establishes and maintains tracking systems that provide HRSA-wide coordination and clearance of policies, regulations and guidelines; (3) plans, organizes and directs the Executive Secretariat with primary responsibility for preparation and management of written correspondence; (4) arranges briefings for Department officials on critical policy issues and oversees the development of necessary briefing documents; (5) coordinates the preparation of proposed rules and regulations relating to HRSA programs and coordinates review and comment on other Department regulations and policy directives that may affect HRSA programs; (6) oversees and coordinates the committee management activities; and (7) coordinates the review and publication of **Federal Register** notices.

*Division of Human Resources Management (RB42)*

(1) Provides advice and guidance on all aspects of the HRSA human resources management program; (2) provides the full range of human resources operations including: employment; staffing and recruitment; compensation; classification; executive resources; labor and employee relations; employee benefits; and retirement; (3) develops and coordinates the implementation of human resources policies and procedures for HRSA's human resources activities; (4) monitors, evaluates, and reports on the effectiveness, efficiency and compliance with HR laws, rules, and regulations; (5) provides advice and guidance for the establishment or modification of organization structures, functions, and delegations of authority; (6) manages the ethics program; (7) administers the performance management programs, including the SES Performance Review Board; (8) manages the incentive and honor awards programs; (9) represents HRSA in human resources matters both within and outside of the Department; and (10) oversees the commissioned corps liaison activities including the day-to-day operations of workforce management.

*Division of Management Services (RB43)*

Plans, directs and coordinates Agency administrative activities. Specifically:

(1) Provides administrative management services including property, space planning, safety, physical security, and general administrative services; (2) ensures implementation of statutes, Executive Orders, and regulations related to official travel, transportation, and relocation; (3) provides oversight for the HRSA travel management program involving use of travel management systems, passenger transportation, and travel charge cards; (4) provides planning, management and oversight of all space planning projects, move services and furniture requirements; (5) develops space and furniture standards and related policies; (6) provides analysis of office space requirements required in supporting decisions relating to the acquisition of commercial leases; (7) provides advice, counsel, direction, and support to employees to fulfill the Agency's primary safety responsibility of providing a workplace free from recognizable safety and health concerns; (8) manages, controls, and/or coordinates all matters relating to mail management within HRSA, including developing and implementing procedures for the receipt, delivery, collection, and dispatch of mail; (9) maintains overall responsibility for the HRSA Forms Management Program; and (10) manages the personnel security, badging, Transhare and quality of work life programs.

*Division of Workforce Development (RB44)*

(1) Plans, directs, and manages HRSA-wide training programs, intern, professional and leadership development programs, the long-term training program, and the mentoring program; (2) develops, designs, and implements a comprehensive strategic human resource leadership development and career management program for all occupational series throughout HRSA; (3) provides technical assistance in organizational development, career management, employee development, and training; (4) maximizes economies of scale through systematic planning and evaluation of Agency-wide training initiatives to assist HRSA employees in achieving required competencies; (5) identifies relevant scanning/benchmarking on workforce and career development processes, services, and products; (6) establishes policies governing major learning initiatives and new learning activities, and works collaboratively with other components of HRSA in planning, developing, and implementing policies related to training initiatives; (7) plans, directs, and manages HRSA-wide training and service programs for fellowships and internships sponsored by other partner organizations and implemented within HRSA; (8) conducts Agency-wide workforce analysis studies and surveys; (9) develops comprehensive workforce strategies that meet the requirements of the Office of Personnel Management and the Department of Health and Human Services, programmatic needs of HRSA, and the governance and management needs of HRSA leadership; and (10) evaluates employee development practices to develop and enhance strategies to ensure HRSA retains a cadre of public health professionals and reduces risks associated with turnover in mission critical positions.

*Section RB4–30, Delegations of Authority*

All delegations of authority and re-delegations of authority made to HRSA officials that were in effect immediately prior to this reorganization, and that are consistent with this reorganization, shall continue in effect pending further re-delegation.

This reorganization is effective upon date of signature.

Dated: July 26, 2012.

**Mary K. Wakefield,**

*Administrator.*

[FR Doc. 2012–19421 Filed 8–7–12; 8:45 am]

BILLING CODE 4165–15–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Indian Health Service

**[Funding Announcement Number HHS–2012–IHS–TSGP–0001]**

### Funding Opportunity: Tribal Self-Governance Program; Planning Cooperative Agreement

Catalog of Federal Domestic Assistance Number: 93.444.

*Announcement Type:* New—Limited Competition.

**Key Dates**

*Application Deadline Date:* September 9, 2012.

*Review Date:* September 12, 2012.

*Earliest Anticipated Start Date:* September 30, 2012.

*Signed Tribal Resolutions Due Date:* September 11, 2012.

**I. Funding Opportunity Description**

*Statutory Authority*

The Indian Health Service (IHS) Office of Tribal Self-Governance (OTSG) is accepting limited competition Planning Cooperative Agreement applications for the Tribal Self-Governance Program (TSGP). This program is authorized under Public Law (Pub. L.) 106–260, the Tribal Self-Governance Amendments of 2000; Title V of the Indian Self-Determination and Education Assistance Act (ISDEAA), Public Law 93–638, as amended; and the Snyder Act, Public Law 67–85 (25 U.S.C. 13). This program is described in the Catalog of Federal Domestic Assistance (CFDA) under 93.444.

*Background*

The TSGP is more than an IHS program; it is an expression of the government-to-government relationship between the United States and each Indian Tribe. Through the TSGP, Tribes negotiate with the IHS to assume IHS programs, services, functions, and activities (PSFAs), or portions thereof, to manage them to best fit their Tribal communities. Participation in the TSGP is one of three ways that Tribes can choose to obtain health care from the Federal Government for their members. Specifically, Tribes can choose to: (1) Receive health care services directly from the IHS, (2) contract with the IHS to administer individual programs and services the IHS would otherwise provide (referred to as Title I Self-Determination Contracting), and (3) compact with the IHS to assume control over health care programs the IHS would otherwise provide (referred to as Title V Self-Governance Compacting or the TSGP). These options are not exclusive; Tribes may choose to combine them based on their individual needs and circumstances. Participation in the TSGP affords Tribes the most flexibility to tailor health care services to the needs of their communities. The TSGP is and always has been a Tribally driven initiative, and strong Federal-Tribal partnerships have been critical to the program's success. The OTSG serves as the primary liaison and advocate for Tribes participating in the TSGP and was established to implement Tribal Self-Governance legislation and authorities within the IHS. The OTSG develops, directs, and implements Tribal Self-Governance policies and procedures; provides information and technical assistance to Self-Governance Tribes; and advises the IHS Director on Agency compliance with TSGP policies, regulations and guidelines. Each IHS Area has an Agency Lead Negotiator (ALN) that negotiates Self-Governance instruments (Compacts and Funding Agreements) on behalf of the IHS Director. To begin the Self-Governance planning process, a Tribe should contact the ALN. The ALN will provide an

overview of the TSGP and will provide technical assistance as the Tribe explores the option of participating in the TSGP.

*Purpose*

The purpose of this Planning Cooperative Agreement is to provide resources to Tribes interested in participating in the TSGP. Title V of the ISDEAA requires that a Tribe or Tribal Organization complete a planning phase to the satisfaction of the Tribe. The planning phase must include legal and budgetary research and internal Tribal government planning and organization preparation relating to the administration of health care programs. *See* 25 U.S.C. 458aaa–2(c)(1)(A). The planning phase helps Tribes to make informed decisions about which PSFAs, or portions thereof, to assume and what organizational changes will be necessary to support those PSFAs. A thorough planning phase makes the rest of the negotiations process more timely and efficient. Planning helps to identify issues in advance and ensures that the Tribe is fully prepared for the transfer of IHS PSFAs to the Tribal health program. The ultimate goal of the planning stage is to ensure that the Tribe is aware of the responsibility involved in assuming IHS PSFAs.

*Limited Competition Justification*

There is limited competition under this announcement because the authorizing legislation restricts eligibility to Tribes that meet specific criteria (refer to Section III.1. Eligibility, of this announcement). *See* 25 U.S.C. 458aaa–2(e); 42 CFR 137.24–25; *see also* 42 CFR 137.10. The Tribes eligible to compete for the Planning Cooperative Agreements include: any Indian Tribe that has not previously received a Planning Cooperative Agreement; any Indian Tribe that has previously received Planning Cooperative Agreements but chose not to enter the TSGP; and those Indian Tribes that received a Planning Cooperative Agreement, entered the TSGP, and would like to plan for the assumption of new and/or expanded programs. The receipt of a Planning Cooperative Agreement is not a prerequisite to enter the TSGP. A Tribe may use its own resources to meet the planning requirement. Tribes that receive Planning Cooperative Agreements are not obligated to participate in Title V and may choose to delay or decline participation in the TSGP based on its planning activities.

## II. Award Information

*Type of Award*

Cooperative Agreement.

*Estimated Funds Available*

The total amount of funding identified for the current fiscal year (FY) 2012 is approximately $600,000. Individual award amounts shall not exceed $120,000. Competing awards issued under this announcement are subject to the availability of funds. In the absence of funding, the IHS is under no obligation to make awards that are selected for funding under this announcement.

*Anticipated Number of Awards*

Approximately five awards will be issued under this program announcement.

*Project Period*

The project period will be for 12 months and will run from September 30, 2012 to September 29, 2013.

*Cooperative Agreement*

In the Department of Health and Human Services (HHS), a cooperative agreement is administered under the same policies as a grant. The funding agency (IHS) is required to have substantial programmatic involvement in the project during the entire award segment. Below is a detailed description of the level of involvement required for both IHS and the grantee. The IHS will be responsible for activities listed under section A and the grantee will be responsible for activities listed under section B as stated:

*Substantial Involvement Description for Cooperative Agreement*

A. IHS Programmatic Involvement

(1) Provide descriptions of PSFAs and associated funding at all organizational levels (Service Unit, Area, and Headquarters), including funding formulas and methodologies related to determining Tribal shares.

(2) Meet with Tribe to provide program information and discuss methods currently used to manage and deliver health care.

(3) Identify and provide statutes, regulations, and policies that provide authority for administering IHS programs.

(4) Provide technical assistance on the IHS budget, Tribal shares, and other topics as needed.

B. Grantee Cooperative Agreement Award Activities

(1) Research and analyze the complex IHS budget to gain a thorough understanding of funding distribution at all organizational levels and to determine which PSFAs the Tribe may elect to assume.

(2) Establish a process by which Tribes can affectively approach the IHS to identify programs and associated funding that could be incorporated into their current programs.

(3) Determine the Tribe's share of each PSFA and evaluate the current level of health care services being provided to make an informed decision on new program assumption(s).

## III. Eligibility Information

*1. Eligibility*

To be eligible for this Limited Competition Planning Cooperative Agreement under this announcement, an applicant must:

A. Be an ''Indian Tribe'' as defined in 25 U.S.C. 450b(e); a ''Tribal Organization'' as defined in 25 U.S.C. 450b(*l*); or an ''Inter-Tribal Consortium'' as defined at 42 CFR 137.10. Entities must be eligible to receive IHS funds for the provision of health care services pursuant to the ISDEAA in order to be eligible for this award. Pursuant to the Consolidated Appropriations Act, 2012, Public Law 112–74, ''the Indian Health Service may not disburse funds for the provision of health care services pursuant to [the ISDEAA] to any Alaska Native village or Alaska Native village corporation that is located within the area served by an Alaska Native regional health entity.''

B. Submit a Tribal resolution from the appropriate governing body of each Indian Tribe to be served by the ISDEAA compact and authorizing the submission of the Planning Cooperative Agreement application. Tribal consortia applying for a TSGP Planning Cooperative Agreement shall submit Tribal Council resolutions from each Tribe in the consortium. Tribal resolutions can be attached to the electronic online application. Draft resolutions can be submitted with the application in lieu of an official signed resolution; however an official signed Tribal resolution must be received by the Division of Grants Management (DGM), prior to the Objective Review on September 6. Official signed resolutions can be mailed to the DGM, Attn: John Hoffman, 801 Thompson Avenue, TMP Suite 360, Rockville, MD 20852. Please contact John Hoffman by telephone at (301) 443–5204 prior to September 6, 2012 regarding submission questions. If the DGM does not receive an official signed resolution by September 5, 2012, then the application will be considered

incomplete and ineligible for review or further consideration.

C. Demonstrate, for three fiscal years, financial stability and financial management capability. Applicants are required to submit complete annual audit reports for the three fiscal years prior to the year that the applicant is applying for the Planning Cooperative Agreement. The Indian Tribe must provide evidence that for the three years prior to applying for the Planning Cooperative Agreement, the Tribe has had no uncorrected significant and material audit exceptions in the required annual audit of the Indian Tribe's Self-Determination contracts or Self-Governance Funding Agreements with any Federal agency. *See* 42 CFR 137.21–23. Scanned electronic copies of the documents can be attached to the electronic online application. If the applicant determines that the audit reports are too lengthy, then the applicants may submit them separately via regular mail by the due date, August 30, 2012. Applicants sending audits via regular mail must submit two copies of the complete audits for the three previous fiscal years under separate cover directly to the DGM, Attn: John Hoffman, 801 Thompson Avenue, TMP Suite 360, Rockville, MD 20852. Applicants must reference the following information in their cover letter transmitting the required complete audits: (1) The Funding Opportunity Number: HHS–2012–IHS–TSGP–0001, (2) the grant tracking number assigned to their electronic submission from *http://www.grants.gov,* and (3) the date submitted via *http://www.grants.gov.* If the DGM does not receive this documentation by August 30, 2012, then the application will be considered incomplete and ineligible for review or further consideration.

Please note that meeting eligibility criteria for a Planning Cooperative Agreement does not mean that a Tribe or Tribal Organization will be eligible for participation in the IHS TSGP under Title V of the ISDEAA, 25 U.S.C. 458aaa–2; 42 CFR 137.15–23.

**Note:** Applicants submitting any of the above documentation after or aside from the online electronic application submission are required to ensure the information is received by the IHS. It is highly recommended that the documentation be sent by a delivery method that includes delivery confirmation and tracking.

(2). **Note:** Please refer to Section IV.2 (Application and Submission Information/Subsection 2, Content and Form of Application Submission) for additional documents required to determine eligibility for this announcement.

*2. Cost Sharing or Matching*

The IHS does not require matching funds or cost sharing for grants or cooperative agreements.

*3. Other Requirements*

If application budgets exceed the highest dollar amount outlined under the ''Estimated Funds Available'' section within this funding announcement, the application will be considered ineligible and will not be reviewed for further consideration. IHS will not return your application to you. You will be notified by email or certified mail by the DGM of this decision.

*Letters of Intent* will not be required under this funding opportunity announcement.

## IV. Application and Submission Information

*1. Obtaining Application Materials*

The application package and detailed instructions for this announcement can be found at *http://www.Grants.gov* or *http://www.ihs.gov/NonMedicalPrograms/gogp/index.cfm?module=gogp_funding*

Additional information regarding the TSGP may also be found on the OTSG Web site at *http://www.ihs.gov/selfgovernance.*

For questions regarding the electronic application process, please contact Paul Gettys, DGM Grant Systems Coordinator, by telephone at (301) 443–2114, or by email to *Paul.Gettys@ihs.gov.*

*2. Content and Form Application Submission*

The applicant must include the project narrative as an attachment to the application package. Mandatory documents for all applicants include:

- Table of contents.
- Abstract (one page) summarizing the project.
- Application forms:
  - SF–424, Application for Federal Assistance.
  - SF–424A, Budget Information—Non-Construction Programs.
  - SF–424B, Assurances—Non-Construction Programs.
- Budget Justification and Narrative (must be single spaced and not exceed 5 pages).
- Project Narrative (must not exceed 10 pages).
  - Background information on the Tribe.
  - Proposed scope of work, objectives, and activities that provide a description of what will be accomplished, including a one-page Timeframe Chart.
- Tribal Resolution(s).
- 501 (c)(3) Certificate (if applicable).
- Biographical sketches for all Key Personnel.
- Contractor/Consultant resumes or qualifications and scope of work.
- Disclosure of Lobbying Activities (SF–LLL).
- Certification Regarding Lobbying (GG–LobbyingForm).
- Copy of current Negotiated Indirect Cost rate (IDC) agreement (required) in order to receive IDC.
- Organizational Chart (optional).
- Documentation of three years of Office of Management and Budget (OMB) A–133 required Financial Audit (see Section III.1.C. of this announcement for more information).

*3. Public Policy Requirements*

All Federal-wide public policies apply to IHS grants with exception of the Discrimination policy.

*4. Requirements for Project and Budget Narratives*

A. *Project Narrative:* This narrative should be a separate Word document that is no longer than 10 pages and must: be single-spaced, be type written, have consecutively numbered pages, use black type not smaller than 12 characters per one inch, and be printed on one side only of standard size 8-½″ x 11″ paper.

Be sure to succinctly answer all questions listed under the evaluation criteria (refer to Section V.1, Evaluation criteria in this announcement) and place all responses and required information in the correct section (noted below), or they will not be considered or scored. These narratives will assist the Objective Review Committee (ORC) in becoming more familiar with the grantee's activities and accomplishments prior to this possible grant award. If the narrative exceeds the page limit, only the first 10 pages will be reviewed. The 10-page limit for the narrative does not include the work plan, standard forms, Tribal resolutions, table of contents, budget, budget justifications, narratives, and/or other appendix items.

There are three parts to the narrative: Part A—Program Information; Part B—Program Planning and Evaluation; and Part C—Program Report. See below for additional details about what must be included in the narrative.

Part A: Program Information (4-Page Limitation)

Section 1: Needs

Introduce the Tribe's current health program and describe the current level of health care services that are being

administered. Describe the organizational capabilities and the need for assistance.

Part B: Program Planning and Evaluation (4-Page Limitation)

Section 1: Program Plans

Propose an improved approach to managing the health programs and indicate how the delivery of quality health care services will be maintained under Self-Governance. Describe the organizational structure of the Tribe and its ability to manage the proposed project. Include resumes or position descriptions of key staff showing requisite experience and expertise. If applicable, include resumes and scope of work for consultants that demonstrate experience and expertise relevant to the project.

Section 2: Program Evaluation

Are the goals and objectives measurable and consistent with the purpose of the program and the needs of the people to be served? Are they achievable within the proposed time frame?

Part C: Program Report (2-Page Limitation)

Section 1: Describe major accomplishments over the last 24 months. Please identify and describe significant health related project activities associated with the delivery of quality health services.

Section 2: Describe major activities over the last 24 months. Please identify and describe significant program achievements associated with the delivery of quality health services, as described in the previous accomplishments section.

B. *Budget Narrative:* This narrative must describe the budget requested and match the scope of work described in the project narrative. The budget narrative should not exceed 5 pages.

*5. Submission Dates and Times*

Applications must be submitted electronically through Grants.gov by 12:00 a.m., midnight Eastern Daylight Time (EDT) on August 30, 2012. Any application received after the application deadline will not be accepted for processing, nor will it be given further consideration for funding. You will be notified by the DGM via email or certified mail of this decision.

If technical challenges arise and assistance is required with the electronic application process, contact Grants.gov Customer Support by telephone at (800) 518–4726 or via email to *support@grants.gov.* Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays). If problems persist, contact Paul Gettys, DGM Grant Systems Coordinator, by telephone at (301) 443–2114 or via email at *Paul.Gettys@ihs.gov.* Please be sure to contact Mr. Gettys at least ten days prior to the application deadline with your tracking number received from Grants.gov. In the event you are not able to obtain a tracking number, call the DGM as soon as possible.

If an applicant needs to submit a paper application instead of submitting electronically via Grants.gov, a waiver must be requested. Prior approval for a waiver must be requested and obtained from Tammy Bagley, Acting Director of DGM (see Section IV.8 of this announcement). The waiver must: (1) Be documented in writing (emails are acceptable) to *GrantsPolicy@ihs.gov* with a copy to *Tammy.Bagley@ihs.gov, before* submitting a paper application; and (2) include a clear justification for the need to deviate from our standard electronic submission process. Once your waiver request has been approved by the Acting Director of DGM, you will receive a confirmation of approval and the mailing address to submit your paper application. A copy of the written approval from the Acting Director of DGM must be submitted along with the paper application that is submitted to the DGM. Paper applications that are submitted without a waiver from the Acting Director of DGM will not be reviewed or considered further for funding. You will be notified via email or certified mail of this decision by the Grants Management Officer of DGM. Paper applications must be received by the DGM no later than 5:00 p.m., EDT, August 30, 2012. Late applications will not be accepted for processing or considered for funding.

*6. Intergovernmental Review*

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

*7. Funding Restrictions*

- Pre-award costs are not allowable.
- Each Planning Cooperative Agreement shall not exceed $120,000, including direct and appropriate indirect costs.
- Although only one Planning Cooperative Agreement will be awarded per applicant per grant cycle, a Tribe may also apply for a Negotiation Cooperative Agreement within the same grant cycle. Both applications will be reviewed separately for merit by the ORC based on evaluation criteria.

*8. Electronic Submission Requirements*

All applications must be submitted electronically. Please use the ''Find Grant Opportunities'' link on the *http://www.Grants.gov* homepage to search for the application either by entering: (1) The CFDA number (93.444), or (2) the Funding Opportunity Number (HHS–20120–IHS–TSGP–0001). Download a copy of the application package, complete it offline, and then upload and submit the completed application via the *http://www.Grants.gov* Web site. Electronic copies of the application may not be submitted as attachments to email messages addressed to IHS employees or offices.

Applicants that receive a waiver to submit paper application documents must follow the rules and timelines that are noted below. The applicant must seek assistance at least ten days prior to the application deadline.

Applicants that do not adhere to the timelines for Central Contractor Registry (CCR) and/or *http://www.Grants.gov* registration or that fail to request timely assistance with technical issues will not be considered for a waiver to submit a paper application.

Please be aware of the following:

- Please search for the application package in *http://www.Grants.gov* by entering the CFDA number or the Funding Opportunity Number. Both numbers are located in the header of this announcement.
- If you experience technical challenges while submitting your application electronically, please contact Grants.gov Support directly at: *support@grants.gov* or (800) 518–4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays).
- Upon contacting Grants.gov, obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and waiver from the agency must be obtained.
- If it is determined that a waiver is needed, you must submit a request in writing (emails are acceptable) to *GrantsPolicy@ihs.gov* with a copy to *Tammy.Bagley@ihs.gov*. Please include a clear justification for the need to deviate from our standard electronic submission process.
- If the waiver is approved, the application should be sent directly to the DGM by the deadline date of August 30, 2012.
- Applicants are strongly encouraged not to wait until the deadline date to begin the application process through Grants.gov as the registration process for

CCR and Grants.gov could take up to fifteen working days.

- Please use the optional attachment feature in Grants.gov to attach additional documentation that may be requested by the DGM or this announcement.
- All applicants must comply with any page limitation requirements described in this Funding Announcement.
- After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The DGM will download your application from Grants.gov and provide necessary copies to the appropriate Program officials. Neither the DGM nor the OTSG will notify applicants that the application has been received.
- Email applications will not be accepted under this announcement.

Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS)

All IHS applicants and grantee organizations are required to obtain a DUNS number and maintain an active registration in the CCR database. The DUNS number is a unique 9-digit identification number provided by D&B which uniquely identifies your entity. The DUNS number is site specific; therefore, each distinct performance site may be assigned a DUNS number. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, you may access it through *http://fedgov.dnb.com/webform*, or to expedite the process, call (866) 705–5711.

Effective October 1, 2010, all HHS recipients were asked to start reporting information on subawards, as required by the Federal Funding Accountability and Transparency Act of 2006, as amended (''Transparency Act''). Accordingly, all IHS grantees must notify potential first-tier subrecipients that no entity may receive a first-tier subaward unless the entity has provided its DUNS number to the prime grantee organization. This requirement ensures the use of a universal identifier to enhance the quality of information available to the public pursuant to the ''Transparency Act.''

Central Contractor Registry (CCR)

Organizations that have not registered with CCR will need to obtain a DUNS number first and then access the CCR online registration through the CCR home page at *https://www.bpn.gov/ccr/default.aspx* (U.S. organizations will also need to provide an Employer Identification Number from the Internal Revenue Service that may take an additional 2–5 weeks to become active). Completing and submitting the registration takes approximately one hour and your CCR registration will take 3–5 business days to process. Registration with the CCR is free of charge. Applicants may register online at *https://www.bpn.gov/ccrupdate/NewRegistration.aspx.*

Additional information on implementing the ''Transparency Act,'' including the specific requirements for DUNS and CCR, can be found on the IHS Grants Management, Grants Policy Web site: *http://www.ihs.gov/NonMedicalPrograms/gogp/index.cfm?module=gogp_policy_topics.*

**V. Application Review Information**

The instructions for preparing the application narrative also constitute the evaluation criteria for reviewing and scoring the application. Weights assigned to each section are noted in parentheses. The narrative section should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to understand the project fully. Points will be assigned to each evaluation criteria adding up to a total of 100 points. A minimum score of 60 points is required for funding. Points are assigned as follows:

*1. Criteria*

A. Introduction and Need for Assistance (25 Points)

Describe the applicant's current health program activities, how long it has been operating, what programs or services are currently being provided and if the applicant is currently administering any ISDEAA Title I Self-Determination Contracts. Identify the need for assistance and how the Planning Cooperative Agreement would benefit the health activities the Tribe is currently administering.

B. Project Objective(s), Work Plan and Approach (30 Points)

State in measurable terms the objectives and appropriate activities to achieve each objective for the project listed under Section II. (Grantee Cooperative Agreement Award Activities) of this announcement.

Describe how the goals and objectives are consistent with the purpose of the program and the needs of the people to be served and how they will be achieved within the proposed time frame. Identify the expected results, benefits, and outcomes or products to be derived from each objective of the project.

C. Program Evaluation (10 Points)

Define the criteria to be used to evaluate planning activities. Describe fully and clearly the methodology that will be used to determine if the needs identified for the objectives are being met and if the outcomes identified are being achieved.

D. Organizational Capabilities, Key Personnel and Qualifications (20 Points)

Describe the organizational structure of the Tribe and its ability to manage the proposed project. Include resumes or position descriptions of key staff showing requisite experience and expertise. If applicable, include resumes and scope of work for consultants that demonstrate experience and expertise relevant to the project.

E. Categorical Budget and Budget Justification (15 Points)

Submit a line-item budget with a narrative justification for all expenditures identifying reasonable and allowable costs necessary to accomplish the goals and objectives as outlined in the project narrative.

*2. Review and Selection*

Each application will be prescreened by the DGM staff for eligibility and completeness as outlined in the funding announcement. The applications that meet the minimum criteria will be reviewed for merit by the ORC based on the evaluation criteria. The ORC is composed of both Tribal and Federal reviewers appointed by the IHS to review and make recommendations on these applications. The technical review process ensures selection of quality projects in a national competition for limited funding. The reviewers will use the criteria outlined in this announcement to evaluate the quality of a proposed project, determine the likelihood of success, and assign a numerical score to each application. The scoring of approved applications will assist the IHS in determining which proposals will be funded if the amount of TSGP funding is not sufficient to support all approved applications. Incomplete applications and applications that are non-responsive to the eligibility criteria will not be referred to the ORC. Applicants will be notified by DGM, via email or letter, to outline minor missing components (i.e., signature on the SF–424, audit documentation, key contact form) needed for an otherwise complete application. All missing documents must be sent to DGM on or before the

due date listed in the email of notification of missing documents required.

To obtain a minimum score for funding by the ORC, applicants must address all program requirements and provide all required documentation. Applicants that receive less than a minimum score will be considered to be ''Disapproved'' and will be informed via email or regular mail by the IHS OTSG Program Official of their application's deficiencies. A summary statement outlining the strengths and weaknesses of the application will be provided to each disapproved applicant. The summary statement will be sent to the Authorized Organizational Representative that is identified on the face page (SF–424), of the application within 60 days of the completion of the Objective Review.

## VI. Award Administration Information

### *1. Award Notices*

The Notice of Award (NoA) is a legally binding document signed by the Grants Management Officer and serves as the official notification of the grant award. The NoA will be initiated by the DGM and will be mailed via postal mail or emailed to each entity that is approved for funding under this announcement. The NoA is the authorizing document for which funds are dispersed to the approved entities and reflects the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the award, the effective date of the award, and the budget/project period.

Disapproved Applicants

Applicants who: (1) Received a score less than 60 points, the recommended approval level; and (2) were deemed to be disapproved by the ORC, will receive an Executive Summary Statement outlining the strengths and weaknesses of the application that was submitted from the IHS OTSG Program Official within 30 days of the conclusion of the ORC. The IHS OTSG Program Official will also provide additional contact information to address questions and concerns as well as provide technical assistance if desired.

Approved but Unfunded Applicants

Approved but unfunded applicants that met the minimum scoring range and were deemed by the ORC to be ''Approved'', but were not funded due to lack of funding, will have their applications held by DGM for a period of one year from the date of the official ORC. If additional funding becomes available during the course of FY 2012, then the approved application may be re-considered by the awarding program office for possible funding. The applicant will also receive an Executive Summary Statement from the IHS OTSG Program Official within 30 days of the conclusion of the ORC.

**Note:** Any correspondence other than the official NoA signed by an IHS Grants Management Official announcing to the Project Director that an award has been made to their organization is not an authorization to implement their program on behalf of IHS.

### *2. Administrative Requirements*

Cooperative Agreements are administered in accordance with the following regulations, policies, and OMB cost principles:

A. The criteria as outlined in this Program Announcement.

B. Administrative Regulations for Grants:

- 45 CFR part 92, Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local and Tribal Governments.

C. Grants Policy:

- HHS Grants Policy Statement, Revised 01/07.

D. Cost Principles:

- Title 2: Grant and Agreements, Part 225—Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A–87).

E. Audit Requirements:

- OMB Circular A–133, Audits of States, Local Governments, and Non-profit Organizations.

### *3. Indirect Costs*

This section applies to all grant recipients that request reimbursement of IDC in their grant application. In accordance with HHS Grants Policy Statement, Part II–27, IHS requires applicants to obtain a current IDC rate agreement prior to award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate covers the applicable grant activities under the current award's budget period. If the current rate is not on file with the DGM at the time of award, the IDC portion of the budget will be restricted. The restrictions remain in place until the current rate is provided to the DGM.

Generally, IDC rates for IHS grantees are negotiated with the Division of Cost Allocation *http://rates.psc.gov/* and the Department of Interior (National Business Center) *http://www.aqd.nbc.gov/services/ICS.aspx.* If your organization has questions regarding the IDC, please call the DGM at (301) 443–5204 to request assistance.

### *4. Reporting Requirements*

Grantees must submit required reports consistent with the applicable deadlines. Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: (1) The imposition of special award provisions; and (2) the non-funding or non-award of other eligible projects or activities. This requirement applies whether the delinquency is attributable to the failure of the grantee organization or the individual responsible for preparation of the reports.

The reporting requirements for this program are noted below.

A. Progress Reports

Program progress reports are required semi annually, within 30 days after the budget period ends. These reports must include a brief comparison of actual accomplishments to the goals established for the period, or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required. A final report must be submitted within 90 days of expiration of the budget/project period.

B. Financial Reports

Federal Financial Report FFR (SF–425), Cash Transaction Reports are due 30 days after the close of every calendar quarter to the Division of Payment Management, HHS at: *http://www.dpm.psc.gov.* It is recommended that you also send a copy of your FFR (SF–425) report to your Grants Management Specialist (see Section VII.,2., of this announcement). Failure to submit timely reports may cause a disruption in timely payments to your organization.

Grantees are responsible and accountable for accurate information being reported on all required reports: the Progress Reports and Federal Financial Report.

C. Federal Subaward Reporting System (FSRS)

This award may be subject to the ''Transparency Act'' subaward and executive compensation reporting requirements of 2 CFR part 170.

The ''Transparency Act'' requires: (1) The OMB to establish a single searchable database, accessible to the public, with information on financial

assistance awards made by Federal agencies; and (2) recipients of Federal grants to report information about first-tier subawards and executive compensation under Federal assistance awards.

Effective October 1, 2010, IHS implemented a Term of Award into all IHS Standard Terms and Conditions, NoAs and funding announcements regarding this requirement. This IHS Term of Award is applicable to all IHS grant and cooperative agreements issued on or after October 1, 2010, with a $25,000 subaward obligation dollar threshold met for any specific reporting period. Additionally, all new (discretionary) IHS awards (where the project period is made up of more than one budget period) and where: 1) the project period start date was October 1, 2010 or after and 2) the primary awardee will have a $25,000 subaward obligation dollar threshold during any specific reporting period will be required to conduct address the FSRS reporting. For the full IHS award term implementing this requirement and additional award applicability information, visit the Grants Management Grants Policy Web site at: *http://www.ihs.gov/NonMedicalPrograms/gogp/index.cfm?module=gogp_policy_topics.*

Telecommunication for the hearing impaired is available at: TTY (301) 443–6394.

**VII. Agency Contacts**

1. Questions on the programmatic issues may be directed to: Anna Johnson, Program Official, Office of Tribal Self-Governance, 801 Thompson Avenue, Suite 240, Rockville, MD 20852, Phone: (301) 443–7821, Fax: (301) 443–1050, Email: *anna.johnson2@ihs.gov.*

2. Questions on grants management and fiscal matters may be directed to: John Hoffman, Grants Management Specialist, Division of Grants Management, 801 Thompson Avenue, TMP 360, Rockville, MD 20852, Phone: (301) 443–2116, Fax: (301) 443–9602, Email: *John.Hoffman@ihs.gov.*

**VIII. Other Information**

The Public Health Service strongly encourages all cooperative agreement and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the HHS mission to protect and advance the physical and mental health of the American people.

Dated: August 1, 2012.

**Yvette Roubideaux,**

*Director, Indian Health Service.*

[FR Doc. 2012–19346 Filed 8–7–12; 8:45 am]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Indian Health Service

**[Funding Announcement Number HHS–2012–IHS–TSGN–0001]**

### Funding Opportunity: Tribal Self-Governance Program; Negotiation Cooperative Agreement

Catalog of Federal Domestic Assistance Number: 93.444.

*Announcement Type:* New—Limited Competition.

**Key Dates**

*Application Deadline Date:* September 9, 2012.

*Review Date:* September 12, 2012.

*Earliest Anticipated Start Date:* September 30, 2012.

*Signed Tribal Resolutions Due Date:* September 11, 2012.

**I. Funding Opportunity Description**

*Statutory Authority*

The Indian Health Service (IHS) Office of Tribal Self-Governance (OTSG) is accepting limited competition Negotiation Cooperative Agreement applications for the Tribal Self-Governance Program (TSGP). This program is authorized under Public Law (Pub. L.) 106–260, the Tribal Self-Governance Amendments of 2000; Title V of the Indian Self-Determination and Education Assistance Act (ISDEAA), Public Law 93–638, as amended; and the Snyder Act, Public Law 67–85 (25 U.S.C. 13). This program is described in the Catalog of Federal Domestic Assistance (CFDA) under 93.444.

**Background**

The TSGP is more than an IHS program; it is an expression of the government-to-government relationship between the United States and each Indian Tribe. Through the TSGP, Tribes negotiate with the IHS to assume IHS programs, services, functions, and activities (PSFAs), or portions thereof, to manage them to best fit the needs of their Tribal communities. Participation in the TSGP is one of three ways that Tribes can choose to obtain health care from the Federal Government for their members. Specifically, Tribes can choose to: (1) Receive health care services directly from the IHS, (2) contract with the IHS to administer individual programs and services the IHS would otherwise provide (referred to as Title I Self-Determination Contracting), and (3) compact with the IHS to assume control over health care programs the IHS would otherwise provide (referred to as Title V Self-Governance Compacting or the TSGP). These options are not exclusive; Tribes may choose to combine them based on their individual needs and circumstances. Participation in the TSGP affords Tribes the most flexibility to tailor health care services to the needs of their communities. The TSGP is and always has been a Tribally driven initiative, and strong Federal-Tribal partnerships have been critical to the program's success. The OTSG serves as the primary liaison and advocate for Tribes participating in the TSGP and was established to implement Tribal Self-Governance legislation and authorities within the IHS. The OTSG develops, directs, and implements Tribal Self-Governance policies and procedures; provides information and technical assistance to Self-Governance Tribes; and advises the IHS Director on Agency compliance with TSGP policies, regulations and guidelines. Each IHS Area has an Agency Lead Negotiator (ALN) that negotiates the Self-Governance instruments (Compacts and Funding Agreements) on behalf of the IHS Director. To begin the Self-Governance negotiations process, a Tribe should contact the ALN. The ALN will provide an overview of the TSGP negotiations process and will provide technical assistance as the Tribe prepares to participate in the TSGP.

**Purpose**

The purpose of this Negotiation Cooperative Agreement is to provide resources to Tribes to help defray the costs involved in and preparing for the TSGP negotiations process. Title V of the ISDEAA requires that a Tribe or Tribal Organization complete a planning phase to the satisfaction of the Tribe. Negotiations are a dynamic, evolving, and tribally driven process that requires careful planning and preparation by both parties, including the sharing of precise, up-to-date information. Because each Tribal situation is unique, a Tribe's successful transition into the TSGP requires focused discussions between the Federal and Tribal negotiation team about the Tribe's specific health care concerns and plans. The design of the negotiation process: (1) Enables a Tribe

to set its own priorities when assuming responsibility for IHS PSFAs, (2) observes the government-to-government relationship between the United States and each Tribe, and (3) involves the active participation of both Tribal and IHS representatives, including the IHS OTSG. The process for entering the TSGP has four major stages: planning, pre-negotiations, negotiations, and post-negotiations. During pre-negotiations, the Tribal and Federal negotiation teams review and discuss issues identified during the planning phase. A draft Compact, Funding Agreement, and funding table are developed, typically by the Tribe, and distributed to both the Tribal and Federal negotiation teams. These draft documents are used as the basis for pre and final negotiations. Pre-negotiations provide an opportunity for the Tribe and the IHS to identify and discuss issues directly related to the Tribe's Compact, Funding Agreement and Tribal shares. At final negotiations, Tribal and Federal negotiations teams come together to determine and agree upon the terms and provisions of the Tribes Compact and Funding Agreement. The Tribal negotiation team may include a Tribal leader from the governing body (or a designee), the Tribal Health Director, technical and program staff, legal counsel and other consultants. The Federal negotiation team is led by the ALN and generally includes an OTSG Program Analyst, a member of the Office of General Counsel, and may also include other IHS staff and subject matter experts as needed. The ALN is the only member of the Federal negotiation team with delegated authority to negotiate on behalf of the IHS Director. These negotiations provide the opportunity for both sides to work together in good faith to enhance each Self-Governance agreement. Negotiations are not an allocation process; they provide an opportunity to mutually review and discuss budget and program issues. As issues arise, both negotiation teams work through the issues to reach agreement on the final documents. After negotiations are complete, the Compact and Funding Agreement are signed by the authorizing Tribal official and submitted to the ALN, who then reviews the final package to ensure each document accurately reflects what was agreed to during negotiations. Once the ALN completes this review, the final package is submitted to the OTSG to be prepared for the IHS Director's signature. Once the Compact and Funding Agreement have been signed by both parties, they become legally binding and enforceable agreements and the negotiating Tribe becomes a ''Self-Governance Tribe,'' and a participant in the TSGP.

**Limited Competition Justification**

There is limited competition under this announcement because the authorizing legislation restricts eligibility to Tribes that meet specific criteria (refer to Section III.1. Eligiblity of this announcement). *See* 25 U.S.C. 458aaa–2(e); 42 CFR 137.24–25; *see also* 42 CFR137.10. The Tribes eligible to compete for the Negotiation Cooperative Agreements include: any Indian Tribe that has not previously received an Negotiation Cooperative Agreement; any Indian Tribe that has previously received a Negotiation Cooperative Agreement but chose not to enter the TSGP; and those Indian Tribes that have previously received a Negotiation Cooperative Agreement, entered the TSGP, and would like to negotiate the assumption of new and/or expanded programs. The receipt of a Negotiation Cooperative Agreement is not a prerequisite to enter the TSGP. A Tribe may use its own resources to develop and negotiate its Compact and Funding Agreement. Tribes that receive Negotiation Cooperative Agreements are not obligated to participate in Title V.

**II. Award Information**

*Type of Award*

Cooperative Agreement.

*Estimated Funds Available*

The total amount of funding identified for the current fiscal year (FY) 2012 is approximately $240,000. Individual award amounts shall not exceed $48,000. Competing awards issued under this announcement are subject to the availability of funds. In the absence of funding, the IHS is under no obligation to make awards that are selected for funding under this announcement.

*Anticipated Number of Awards*

Approximately five awards will be issued under this program announcement.

*Project Period*

The project period will be for 12 months and will run from September 30, 2012 to September 29, 2013.

*Cooperative Agreement*

In the Department of Health and Human Services (HHS), a cooperative agreement is administered under the same policies as a grant. The funding agency (IHS) is required to have substantial programmatic involvement in the project during the entire award segment. Below is a detailed description of the level of involvement required for both IHS and the grantee. The IHS will be responsible for activities listed under section A and the grantee will be responsible for activities listed under section B as stated:

*Substantial Involvement Description for Cooperative Agreement*

A. IHS Programmatic Involvement

(1) Provide descriptions of PSFAs and associated funding at all organizational levels (Service Unit, Area, and Headquarters), including funding formulas and methodologies related to determining Tribal shares.

(2) Meet with Tribe to provide program information and discuss methods currently used to manage and deliver health care.

(3) Identify and provide statutes, regulations, and policies that provide authority for administering IHS programs.

(4) Provide technical assistance on the IHS budget, Tribal shares, and other topics as needed.

B. Grantee Cooperative Agreement Award Activities

(1) Determine what PSFAs, or portions thereof, will be negotiated into the Tribe's Compact and Funding Agreement and preparing to discuss each PSFA in comparison to the current level of services provided so that an informed decision can be made on new program assumption.

(2) Identify Tribal funding shares associated with the PSFAs that will be included in the Funding Agreement.

(3) Develop the terms and conditions that will be set forth in both the Compact and Funding Agreement to submit to the ALN prior to negotiations.

**III. Eligibility Information**

*1. Eligibility*

To be eligible for this Limited Competition Negotiation Cooperative Agreement under this announcement, an applicant must:

A. Be an ''Indian Tribe'' as defined in 25 U.S.C. 450b(e); a ''Tribal Organization'' as defined in 25 U.S.C. 450b(*l*); or an ''Inter-Tribal Consortium'' as defined at 42 CFR 137.10. Entities must be eligible to receive IHS funds for the provision of health care services pursuant to the ISDEAA in order to be eligible for this award. Pursuant to the Consolidated Appropriations Act, 2012, Public Law 112–74, ''the Indian Health Service may not disburse funds for the provision of health care services pursuant to [the ISDEAA] to any Alaska Native village or Alaska Native village

corporation that is located within the area served by an Alaska Native regional health entity.''

B. Submit a Tribal resolution from the appropriate governing body of each Indian Tribe to be served under the ISDEAA compact and authorizing the submission of the Negotiation Cooperative Agreement application. Tribal consortia applying for a TSGP Negotiation Cooperative Agreement shall submit Tribal Council resolutions from each Tribe in the consortium. Tribal resolutions can be attached to the electronic online application.

Draft resolutions can be submitted with the application in lieu of an official signed resolution; however an official signed Tribal resolution must be received by the Division of Grants Management (DGM), prior to the Objective Review on September 6, 2012. Official signed resolutions can be mailed to the DGM, Attn: John Hoffman, 801 Thompson Avenue, TMP, Suite 360, Rockville, MD 20852. Please contact John Hoffman by telephone at (301) 443–5204 prior to September 6, 2012 regarding submission questions. If the DGM does not receive an official signed resolution by September 5, 2012, then the application will be considered incomplete and ineligible for review or further consideration.

C. Demonstrate, for three fiscal years, financial stability and financial management capability. Applicants are required to submit complete annual audit report for the three fiscal years prior to the year the applicant is applying for the Negotiation Cooperative Agreement. The Indian Tribe must provide evidence that for the three years prior to applying for the Negotiation Cooperative Agreement; the Tribe has had no uncorrected significant and material audit exceptions in the required annual audit of the Indian Tribe's Self-Determination contracts or Self-Governance Funding Agreements with any Federal agency. *See* 42 CFR137.21–23. Scanned electronic copies of the documents can be attached to the electronic online application. If the applicant determines that the audit reports are too lengthy, then the applicants may submit them separately via regular mail by the due date, August 30, 2012. Applicants sending audits via regular mail must submit two copies of the complete audits for the three previous fiscal years under separate cover directly to the DGM, Attn: John Hoffman, 801 Thompson Avenue, TMP Suite 360, Rockville, MD 20852. Applicants must reference the following information in their cover letter transmitting the required complete audits: (1) The Funding Opportunity Number: HHS–2012–IHS–TSGN–0001, (2) the grant tracking number assigned to their electronic submission from *http://www.Grants.gov,* and (3) the date submitted via *http://www.Grants.gov.* If the DGM does not receive this documentation by August 30, 2012, then the application will be considered incomplete and ineligible for review or further consideration.

Please note that meeting eligibility criteria for a Negotiation Cooperative Agreement does not mean that a Tribe or Tribal Organization will be eligible for participation in the IHS TSGP under Title V of the ISDEAA, 25 U.S.C. 458aaa–2; 42 CFR 137.15–23.

**Note:** Applicants submitting any of the above documentation after or aside from the online electronic application submission are required to ensure the information is received by the IHS. It is highly recommended that the documentation be sent by a delivery method that includes delivery confirmation and tracking.

(2). **Note:**

Please refer to Section IV.2 (Application and Submission Information/Subsection 2, Content and Form of Application Submission) for additional documents required to determine eligibility for this announcement.

*2. Cost Sharing or Matching*

The IHS does not require matching funds or cost sharing for grants or cooperative agreements.

*3. Other Requirements*

If application budgets exceed the highest dollar amount outlined under the ''Estimated Funds Available'' section within this funding announcement, the application will be considered ineligible and will not be reviewed for further consideration. The IHS will not return your application to you. You will be notified by email or certified mail by the DGM of this decision.

*Letters of Intent* will not be required under this funding opportunity announcement.

## IV. Application and Submission Information

*1. Obtaining Application Materials*

The application package and detailed instructions for this announcement can be found at *http://www.Grants.gov* or *http://www.ihs.gov/NonMedicalPrograms/gogp/index.cfm?module=gogp_funding*

Additional information regarding the TSGP may also be found on the OTSG Web site at *http://www.ihs.gov/selfgovernance.*

For questions regarding the electronic application process, please contact Paul Gettys, DGM Grant Systems Coordinator, by telephone at (301) 443–2114, or by email to *Paul.Gettys@ihs.gov.*

*2. Content and Form Application Submission*

The applicant must include the project narrative as an attachment to the application package. Mandatory documents for all applicants include:

- Table of contents.
- Abstract (one page) summarizing the project.
- Application forms:
  - SF–424, Application for Federal Assistance.
  - SF–424A, Budget Information—Non-Construction Programs.
  - SF–424B, Assurances—Non-Construction Programs.
- Budget Justification and Narrative (must be single spaced and not exceed 5 pages).
- Project Narrative (must not exceed 10 pages).
  - Background information on the Tribe
  - Proposed scope of work, objectives, and activities that provide a description of what will be accomplished, including a one-page Timeframe Chart.
- Tribal Resolution(s).
- 501(c)(3) Certificate (if applicable).
- Biographical sketches for all Key Personnel.
- Contractor/Consultant resumes or qualifications and scope of work.
- Disclosure of Lobbying Activities (SF–LLL).
- Certification Regarding Lobbying (GG–LobbyingForm).
- Copy of current Negotiated Indirect Cost rate (IDC) agreement (required) in order to receive IDC.
- Organizational Chart (optional).
- Documentation of three years of Office of Management and Budget (OMB) A–133 required Financial Audit (see Section III.1.C. of this announcement for more information).

*3. Public Policy Requirements*

All Federal-wide public policies apply to IHS grants with exception of the Discrimination policy.

*4. Requirements for Project and Budget Narratives*

A. *Project Narrative:* This narrative should be a separate Word document that is no longer than 10 pages and must: be single-spaced, be type written, have consecutively numbered pages, use black type not smaller than 12 characters per one inch, and be printed

on one side only of standard size 8½″ x 11″ paper.

Be sure to succinctly answer all questions listed under the evaluation criteria (refer to Section V.1, Evaluation criteria in this announcement) and place all responses and required information in the correct section (noted below), or they will not be considered or scored. These narratives will assist the Objective Review Committee (ORC) in becoming more familiar with the grantee's activities and accomplishments prior to this possible grant award. If the narrative exceeds the page limit, only the first 10 pages will be reviewed. The 10-page limit for the narrative does not include the work plan, standard forms, Tribal resolutions, table of contents, budget, budget justifications, narratives, and/or other appendix items.

There are three parts to the narrative: Part A—Program Information; Part B—Program Planning and Evaluation; and Part C—Program Report. See below for additional details about what must be included in the narrative.

Part A: Program Information (4-Page Limitation)

Section 1: Needs

Describe how the Tribe has determined it has the administrative infrastructure to support the assumption of PSFAs. Explain the previous planning activities the Tribe has completed and if the Tribe has determined the PSFAs it will assume.

Part B: Program Planning and Evaluation (4-page limitation)

Section 1: Program Plans

Describe fully and clearly the direction the Tribe plans to take in the TSGP, by proposing an improved approach to managing the health programs, including how the Tribe plans to demonstrate improved health and services to the community it serves. Include proposed timelines for negotiations.

Section 2: Program Evaluation

Describe fully and clearly the improvements that will be made by the Tribe to manage the health care system and identify the anticipated or expected benefits for the Tribe.

Part C: Program Report (2-Page Limitation)

Section 1: Describe major accomplishments over the last 24 months. Please identify and describe significant health related project activities associated with the delivery of quality health services. Provide a comparison of the actual accomplishments to the goals established for the project period, or if applicable, provide justification for the lack of progress.

Section 2: Describe major activities over the last 24 months.

Please identify and summarize recent major health related project activities of the work done during the project period. Describe significant program achievements associated with the delivery of quality health services, as described in the previous accomplishments section.

B. *Budget Narrative:* This narrative must describe the budget requested and match the scope of work described the project narrative. The budget narrative should not exceed 5 pages.

*5. Submission Dates and Times*

Applications must be submitted electronically through Grants.gov by 12:00 a.m., midnight Eastern Daylight Time (EDT) on August 30, 2012. Any application received after the application deadline will not be accepted for processing, nor will it be given further consideration for funding. You will be notified by the DGM via email or certified mail of this decision.

If technical challenges arise and assistance is required with the electronic application process, contact Grants.gov Customer Support by telephone at (800) 518–4726 or via email to *support@grants.gov.* Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays). If problems persist, contact Paul Gettys, DGM Grant Systems Coordinator by telephone at (301) 443–2114 or via email at *Paul.Gettys@ihs.gov.* Please be sure to contact Mr. Gettys at least ten days prior to the application deadline with your tracking number received from Grants.gov. In the event you are not able to obtain a tracking number, call the DGM as soon as possible.

If an applicant needs to submit a paper application instead of submitting electronically via Grants.gov, a waiver must be requested. Prior approval for a waiver must be requested and obtained from Tammy Bagley, Acting Director of DGM (see Section IV.8 of this announcement). The waiver must: 1) be documented in writing (emails are acceptable) to *GrantsPolicy@ihs.gov* with a copy to *Tammy.Bagley@ihs.gov, before* submitting a paper application; and 2) include a clear justification for the need to deviate from our standard electronic submission process. Once your waiver request has been approved by the Acting Director of DGM, you will receive a confirmation of approval and the mailing address to submit your paper application. A copy of the written approval from the Acting Director of DGM must be submitted along with the paper application that is submitted to the DGM. Paper applications that are submitted without a waiver from the Acting Director of DGM will not be reviewed or considered further for funding. You will be notified via email or certified mail of this decision by the Grants Management Officer of DGM. Paper applications must be received by the DGM no later than 5:00 p.m., EDT August 30, 2012. Late applications will not be accepted for processing or considered for funding.

*6. Intergovernmental Review*

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

*7. Funding Restrictions*

- Pre-award costs are not allowable.
- Each Negotiation Cooperative Agreement shall not exceed $48,000, including direct and indirect costs.
- Although only one Negotiation Cooperative Agreement will be awarded per applicant per grant cycle, a Tribe may also apply for a Planning Cooperative within the same grant cycle. Both applications will be reviewed separately for merit by the ORC based on evaluation criteria.

*8. Electronic Submission Requirements*

All applications must be submitted electronically. Please use the ''Find Grant Opportunities'' link on the *http://www.Grants.gov* homepage to search for the application package by either entering: (1) the CFDA number (93.444), or (2) the Funding Opportunity Number (HHS–2012–IHS–TSGN–0001). Download a copy of the application package, complete it offline, and then upload and submit the completed application via the *http://www.Grants.gov* Web site. Electronic copies of the application may not be submitted as attachments to email messages addressed to IHS employees or offices.

Applicants that receive a waiver to submit paper application documents must follow the rules and timelines that are noted below. The applicant must seek assistance at least ten days prior to the application deadline.

Applicants that do not adhere to the timelines for Central Contractor Registry (CCR) and/or *http://www.Grants.gov* registration or that fail to request timely assistance with technical issues will not be considered for a waiver to submit a paper application.

Please be aware of the following:

• Please search for the application package in *http://www.Grants.gov* by entering the CFDA number or the Funding Opportunity Number. Both numbers are located in the header of this announcement.

• If you experience technical challenges while submitting your application electronically, please contact Grants.gov Support directly at: support@*grants.gov* or (800) 518–4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays).

• Upon contacting Grants.gov, obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and a waiver from the agency must be obtained.

• If it is determined that a waiver is needed, you must submit a request in writing (emails are acceptable) to *GrantsPolicy@ihs.gov* with a copy to *Tammy.Bagley@ihs.gov.* Please include a clear justification for the need to deviate from our standard electronic submission process.

• If the waiver is approved, the application should be sent directly to the DGM by the deadline date of August 30, 2012.

• Applicants are strongly encouraged not to wait until the deadline date to begin the application process through Grants.gov as the registration process for CCR and Grants.gov could take up to fifteen working days.

• Please use the optional attachment feature in Grants.gov to attach additional documentation that may be requested by the DGM or this announcement.

• All applicants must comply with any page limitation requirements described in this Funding Announcement.

• After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The DGM will download your application from Grants.gov and provide necessary copies to the appropriate Program officials. Neither the DGM nor the OTSG will notify applicants that the application has been received.

• Email applications will not be accepted under this announcement.

Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS)

All IHS applicants and grantee organizations are required to obtain a DUNS number and maintain an active registration in the CCR database. The DUNS number is a unique 9-digit identification number provided by D&B which uniquely identifies your entity. The DUNS number is site specific; therefore, each distinct performance site may be assigned a DUNS number. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, you may access it through *http://fedgov.dnb.com/webform*, or to expedite the process, call (866) 705–5711.

Effective October 1, 2010, all HHS recipients were asked to start reporting information on subawards, as required by the Federal Funding Accountability and Transparency Act of 2006, as amended (''Transparency Act''). Accordingly, all IHS grantees must notify potential first-tier subrecipients that no entity may receive a first-tier subaward unless the entity has provided its DUNS number to the prime grantee organization. This requirement ensures the use of a universal identifier to enhance the quality of information available to the public pursuant to the ''Transparency Act.''

Central Contractor Registry (CCR)

Organizations that have not registered with CCR will need to obtain a DUNS number first and then access the CCR online registration through the CCR home page at *https://www.bpn.gov/ccr/default.aspx* (U.S. organizations will also need to provide an Employer Identification Number from the Internal Revenue Service that may take an additional 2–5 weeks to become active). Completing and submitting the registration takes approximately one hour and your CCR registration will take 3–5 business days to process. Registration with the CCR is free of charge. Applicants may register online at *https://www.bpn.gov/ccrupdate/NewRegistration.aspx.*

Additional information on implementing the ''Transparency Act,'' including the specific requirements for DUNS and CCR, can be found on the IHS Grants Management, Grants Policy Web site: *http://www.ihs.gov/NonMedicalPrograms/gogp/index.cfm?module=gogp_policy_topics.*

## V. Application Review Information

The instructions for preparing the application narrative also constitute the evaluation criteria for reviewing and scoring the application. Weights assigned to each section are noted in parentheses. The narrative section should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to understand the project fully. Points will be assigned to each evaluation criteria adding up to a total of 100 points. A minimum score of 60 points is required for funding. Points are assigned as follows:

*1. Criteria*

A. Introduction and Need for Assistance (25 Points)

Demonstrate the Tribe has conducted previous Self-Governance planning activities by clearly stating the results of what was learned during the planning process. Explain how the Tribe has determined it has the knowledge and experience to operate and manage the assumption of the PSFAs. Identify the need for assistance and how the Negotiation Cooperative Agreement would benefit the health activities the Tribe is preparing to assume.

B. Project Objective(s), Work Plan and Approach (30 Points)

State in measurable terms the objectives and appropriate activities to achieve each of the objectives for the project listed under Section II (Grantee Cooperative Agreement Award Activities) of this announcement. Thoroughly describe the Tribe's approach regarding the direction that the Tribe plans to take in the TSGP. Explain how the Tribe will demonstrate improve health services to the community it serves. Propose time lines for negotiations.

C. Program Evaluation (10 Points)

Define the criteria to be used to evaluate objectives associated with the project. Describe fully and clearly the methodology that will be used to determine if the needs for the objectives are being met and if the outcomes identified are being achieved.

D. Organizational Capabilities, Key Personnel and Qualifications (20 Points)

Describe the organizational structure of the Tribe and its ability to manage the proposed project. Include resumes or position descriptions of key staff showing requisite experience and expertise. If applicable, include resumes and scope of work for consultants that demonstrate experience and expertise relevant to the project.

E. Categorical Budget and Budget Justification (15 Points)

Submit a line-item budget with a narrative justification for all expenditures identifying reasonable and allowable costs necessary to accomplish the goals and objectives as outlined in the project narrative.

*2. Review and Selection*

Each application will be prescreened by the DGM staff for eligibility and completeness as outlined in the funding announcement. The applications that meet the minimum criteria will be reviewed for merit by the ORC based on the evaluation criteria. The ORC is composed of both Tribal and Federal reviewers appointed by the IHS to review and make recommendations on these applications. The technical review process ensures selection of quality projects in a national competition for limited funding. The reviewers will use the criteria outlined in this announcement to evaluate the quality of a proposed project, determine the likelihood of success, and assign a numerical score to each application. The scoring of approved applications will assist the IHS in determining which proposals will be funded if the amount of TSGN funding is not sufficient to support all approved applications. Incomplete applications and applications that are non-responsive to the eligibility criteria will not be referred to the ORC. Applicants will be notified by DGM, via email or letter, to outline minor missing components (i.e., signature on the SF–424, audit documentation, key contact form) needed for an otherwise complete application. All missing documents must be sent to DGM on or before the due date listed in the email of notification of missing documents required.

To obtain a minimum score for funding by the ORC, applicants must address all program requirements and provide all required documentation. Applicants that receive less than a minimum score will be considered to be ''Disapproved'' and will be informed via email or regular mail by the IHS OTSG Program Official of their application's deficiencies. A summary statement outlining the strengths and weaknesses of the application will be provided to each disapproved applicant. The summary statement will be sent to the Authorized Organizational Representative that is identified on the face page (SF–424), of the application within 60 days of the completion of the Objective Review.

## VI. Award Administration Information

*1. Award Notices*

The Notice of Award (NoA) is a legally binding document signed by the Grants Management Officer and serves as the official notification of the grant award. The NoA will be initiated by the DGM and will be mailed via postal mail or emailed to each entity that is approved for funding under this announcement. The NoA is the authorizing document for which funds are dispersed to the approved entities and reflects the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the award, the effective date of the award, and the budget/project period.

Disapproved Applicants

Applicants who: (1) Received a score less than 60 points, the recommended approval level; and (2) were deemed to be disapproved by the ORC, will receive an Executive Summary Statement outlining the strengths and weaknesses of the application that was submitted from the IHS OTSG Program Official within 30 days of the conclusion of the ORC. The IHS OTSG Program Official will also provide additional contact information to address questions and concerns as well as provide technical assistance if desired.

Approved but Unfunded Applicants

Approved but unfunded applicants that met the minimum scoring range and were deemed by the ORC to be ''Approved,'' but were not funded due to lack of funding, will have their applications held by DGM for a period of one year from the date of official ORC. If additional funding becomes available during the course of FY 2012, then the approved application may be reconsidered by the awarding program office for possible funding. The applicant will also receive an Executive Summary Statement from the IHS OTSG Program Official within 30 days of the conclusion of the ORC.

**Note:** Any correspondence other than the official NoA signed by an IHS Grants Management Official announcing to the Project Director that an award has been made to their organization is not an authorization to implement their program on behalf of IHS.

*2. Administrative Requirements*

Cooperative Agreements are administered in accordance with the following regulations, policies, and OMB cost principles:

A. The criteria as outlined in this Program Announcement.

B. Administrative Regulations for Grants:

- 45 CFR part 92, Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local and Tribal Governments.

C. Grants Policy:

- HHS Grants Policy Statement, Revised 01/07.

D. Cost Principles:

- Title 2: Grant and Agreements, Part 225—Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A–87).

E. Audit Requirements:

- OMB Circular A–133, Audits of States, Local Governments, and Non-profit Organizations.

*3. Indirect Costs*

This section applies to all grant recipients that request reimbursement of IDC in their grant application. In accordance with HHS Grants Policy Statement, Part II–27, IHS requires applicants to obtain a current IDC rate agreement prior to award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate covers the applicable grant activities under the current award's budget period. If the current rate is not on file with the DGM at the time of award, the IDC portion of the budget will be restricted. The restrictions remain in place until the current rate is provided to the DGM.

Generally, IDC rates for IHS grantees are negotiated with the Division of Cost Allocation *http://rates.psc.gov/* and the Department of Interior (National Business Center) *http://www.aqd.nbc.gov/services/ICS.aspx*. If your organization has questions regarding the IDC policy, please contact the DGM, by telephone at (301) 443–5204 to request assistance.

*4. Reporting Requirements*

Grantees must submit required reports consistent with the applicable deadlines. Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: (1) The imposition of special award provisions; and (2) the non-funding or non-award of other eligible projects or activities. This requirement applies whether the delinquency is attributable to the failure of the grantee organization or the individual responsible for preparation of the reports.

The reporting requirements for this program are noted below.

A. Progress Reports

Program progress reports are required semi annually, within 30 days after the budget period ends. These reports must include a brief comparison of actual accomplishments to the goals

established for the period, or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required. A final report must be submitted within 90 days of expiration of the budget/project period.

B. Financial Reports

Federal Financial Report FFR (SF–425), Cash Transaction Reports are due 30 days after the close of every calendar quarter to the Division of Payment Management, HHS at: *http://www.dpm.psc.gov*. It is recommended that you also send a copy of your FFR (SF–425) report to your Grants Management Specialist (see Section VII., 2., of this announcement). Failure to submit timely reports may cause a disruption in timely payments to your organization.

Grantees are responsible and accountable for accurate information being reported on all required reports: the Progress Reports and Federal Financial Report.

C. Federal Subaward Reporting System (FSRS)

This award may be subject to the ''Transparency Act'' subaward and executive compensation reporting requirements of 2 CFR Part 170.

The ''Transparency Act'' requires: (1) The OMB to establish a single searchable database, accessible to the public, with information on financial assistance awards made by Federal agencies; and (2) recipients of Federal grants to report information about first-tier subawards and executive compensation under Federal assistance awards.

Effective October 1, 2010, IHS implemented a Term of Award into all IHS Standard Terms and Conditions, NoAs and funding announcements regarding this requirement. This IHS Term of Award is applicable to all IHS grant and cooperative agreements issued on or after October 1, 2010, with a $25,000 subaward obligation dollar threshold met for any specific reporting period. Additionally, all new (discretionary) IHS awards (where the project period is made up of more than one budget period) and where: (1) the project period start date was October 1, 2010 or after and (2) the primary awardee will have a $25,000 subaward obligation dollar threshold during any specific reporting period will be required to conduct address the FSRS reporting. For the full IHS award term implementing this requirement and additional award applicability information, visit the Grants Management Grants Policy Web site at: *http://www.ihs.gov/NonMedicalPrograms/gogp/index.cfm?module=gogp_policy_topics.*

Telecommunication for the hearing impaired is available at: TTY (301) 443–6394.

**VII. Agency Contacts**

1. Questions on the programmatic issues may be directed to: Anna Johnson, Program Official, Office of Tribal Self-Governance, 801 Thompson Avenue, Suite 240, Phone: (301) 443–7821, Fax: (301) 443–1050, Email: *anna.johnson2@ihs.gov.*

2. Questions on grants management and fiscal matters may be directed to: John Hoffman, Grants Management Specialist, 801 Thompson Avenue, TMP 360, Rockville, MD 20852, Phone: (301) 443–2116, Fax: (301) 443–9602, Email: *John.Hoffman@ihs.gov.*

**VIII. Other Information**

The Public Health Service strongly encourages all cooperative agreement and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the HHS mission to protect and advance the physical and mental health of the American people.

Dated: August 1, 2012.

**Yvette Roubideaux,**

*Director, Indian Health Service.*

[FR Doc. 2012–19343 Filed 8–7–12; 8:45 am]

BILLING CODE P

## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

**[Docket No. DHS–2012–0018]**

### Privacy Act of 1974; Department of Homeland Security/U.S. Citizenship and Immigration Services—006 Fraud Detection and National Security Records, System of Records

**AGENCY:** Privacy Office, Department of Homeland Security.

**ACTION:** Notice of Privacy Act system of records.

**SUMMARY:** In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security proposes to update and reissue the Department of Homeland Security system of records notice currently titled,'' Department of Homeland Security/U.S. Citizenship and Immigration Services—006 Fraud Detection and National Security Data –System and renaming it Fraud Detection and National Security Records.'' This system of records assists the Department of Homeland Security/U.S. Citizenship and Immigration Services in performing its statutory missions including strengthening the integrity of the nation's legal immigration system by ensuring that immigration benefits are not granted to individuals that may pose a threat to national security and/or public safety. In addition, this system of records assists the Department of Homeland Security/U.S. Citizenship and Immigration Services' recording, tracking, and managing immigration inquiries, investigative referrals, law enforcement requests, and case determinations involving benefit fraud, criminal activity, public safety and national security concerns. This system of records is being updated to more clearly describe the functions of the Fraud Detection and National Security Directorate and clarify that the system of records contains both electronic and paper files.

**DATES:** Submit comments on or before September 7, 2012. This revised system will be effective September 7, 2012.

**ADDRESSES:** You may submit comments, identified by docket number DHS–2012–0018 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–343–4010.
- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

*Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** For general questions please contact: United States Citizenship and Immigration Services, Privacy Officer, Donald Hawkins (202–272–8000), 111 Massachusetts Avenue NW., Washington, DC 20529. For privacy issues please contact: Mary Ellen

Callahan (202–343–4010), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS)/U.S. Citizenship and Immigration Services (USCIS) proposes to update and reissue the DHS system of records currently titled, ''Department of Homeland Security/U.S. Citizenship and Immigration Services—006 Fraud Detection and National Security Data System System of Records'' (last published August 18, 2008, 73 FR 48231) and renaming it Fraud Detection and National Security Records. This system of records notice (SORN) is being updated to better describe the functions of the Fraud Detection and National Security Directorate (FDNS).

DHS through USCIS implements immigration law and policy through the processing and adjudication of applications and petitions submitted for citizenship, asylum, and other immigration benefits. Benefits may include adjustment of immigration status (granting lawful permanent residence), naturalization (granting United States citizenship), asylum and refugee status, and other immigrant and nonimmigrant benefits. USCIS supports the DHS statutory mandate of protecting the nation by identifying applicants who threaten national security or public safety and denying them immigration benefits that would allow them to legally enter or remain in the United States. In addition, USCIS enhances the integrity of the nation's legal immigration system by detecting and deterring immigration benefit fraud. In order to support this DHS statutory mandate, USCIS collects applicant, petitioner, and beneficiary information to adjudicate applications and petitions so that immigration benefits are only granted to eligible individuals in an accurate, efficient, and timely manner. This information is also used to determine if and when those benefits should be rescinded or revoked.

In 2004, USCIS established FDNS in response to a Congressional recommendation to establish an organization ''responsible for developing, implementing, directing, and overseeing the joint USCIS- U.S. Immigration and Customs Enforcement (ICE) anti-fraud initiative and conducting law enforcement/ background checks on every applicant, beneficiary, and petitioner prior to granting immigration benefits.'' FDNS fulfills the USCIS mission of enhancing both national security and the integrity of the legal immigration system by: (1) Identifying threats to national security and public safety posed by those seeking immigration benefits; (2) detecting, pursuing, and deterring immigration benefit fraud; (3) identifying and removing systemic vulnerabilities in the process of the legal immigration system; and (4) acting as USCIS's primary conduit for information sharing and collaboration with other governmental agencies. FDNS also oversees a strategy to promote a balanced operation that distinguishes USCIS's administrative authority, responsibility, and jurisdiction from ICE's criminal investigative authority.

FDNS serves as the primary liaison between USCIS and the law enforcement and intelligence communities. This effort includes establishing and developing relationships and collaborating with law enforcement, intelligence, and federal, state, and local agencies to ensure criminals, terrorists, and other individuals who pose a threat to national security and/or public safety are not able to exploit the immigration system to gain access to, or remain in, the United States. In addition, FDNS works with Immigration Services Officers (ISOs) on cases of suspected fraud and where the security vetting process has indicated possible national security or public safety-related concerns.

FDNS uses Fraud Detection and National Security Data System (FDNS–DS) to record, track, and manage the background check process related to immigration applications and petitions, as well as information related to beneficiary applications with suspected or confirmed fraud, criminal activity, public safety and/or national security concerns, and cases randomly selected for benefit fraud assessments. FDNS–DS maintains information on all individuals who have been reviewed for these concerns. In instances where no fraud, criminal activity, public safety and/or national security concerns were found, the information maintained will only be used to demonstrate that an assessment was conducted so additional resources do not have be used for a second review.

FDNS may share FDNS records with law enforcement and intelligence agencies in response to Requests for Information (RFIs) to support criminal and administrative investigations and background checks involving immigrant benefit fraud, criminal activity, and public safety and/or national security concerns. For example, information may be shared with the Department of State (DoS), Bureau of Consular Affairs to provide a comprehensive picture of a visa applicant's status, and to reduce the likelihood that an individual or group might fraudulently obtain an immigration benefit under the Immigration and Nationality Act (INA), as amended. Also, selected ICE representatives have access to certain FDNS records for purposes of criminal investigations. This system of records notice covers not only those records maintained in FDNS–DS, but also those maintained in other IT systems developed specifically for FDNS, such as a collaborative workspace, and paper files. The controls and rules associated with the data remain consistent across these different physical types of records.

Separately, DHS is publishing a Privacy Impact Assessment (PIA) on the functions of FDNS, which can be found at *www.dhs.gov/privacy.*

USCIS is republishing this SORN to provide public notice of the following: (1) The name of the system has been updated to FDNS Records to reflect that it covers not only records in FDNS–DS but also other information technology systems created specifically for FDNS and paper records; (2) location of the system has been updated to include not only FDNS–DS but the records maintained in collaborative workspaces and paper files; (3) categories of individuals has been updated to clarify that this system only covers those who are or have been the subject of an inquiry; (4) categories of records has been updated to clarify what information may be collected on Representatives and Preparers in the system when there are indicia of fraud or national security concerns connected with their appearance before USCIS; (5) authorities under which this system runs have been updated; (6) routine uses have been updated with minor changes to be consistent with other DHS systems of records; and (7) sources of records have been updated to include publicly available information on the Internet.

Previously, DHS issued a final rule published on August 31, 2009 at 6 CFR part 5, appendix C, paragraph 32 exempting this system from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). The updates to this SORN do not necessitate a republication of the exemptions. As noted in the final rule to the extent FDNS maintains a record received from a law enforcement system has been exempted in that source system under 5 U.S.C. 552a(j)(2), DHS will claim the same exemptions. This updated system

will be included in DHS's inventory of record systems.

## II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which the federal government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents (LPRs). As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, LPRs, and visitors. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency record keeping practices transparent, to notify individuals regarding the uses of their record, and to assist individuals to more easily find such files within the agency. Below is the description of the DHS/USCIS–006 FDNS SORN.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

### System of Records

### DHS/USCIS–006

#### SYSTEM NAME:

DHS/USCIS–006 Fraud Detection and National Security Records.

#### SECURITY CLASSIFICATION:

Unclassified.

#### SYSTEM LOCATION:

Records are maintained in the IT system FDNS–DS, other information technology systems developed to support FDNS, and paper files at the USCIS Headquarters in Washington, DC and field offices.

#### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include: (1) Individuals who are the subjects of administrative and/or criminal investigations; (2) individuals who have submitted potentially fraudulent petitions and applications for immigration benefits; (3) individuals whose petitions or applications have been randomly selected for assessment of the effectiveness of fraud detection programs; (4) individuals of concern based on possible national security reasons, public safety concerns, or criminal activity; (5) preparers, representatives, and petitioning organizations that may have submitted applications or petitions on behalf of individuals noted in the above four categories; (6) individuals who are associated with an application but are not actually applying for a benefit; and (7) individuals associated with cases that were investigated but determined not to pose any concern.

#### CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system include:

- Individual's name;
- Alias(es);
- Social Security Number (SSN);
- Alien Number (A–Number);
- Associated A–Numbers of close relatives and associates;
- Application Receipt Number;
- Address (home and business);
- Date of birth;
- Place of birth;
- Driver's License number;
- Country of citizenship;
- Citizenship status;
- Gender;
- Telephone number(s);
- Email address;
- Place of employment and employment history;
- Associated organizations (e.g., corporate information relating to employing entity if employment-based immigration benefits are being sought, and place of business or place of worship if such organization is sponsoring the applicant);
- Family lineage;
- Bank account information and/or financial transaction history;
- Marriage record;
- Civil or criminal history information;
- Information on social media Web sites and other information publicly available on the Internet;
- Education record;
- Information from commercial data providers in order to verify information provided on the application;
- Biometric identifiers (e.g., photographic facial image, fingerprints, signature, etc);
- Investigation or background check information generated by DHS/CBP TECS National Crime Information Center, other government agencies, and other data and analysis generated as part of the adjudication process;
- Other unique identifying numbers or characteristics such as passport number(s), visa number(s), account numbers, and other identifiers associated with travel; and
- Representative and Preparer information maintained in the G–28, Notice of Entry of Appearance as an Attorney or Accredited Representative
  - Name
  - Address
  - Phone number
  - Fax number
  - Email address
  - Bar number
  - State of bar membership
  - Date of filing
  - Associated client case information

**Note:** FDNS may gather additional data on Representatives or Preparers that are the subject or associated with a fraud, public safety, or national security concern based on applications submitted on behalf of individuals seeking an immigration benefit.

#### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Immigration and Nationality Act of 1952, as amended (INA), 8 U.S.C. 1101, *et seq.* provides the legal authority to collect information used for the adjudication of immigration benefits. In addition to other delegations, the Secretary of Homeland Security in Homeland Security Delegation No. 0150.1 paragraphs (H), (I), (J), (M), and (S) has delegated the following authorities to USCIS:

- Authority under section 103(a)(1) of the INA, 8 U.S.C. 1103(a)(1), to administer the immigration laws (as defined in section 101(a)(17) of the INA).
- Authority to investigate alleged civil and criminal violations of the immigration laws, including but not limited to alleged fraud with respect to applications or determinations within the Bureau of Citizenship and Immigration Services (BCIS) [predecessor to USCIS] and make recommendations for prosecutions or other appropriate action when deemed advisable.
- Authority to fingerprint and register aliens.
- Authority to maintain files and records systems as necessary.
- Authority to take and consider evidence.

In addition, the joint USCIS–ICE anti-fraud strategy was recommended by the *Conference Report, FY 2005 Appropriations Act.* The Appropriations

Act authorized USCIS to conduct law enforcement and background checks on every applicant, beneficiary, and petitioner prior to granting immigration benefits.

**PURPOSE(S):**

The purpose of this system is to support USCIS' efforts to strengthen the integrity of the nation's legal immigration system and to ensure that immigration benefits are not granted to individuals who may pose a threat to national security and/or public safety. In addition, FDNS is responsible for detecting, deterring, and combatting immigration benefit fraud.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (including United States Attorney Offices) or other federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee of DHS in his/her official capacity;

3. Any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or

4. The United States or any agency thereof.

B. To a congressional office from the record of an individual in response to a written inquiry from that congressional office made pursuant to a Privacy Act waiver from the individual to whom the record pertains.

C. To the National Archives and Records Administration or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. DHS has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) or harm to the individuals who rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To federal and foreign government intelligence or counterterrorism agencies when USCIS reasonably believes there to be a threat or potential threat to national or international security for which the information may be useful in countering the threat or potential threat, when DHS reasonably believes such use is to assist in anti-terrorism efforts.

I. To the Department of State in the processing of petitions or applications for benefits under the Immigration and Nationality Act, and all other immigration and nationality laws including treaties and reciprocal agreements.

J. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

None.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, digital media, and CD–ROM.

**RETRIEVABILITY:**

Records may be retrieved by utilizing multiple data points that include an individual's last name, A–Number, Application Receipt Number, Date of Birth, or other unique identifier.

**SAFEGUARDS:**

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions. FDNS–DS maintains a real-time auditing function of individuals who access the system.

**RETENTION AND DISPOSAL:**

FDNS records have a retention period of 15 years from the date of the last interaction between FDNS personnel and the individual after which time the record will be deleted from FDNS. The 15-year retention schedule provides FDNS with access to information that is critical to the investigation of suspected or confirmed fraud, criminal activity, egregious public safety, and/or national security concerns. Upon closure of a case, any information that is needed to make an adjudicative decision (such as a statement of findings report), whether there was or was not an indication of fraud, criminal activity, egregious public safety, and/or national security concerns, will be transferred to the A–File and maintained under the A–File

retention period of 100 years after the individual's date of birth.

**SYSTEM MANAGER AND ADDRESS:**

Associate Director of FDNS, United States Citizenship and Immigration Services, 111 Massachusetts Avenue NW., Washington, DC 20529.

**NOTIFICATION PROCEDURE:**

The Secretary of Homeland Security has exempted this system from the notification, access, amendment, and certain accounting procedures of the Privacy Act. These exemptions also apply to the extent that information in this system of records is recompiled or is created from information contained in other systems of records. As noted below, where a record received from a law enforcement system has been exempted in that source system under 5 U.S.C. 552a(j)(2), DHS will claim the same exemptions for those records that are claimed for the original primary systems of records from which they originated and claims any additional exemptions in accordance with this rule. Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to National Records Center, FOIA/PA Office P.O. Box 648010 Lee's Summit, MO 64064–8010. If an individual believes more than one component maintains Privacy Act records concerning him or her the individual may submit the request to the Chief Privacy Officer, Department of Homeland Security, 245 Murray Drive SW., Building 410, STOP–0655, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 6 CFR Part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Director, Disclosure and FOIA, *http://www.dhs.gov* or 1–866–431–0486. In addition you should provide:

- Provide an explanation of why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records.

If your request seeks records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without the above bulleted information DHS may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

**RECORD ACCESS PROCEDURES:**

See ''Notification procedure'' above.

**CONTESTING RECORD PROCEDURES:**

See ''Notification procedure'' above.

**RECORD SOURCE CATEGORIES:**

Parties who file USCIS applications supply the basic information contained in this system. Other information comes from petitions, law enforcement and intelligence agencies, public institutions, interviews of witnesses, public records, sworn statements, official reports, commercial data aggregators, publicly available information on the Internet, and from members of the general public.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2): 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f). Additionally, many of the functions in this system require retrieving records from law enforcement systems. Where a record received from another system has been exempted in that source system under 5 U.S.C. 552a(j)(2), DHS will claim the same exemptions for those records that are claimed for the original primary systems of records from which they originated and claims any additional exemptions in accordance with this rule.

Dated: July 31, 2012.

**Mary Ellen Callahan,**

*Chief Privacy Officer, Department of Homeland Security.*

[FR Doc. 2012–19337 Filed 8–7–12; 8:45 am]

BILLING CODE 9111–97–P

## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

**[Docket No. DHS–2012–0047]**

### Privacy Act of 1974; Department of Homeland Security U.S. Citizenship and Immigration Services (USCIS)—004—Systematic Alien Verification for Entitlements (SAVE) Program System of Records

**AGENCY:** Privacy Office, Department of Homeland Security.

**ACTION:** Notice of Privacy Act system of records.

**SUMMARY:** In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to update and reissue a current Department of Homeland Security system of records titled, ''Department of Homeland Security/United States Citizenship and Immigration Services—004—Systematic Alien Verification for Entitlements Program System of Records.'' The United States Citizenship and Immigration Services, Systematic Alien Verification for Entitlements (SAVE) program is a fee-based intergovernmental initiative designed to help federal, state, tribal, and local government agencies check immigration status for granting benefits, licenses, and other lawful purposes. The Department of Homeland Security is updating this Privacy Act System of Records for the SAVE program to provide notice that SAVE is: (1) Adding the collection of the foreign passport country of issuance (COI) from the agencies that issue the benefits and from the United States Visitor and Immigrant Status Indicator Technology (US–VISIT) Arrival and Departure Information System (ADIS) to the ''Categories of Records;'' (2) moving the list of sources of records from ''Category of Records'' to ''Record Source Categories,'' removing two decommissioned systems and adding two new systems from ''Record Source Categories;'' (3) updating the system location information for the Verification Information System (VIS), the underlying technology supporting the SAVE program, from a contractor-owned facility in Meriden, CT to a government-owned facility in Stennis, MS; (4) incorporating minor changes to the ''Routine Uses'' to improve clarity; and (5) adding COI to ''Retrievability'' as a way in which DHS may retrieve records in this system of records. This updated system is included in the Department of Homeland Security's inventory of records systems.

**DATES:** Submit comments on or before September 7, 2012. This updated system will be effective September 7, 2012.

**ADDRESSES:** You may submit comments, identified by docket number DHS–2012–0047 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–343–4010.
- *Mail:* Jonathan R. Cantor, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

*Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** For general questions please contact: Brian C. Hobbs, 202–443–0114, Privacy Branch Chief, Verification Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 131 M Street NE., Suite 200, MS 2600, Washington, DC 20529. For privacy issues please contact: Jonathan R. Cantor (202–343–1717), Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) proposes to update and re-issue the current DHS system of records titled, ''DHS/U.S. Citizenship and Immigration Services—DHS/USCIS–004, Systematic Alien Verification for Entitlement (SAVE) Program System of Records.'' The USCIS SAVE program is a fee-based intergovernmental initiative designed to help federal, state, tribal, and local government agencies check immigration status for granting benefits, licenses, and other lawful purposes.

DHS is updating this Privacy Act System of Records Notice for the SAVE Program to provide notice that SAVE is: (1) Adding the collection of the foreign passport country of issuance (COI) from the agencies that issue benefits and from the United States Visitor and Immigrant Status Indicator Technology (US–VISIT) Arrival and Departure Information System (ADIS) to the ''Categories of Records;'' (2) moving the list of sources of records from ''Category of Records'' to ''Record Source Categories,'' removing two decommissioned systems and adding two new systems to ''Record Source Categories;'' (3) updating the system location information for the Verification Information System (VIS), the underlying technology supporting the SAVE program, from a contractor-owned facility in Meriden, CT to a government-owned facility in Stennis, MS; (4) incorporating minor changes to the ''Routine Uses'' to improve clarity; and (5) adding COI to ''Retrievability'' as a way in which DHS may retrieve records in this system of records.

As described in more detail in the DHS/USCIS/PIA–006(a), SAVE currently uses the I–94 number, which is generally issued to aliens at the time they lawfully enter the United States, as a primary identifier to determine immigration status for non-immigrants. U.S. Customs and Border Protection (CBP) is in the process of automating the I–94 system to increase efficiency and streamline the admission process for travelers to the United States. However, since SAVE depends on the integrity of the I–94 number and the CBP's automation efforts are still underway, USCIS is updating its process for SAVE by using a foreign passport number and COI as a primary identifier. A stand-alone passport number does not result in a unique primary identifier because multiple countries could issue the same passport number. Benefit granting agencies will enter the foreign passport number and COI. SAVE will verify this data against ADIS.

In order to provide greater clarity in this SORN, USCIS has removed the sources of records that were described in the ''Category of Records'' and moved them to ''Source Record Categories''. In addition to moving the list of source records, DHS has removed two sources, ISRS and RNACS, and added two new sources of records: (1) Customer Profile Management System (CPMS) for biometric information on individuals issued a Permanent Resident Card (Form I–551) or Employment Authorization Document (Form I–766), and (2) eCISCOR to manually verify the immigration status of benefit applicants.

USCIS is also providing public notice of the relocation of the VIS system. In alignment with OMB's Federal Data Center Consolidation Initiative, the DHS Office of the Chief Information Officer is consolidating 43 of the Department's legacy data centers into two Enterprise Data Centers (EDCs), known as Data Center (DC)1 and DC2. The consolidation of numerous Component systems at our EDCs enables more effective collection and use of business information across the enterprise. VIS was originally stored in a contractor owned facility in Meriden, CT. Since the publication of the original SORN, the system has moved to the DHS-owned facility, DC1.

DHS is updating the routine uses to add additional clarity concerning the uses of data. These updates do not create any new sharing uses of data. The routine uses are being updated to add general language ensuring that ''[a]ny disclosure of information must be made consistent with the official duties of the person making the disclosure.'' Routine uses A, B, and D are being reworded to provide greater clarity and make non-substantive grammatical changes. Routine use C is being updated to change ''other federal government agencies'' to ''General Services Administration'' to better reflect the statutory authorities and the fact that records will be shared with the National Archives and Records Administration (NARA) where NARA maintains the records as permanent records.

DHS is updating ''Retreivability'' to include COI as a way in which DHS may retrieve records in this system of records.

## II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which the federal government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors.

Below is the description of the DHS/U.S. Citizenship and Immigration Services (USCIS)—004, Systematic Alien Verification for Entitlements, System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

**System of Records**

Department of Homeland Security (DHS)/U.S. Citizenship and Immigration Services (USCIS)—004.

**SYSTEM NAME:**

Department of Homeland Security (DHS)/U.S. Citizenship and Immigration Services (USCIS), Systematic Alien Verification for Entitlements (SAVE).

**SECURITY CLASSIFICATION:**

Unclassified, For Official Use Only

**SYSTEM LOCATION:**

Records are maintained at U.S. Citizenship and Immigration Services Headquarters in Washington, DC, in U.S. Citizenship and Immigration Services field offices, and at the DHS Stennis Data Center (DC1).

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Categories of individuals covered by this system include both U.S. citizens and non-U.S. citizens covered by provisions of the Immigration and Nationality Act of the United States, including individuals who have been lawfully admitted to the United States, individuals who have been granted or derived U.S. citizenship, and individuals who have applied for other immigration benefits pursuant to 8 U.S.C. 1103 *et seq.*

**CATEGORIES OF RECORDS IN THE SYSTEM:**

A. Information collected from the benefit applicant by the agency issuing the benefit to facilitate immigration status verification may include the following about the benefit applicant:

- Receipt number
- Alien Number (A–Number)
- Admission number (I–94 number)
- Name (last, first, middle, maiden)
- Date of birth
- Country of birth
- Customer agency case number
- Department of Homeland Security document type
- Department of Homeland Security document expiration date
- U. S. Immigration and Custom Enforcement's (ICE) Student and Exchange Visitor Identification System (SEVIS) ID
- Foreign passport number and Country of Issuance (COI)
- Visa number
- Social Security Number (in very limited circumstances using the Form G–845, Document Verification Request), and type of benefit(s) for which the applicant has applied (e.g., unemployment insurance, educational assistance, driver licensing, etc.).

B. System-generated responses as a result of the SAVE program verification process including case verification number and SAVE program response.

C. The individual information that may be verified through the SAVE program includes:

- Alien Number
- Name (last, first, middle)
- Date of birth
- Date entered into the United States (entry date)
- Country of birth
- Class of admission code
- File control office code
- Social Security Number
- I–94 number
- Provision of law code cited for employment authorization
- Alien's status change date
- Date admitted until, country of citizenship
- Port of entry
- Departure date
- Visa number
- Passport number and country of issuance (COI)
- Passport information
- Passport card number
- Document receipt number
- Form numbers (e.g., Form I–551 Lawful Permanent Resident Card or Form I–766 Employment Authorization Document)
- SEVIS Identification Number (SEVIS ID)
- Naturalization date
- Federal Bureau of Investigation Number (FIN)
- Beneficiary alien number
- Beneficiary date of birth
- Beneficiary country of birth
- Beneficiary Social Security number
- Beneficiary name (last, first, middle)
- Petitioner alien number
- Petitioner Social Security Number
- Petitioner naturalization certificate number
- Petitioner name (last, first)
- Petitioner tax number
- Information may also include spouse's name (last, first, middle), date of birth, country of birth, country of citizenship, class of admission, date of admission, Alien Number, receipt number, phone number, marriage date and place, and naturalization date and place
- Information may also include child's name(s) (last, first, middle), date of birth, country of birth, class of admission, Alien Number
- Employer information: Name, address, supervisor's name, and supervisor's phone number
- Case history: Alerts, case summary comments, case category, date of encounter, encounter information, custody actions and decisions, case actions and decisions, bonds, and photograph, asylum applicant receipt date, airline and flight number, country of residence, city where boarded, city where visa was issued, date visa issued, address while in the United States, nationality, decision memoranda, investigatory reports and materials compiled for the purpose of enforcing immigration laws, exhibits, transcripts, and other case-related papers concerning aliens, alleged aliens, or lawful permanent residents brought into the administrative adjudication process.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Authority for having a system for verification of immigration status is found in Immigration Reform and Control Act (IRCA), Public Law 99–603, 100 Stat. 3359 (1986); Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), Public Law 104–193, 110 Stat. 2105 (1996); Title IV, Subtitle A, of Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Public Law 104–208, 110 Stat. 3009 (1997); and the REAL ID Act of 2005, Public Law 109–13, 119 Stat. 231 (2005).

**PURPOSE(S):**

The purpose of the Systematic Alien Verification for Entitlements (SAVE) program is to provide a fee-based intergovernmental service, which assists federal, state, tribal, or local government agencies, or contractors acting on the agency's behalf, and licensing bureaus confirm immigration status information, to the extent that such disclosure is necessary to enable these agencies to make decisions related to: (1) Determining eligibility for a federal, state, or local public benefit; (2) issuing a license or grant; (3) issuing a government credential; (4) conducting a background investigation; or (5) any other lawful purpose.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the Department of Homeland Security as a routine use pursuant to 5 U.S.C. 552a(b)(3). Any disclosure of information must be made consistent with the official duties of the person making the disclosure. The routine uses are as follows:

A. To the Department of Justice (DOJ), including U.S. Attorney Offices, or other federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body,

when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;
2. Any employee of DHS in his/her official capacity;
3. Any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or
4. The U.S. or any agency thereof.

B. To a congressional office from the record of an individual in response to a written inquiry from that congressional office made pursuant to a Privacy Act waiver from the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;
2. DHS has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) or harm to the individual that rely upon the compromised information; and
3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To approved federal, state, and local government agencies for any legally mandated purpose in accordance with their authorizing statute or law and where an approved Memorandum of Agreement or Computer Matching Agreement (CMA) is in place between DHS and the entity.

I. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

None.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, digital media, and CD–ROM.

**RETRIEVABILITY:**

Records may be retrieved by name of applicant or other unique identifier to include: Verification Number, Alien Number, I–94 Number, Social Security Number, Passport Number and Country of Issuance (COI), Visa Number, SEVIS Identification, or by the submitting agency name.

**SAFEGUARDS:**

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

**RETENTION AND DISPOSAL:**

The retention and disposal schedule, N1–566–08–7, has been approved by the National Archives and Records Administration. Records collected in the process of enrolling in SAVE and in verifying citizenship or immigration status are stored and retained in SAVE for ten (10) years from the date of the completion of verification, unless the records are part of an ongoing investigation in which case they will be retained until completion of the investigation. This period is based on the statute of limitations for most types of misuse or fraud possible using SAVE (under 18 U.S.C. 3291, the statute of limitations for false statements or misuse regarding passports, citizenship, or naturalization documents).

**SYSTEM MANAGER AND ADDRESS:**

Chief, Verification Division, U.S. Citizenship and Immigration Services, 131 M Street NE., Suite 200, Mail Stop 200, Washington, DC 20529.

**NOTIFICATION PROCEDURE:**

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the USCIS's FOIA Officer, whose contact information can be found at *http://www.dhs.gov/foia* under ''contacts.'' If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, 245 Murray Drive SW., Building 410, STOP–0655, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records, your request must conform with the Privacy Act regulations set forth in 6 CFR Part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief

Freedom of Information Act Officer, *http://www.dhs.gov* or 1–866–431–0486. In addition you should:

• Explain why you believe the Department would have information on you;

• Identify which component(s) of the Department you believe may have the information about you;

• Specify when you believe the records would have been created; and

• Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records.

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without the above information the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

**RECORD ACCESS PROCEDURES:**

See ''Notification procedure'' above.

**CONTESTING RECORD PROCEDURES:**

See ''Notification procedure'' above.

**RECORD SOURCE CATEGORIES:**

Records are obtained from several sources to include:

(A) Agencies seeking to determine immigration status;

(B) Individuals seeking public licenses, benefits, or credentials;

• (C) Information collected from the Federal databases listed below: Arrival/Departure Information System (ADIS),

• Central Index System (CIS)

• Computer-Linked Application Information Management System 3 & 4 (CLAIMS 3 & CLAIMS 4)

• Customer Profile Management System (CPMS)

• Customs and Border Protection's (CBP) Nonimmigrant Information System and Border Crossing Information (NIIS and BCI)

• Enforcement Integrated Database (EID)

• Enforcement Alien Removal Module (EARM)

• Enterprise Citizenship and Immigration Services Centralized Operational Repository (eCISCOR)

• Enterprise Document Management System (EDMS)

• Marriage Fraud Amendment System (MFAS)

• Microfilm Digitization Application System (MiDAS)

• National File Tracking System (NFTS)

• Refugees, Asylum, and Parole System (RAPS)

• Student and Exchange Visitor Identification System (SEVIS)

• Immigration status (e.g., Lawful Permanent Resident) from the Department of Justice Executive Office of Immigration Review (EOIR), System and the Department of State the Consular Consolidated Database (DOS–CCD).

(D) Information created by the Systematic Alien Verification for Entitlements (SAVE) program.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

Dated: July 27, 2012.

**Mary Ellen Callahan,**

*Chief Privacy Officer, Department of Homeland Security.*

[FR Doc. 2012–19207 Filed 8–7–12; 8:45 am]

**BILLING CODE 9111–97–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

**[Docket No. DHS–2012–0048]**

### Privacy Act of 1974; Department of Homeland Security U.S. Citizenship and Immigration Services –011 E-Verify Program System of Records

**AGENCY:** Privacy Office, Department of Homeland Security.

**ACTION:** Notice of Privacy Act system of records.

**SUMMARY:** In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to update and reissue a current Department of Homeland Security system of records titled ''Department of Homeland Security/United States Citizenship and Immigration Services—011 E-Verify Program System of Records.'' The United States Citizenship and Immigration Services E-Verify Program allows employers to check citizenship status and verify employment eligibility of newly hired employees. The Department of Homeland Security is updating this Privacy Act System of Records Notice for the E-Verify Program in order to provide notice that E-Verify is: (1) Updating the ''Category of Individuals'' to remove USCIS employees and contractors, which are covered under the DHS/ALL–004 General Information Technology Access Account Records System SORN, and to remove individuals who have locked their Social Security Number (SSN) in E-Verify since this functionality is not available; (2) adding the collection of the foreign passport country of issuance (COI) from the employers using the recently updated Form I–9 and from the United States Visitor and Immigrant Status Indicator Technology (US–VISIT) Arrival and Departure Information System (ADIS) to the ''Categories of Records;'' (3) moving the list of sources of records from ''Category of Records'' to ''Record Source Categories,'' removing two decommissioned systems and adding two new systems to ''Record Source Categories;'' (4) removing the monitoring and compliance ''Category of Records'' because those are now covered by the Compliance Tracking and Management System (CTMS) SORN (74 FR 24022); (5) updating the system location information for the Verification Information System (VIS), the underlying technology supporting the E-Verify program, from a contractor-owned facility in Meriden, CT to a government-owned facility in Stennis, MS; (6) incorporating minor changes to the ''Routine Uses'' to improve clarity; and (7) adding COI to ''Retrievability'' as a way in which DHS may retrieve records in this system of records.

This updated system is included in the Department of Homeland Security's inventory of record systems.

**DATES:** Submit comments on or before September 7, 2012. This updated system will be effective September 7, 2012.

**ADDRESSES:** You may submit comments, identified by docket number DHS–2012–0048 by one of the following methods:

• *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Fax:* 202–343–4010.

• *Mail:* Jonathan R. Cantor, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

*Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** For general questions please contact: Brian C. Hobbs, (202–443–0114), Privacy Branch Chief, U.S. Citizenship and Immigration Services, Department of Homeland Security, 131 M Street NE., Suite 200 Mail Stop 2600, Washington, DC 20529. For privacy issues please contact: Jonathan R. Cantor (202–343–1717), Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to update and reissue the Department of Homeland Security system of records titled, ''Department of Homeland Security/U.S. Citizenship and Immigrations—011 E-Verify Program System of Records.'' The USCIS E-Verify Program allows employers to check citizenship status and verify employment eligibility of newly hired employees.

DHS is updating this Privacy Act System of Records Notice for the E-Verify Program in order to provide notice that E-Verify is: (1) Updating the ''Category of Individuals'' to remove USCIS employees and contractors, which are covered under the DHS/ALL–004 General Information Technology Access Account Records System SORN, and to remove individuals who have locked their SSN in E-Verify since this functionality is not currently available; (2) adding the collection of the foreign passport country of issuance (COI) from the employers using the recently updated I–9 Form and from the United States Visitor and Immigrant Status Indicator Technology (US–VISIT) Arrival and Departure Information System (ADIS) to the ''Categories of Records;'' (3) moving the list of sources of records from ''Category of Records'' to ''Record Source Categories,'' removing two decommissioned systems and adding two new systems to ''Record Source Categories;'' (4) removing the monitoring and compliance ''Category of Records'' because those are now covered by the Compliance Tracking and Management System (CTMS) SORN (74 FR 24022); (5) updating the system location information for the Verification Information System (VIS), the underlying technology supporting the E-Verify program, from a contractor-owned facility in Meriden, CT to a government-owned facility in Stennis, MS; (6) incorporating minor changes to the ''Routine Uses'' to improve clarity; and (7) adding COI to ''Retrievability'' as a way in which DHS may retrieve records in this system of records.

DHS is updating the ''Category of Individuals'' to remove USCIS employees and contractors. These individuals are covered under the DHS/ALL–004 General Information Technology Access Account Records System SORN. Additionally DHS is updating the ''Category of Individuals'' to remove individuals who have locked their SSN in E-Verify. Functionality that enables individuals to lock their SSNs is not available in E-Verify.

As described in more detail in the DHS/USCIS/PIA–030(d), E-Verify currently uses the I–94 number, which is generally issued to aliens at the time they lawfully enter the United States, as a primary identifier to determine employment eligibility for non-immigrants. U.S. Customs and Border Protection (CBP) is in the process of automating the I–94 system to increase efficiency and streamline the admission process for travelers to the United States. However, since E-Verify depends on the integrity of the I–94 number and the CBP's automation efforts are still underway, USCIS is updating it process for E-Verify by using a foreign passport number and COI as a primary identifier. A stand-alone passport number does not result in a unique primary identifier because multiple countries could issue the same passport number. Employers will enter the foreign passport number and COI. E-Verify will verify this data against ADIS.

In order to provide greater clarity in this SORN, USCIS has removed the sources of records that were described in the ''Category of Records'' and moved them to ''Source Record Categories.'' In addition to moving the list of source records, DHS has removed two sources, ISRS and RNACS, and added one new source of records, Customer Profile Management System (CPMS) for biometric information on individuals issued a Permanent Resident Card (Form I–551).

DHS removed the monitoring and compliance ''Category of Records'' because those are now covered by the Compliance Tracking and Management System (CTMS) SORN (74 FR 24022).

DHS is also providing public notice of the relocation of the VIS system. In alignment with OMB's Federal Data Center Consolidation Initiative, the DHS Office of the Chief Information Officer is consolidating 43 of the Department's legacy data centers into two Enterprise Data Centers (EDCs), known as Data Center (DC) 1 and DC2. The consolidation of numerous Component systems at our EDCs enables more effective collection and use of business information across the enterprise. VIS was originally stored in a contractor owned facility in Meriden, CT. Since the publication of the original SORN, the system has moved to the DHS-owned facility, DC1.

DHS is updating the routine uses to add additional clarity concerning the uses of data. These updates do not create any new sharing uses of data. The routine uses are being updated to add general language ensuring that ''[a]ny disclosure of information must be made consistent with the official duties of the person making the disclosure.'' Routine uses A, B, and D are being reworded to provide greater clarity and make non-substantive grammatical changes. Routine use C is being updated to change ''other federal government agencies'' to ''General Services Administration'' to better reflect the statutory authorities and the fact that records will be shared with the National Archives and Records Administration (NARA) where NARA maintains the records as permanent records.

DHS is updating ''Retreivability'' to include COI as a way in which DHS may retrieve records in this system of records.

## II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which the federal government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, the Department of Homeland Security extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors.

Below is the description of the DHS/U.S. Citizenship and Immigration Services—011, E-Verify Program System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

### System of Records

Department of Homeland Security (DHS)/U.S. Citizenship and Immigration Services (USCIS)—011

**SYSTEM NAME:**

DHS/U.S. Citizenship and Immigration Services—011—E-Verify Program

**SECURITY CLASSIFICATION:**

Unclassified, for official use only.

**SYSTEM LOCATION:**

Records are maintained at the U.S. Citizenship and Immigration Services

(USCIS) Headquarters in Washington, DC and field offices; and at the DHS Stennis Data Center (DC1).

**CATEGORIES OF UNDIVIDUALS COVERED BY THE SYSTEM:**

Categories of individuals covered by the E-Verify program include: employees, both U.S. Citizens and non–U.S. Citizens, whose employers have submitted to E-Verify their identification information; employers who enroll in E-Verify; designated agents who enroll in E-Verify; individuals employed or retained by employers or designated agents who have accounts to use E-Verify; individuals who contact E-Verify with information on the use of E-Verify; and individuals who provide their names and contact information to E-Verify for notification or contact purposes.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

A. Information about the employee to be verified:

- Name (last, first, middle initial, maiden)
- Date of Birth
- Social Security Number
- Date of Hire
- Information related to the expiration of the three day hire
- Awaiting SSN
  - Technical Problems
  - Audit Revealed New Hire Was Not Run
  - Federal Contractor With E-Verify Clause Verifying Existing Employees
  - Other
- Claimed Citizenship Status
- Acceptable Form I–9 document type
- Expiration Date of Acceptable Form I–9 Document
- State or jurisdiction of issuance of identity document when that document is a driver's license, driver's permit, or state-issued identification (ID) card
- Passport Number and Country of Issuance
- Driver's license number, driver's permit number, or state-issued ID number if issued by a state or jurisdiction participating in the Records and Information from Departments of Motor Vehicles for E-Verify (RIDE) program and where an Memorandum of Agreement (MOA) exists between the state or jurisdiction and DHS USCIS to verify the information about the document
- Receipt Number
- Visa Number
- A-Number
- I–94 Number
- Employment Authorization Document (Form I–766) Number
- Permanent Residence Card (Form I–551) Number Photographs, if required by secondary verification

B. Disposition data from the employer. The following codes are entered by the employer based on what the employer does as a result of the employment verification information:

- The employee continues to work for the employer after receiving and Employment Authorized result: Employer selects this option based on receiving an Employment Authorized response from E-Verify;
- The employee continues to work for the employer after receiving a Final Non-confirmation (FNC) result: Employer selects this option based on the employee getting an FNC despite the employee contesting the Tentative Non-confirmation (TNC) and the employer retains the employee;
- The employee continues to work for the employer after receiving a No Show result: Employer selects this option based on the employee getting a TNC but the employee did not try to resolve the issue with SSA or DHS and the employer retains the employee;
- The employee continues to work for the employer after choosing not to contest a TNC: Employer selects this option when the employee does not contest the TNC but the employer retains the employee;
- The employee was terminated by the employer for receiving a FNC result: Employer selects this option when employee receives FNC and is terminated;
- The employee was terminated by the employer for receiving a No Show result: Employer selects this option when employee did not take an action to resolve and is terminated;
- The employee was terminated by the employer for choosing not to contest a TNC: Employer selects this option when employee does not contest the TNC and is terminated;
- The employee voluntarily quit working for the employer: Employer selects this option when employee voluntarily quits job without regard to E-Verify;
- The employee was terminated by the employer for reasons other than E-Verify: Employer selects this option when employee is terminated for reasons other than E-Verify;
- The case is invalid because another case with the same data already exists: Employer selects this option when the employer ran an invalid query because the information had already been submitted;
- The case is invalid because the data entered is incorrect: Employer selects this option when the employer ran an invalid query because the information was incorrect.

C. Information about the Employer or Designated Agent:

- Company Name
- Street Address
- Employer Identification Number
- North American Industry Classification System (NAICS) Code
- Number of Employees
- Number of Sites
- Parent Company or Corporate Company
- Name of Company Point of Contact
- Phone Number
- Fax Number
- Email Address

D. Information about the Individual Employer User of E-Verify: (e.g., Human Resource employee conducting E-Verify queries):

- Last Name
- First Name
- Middle Initial
- Phone Number
- Fax Number
- Email Address
- User ID

E. Employment Eligibility Information created by E-Verify:

- Case Verification Number
- VIS Response
  - Employment Authorized
  - SSA TNC
  - DHS TNC
  - SSA Case in Continuance (In rare cases SSA needs more than 10 federal government workdays to confirm employment eligibility)
  - DHS Case in Continuance (In rare cases DHS needs more than 10 federal government workdays to confirm employment eligibility)
  - SSA FNC
  - DHS Verification in Process
  - DHS Employment Unauthorized
  - DHS No Show
  - DHS FNC

F. Information from state Motor Vehicle Agencies (MVAs) used to verify of the information from a driver's license, permit, or state issued ID card if the state has established a MOA with DHS USCIS to allow verification of this information. The categories of records from MVAs may include:

Last Name
- First Name
- State or Jurisdiction of Issuance
- Document Type
- Document Number
- Date of Birth
- Status Text
- Status Description Text
- Expiration Date

G. Information from federal databases used to verify employment eligibility may contain some or all of the following information about the individual being verified:

- Last Name

○ First Name
○ Middle Name
○ Maiden Name
○ Date of Birth
○ Age
○ Country of Birth
○ Country of Citizenship
○ Alien Number
○ Social Security Number
○ Citizenship Number
○ Receipt Number
○ Address
○ Previous Address
○ Phone Number
○ Nationality
○ Gender
○ Photograph
○ Date Entered United States
○ Class of Admission
○ File Control Office Code
○ Form I–94 Number
○ Provision of Law Cited for Employment Authorization
○ Office Code Where the Authorization Was Granted
○ Date Employment Authorization Decision Issued
○ Date Employment Authorization Begins
○ Date Employment Authorization Expires
○ Date Employment Authorization Denied
○ Confirmation of Employment Eligibility
○ TNC of Employment Eligibility and Justification
○ FNC of Employment Eligibility
○ Status of Department of Justice Executive Office Immigration Review System (EOIR) Information, if in Proceedings
○ Date Alien's Status Changed
○ Class of Admission Code
○ Date Admitted Until
○ Port of Entry
○ Departure Date
○ Visa Number
○ Passport Number
○ Passport Information including COI
○ Passport Card Number
○ Form Number, for example Form I–551 (Lawful Permanent Resident card) or Form I–766 (Employment Authorization Document);
○ Expiration Date
○ Employment Authorization Card Information
○ Lawful Permanent Resident Card Information
○ Petitioner Internal Revenue Service Number
○ Class of Admission
○ Valid To Date
○ Student Status
○ Visa Code
○ Status Code
○ Status Change Date
○ Port of Entry Code
○ Non-Citizen Entry Date
○ Program End Date
○ Naturalization Certificate Number
○ Naturalization Date and Place
○ Naturalization Information and Certificate
○ Naturalization Verification (Citizenship Certificate Identification ID)
○ Naturalization Verification (Citizenship Naturalization Date/Time)
○ Immigration Status (Immigration Status Code)
○ Federal Bureau of Investigation Number
○ Admission Number
○ Petitioner Firm Name
○ Petitioner Tax Number
○ Date of Admission
○ Marital Status
○ Marriage Date and Place
○ Marriage Information and Certificate
○ Visa Control Number
○ Visa Foil Number
○ Class of Admission
○ Federal Bureau of Investigation Number
○ Case History
○ Alerts
○ Case Summary Comments
○ Case Category
○ Date of Encounter
○ Encounter Information
○ Case Actions & Decisions
○ Bonds
○ Current Status
○ Asylum Applicant Receipt Date
○ Airline and Flight Number
○ Country of Residence
○ City Where Boarded
○ City Where Visa was Issued
○ Date Visa Issued
○ Address While in United States
○ File Number
○ File Location

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Authority for having a system for verification of employment eligibility is found in The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104–208 (1996).

**PURPOSE(S):**

This system provides employment authorization information to employers participating in E-Verify. It may also be used to support monitoring and compliance activities for obtaining information in order to prevent the commission of fraud, discrimination, or other misuse or abuse of the E-Verify system, including violation of privacy laws or other illegal activity related to misuse of E-Verify, including:

- Investigating duplicate registrations by employers;
- Inappropriate registration by individuals posing as employers;
- Verifications that are not performed within the required time limits; and
- Cases referred by and between E-Verify and the Department of Justice Office of Special Counsel for Immigration-Related Unfair Employment Practices, or other law enforcement entities.

Additionally, the information in E-Verify may be used for program management and analysis, program outreach, customer service and preventing or deterring further use of stolen identities in E-Verify.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the Department of Homeland Security as a routine use pursuant to 5 U.S.C. 552a(b)(3). Any disclosure of information must be made consistent with the official duties of the person making the disclosure. The routine uses are as follows:

A. To the Department of Justice (DOJ), including U.S. Attorney Offices, or other federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;
2. any employee of DHS in his/her official capacity;
3. any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or
4. the U.S. or any agency thereof.

B. To a congressional office from the record of an individual in response to a written inquiry from that congressional office made pursuant to a Privacy Act waiver from the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of

information in the system of records has been compromised;

2. DHS has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) or harm to the individual that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To employers participating in the E-Verify Program in order to verify the employment eligibility of their employees working in the United States.

I. To the American Association of Motor Vehicle Administrators Network and participating MVAs for the purpose of validating information for a driver's license, permit, or identification card issued by the Motor Vehicle Agency of states or jurisdictions who have signed a Memorandum of Agreement with DHS under the Records and Information from Departments of Motor Vehicles for E-Verify (RIDE) program.

J. To the DOJ, Civil Rights Division, for the purpose of responding to matters within the DOJ's jurisdiction of the E-Verify Program, especially with respect to discrimination.

K. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

None.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, digital media, and CD–ROM.

**RETRIEVABILITY:**

Records may be retrieved by name, verification case number, Alien Number, I–94 Number, Receipt Number, Passport (U.S. or Foreign) Number and Country of Issuance (COI), Driver's License, Permit, or State-Issued Identification Card Number, or SSN of the employee, employee user, or by the submitting company name.

**SAFEGUARDS:**

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

**RETENTION AND DISPOSAL:**

The retention and disposal schedule, N1–566–08–7 has been approved by the National Archives and Records Administration. Records collected in the process of enrolling in E-Verify and in verifying employment eligibility are stored and retained in E-Verify for ten (10) years, from the date of the completion of the last transaction unless the records are part of an on-going investigation in which case they may be retained until completion of the investigation. This period is based on the statute of limitations for most types of misuse or fraud possible using E-Verify (under 18 U.S.C. 3291, the statute of limitations for false statements or misuse regarding passports, citizenship, or naturalization documents).

**SYSTEM MANAGER AND ADDRESS:**

Chief, Verification Division, U.S. Citizenship and Immigration Services (USCIS), Washington, DC 20528.

**NOTIFICATION PROCEDURE:**

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the U.S. Citizenship and Immigration Services (USCIS), Freedom of Information Act (FOIA) Officer, whose contact information can be found at *http://www.dhs.gov/foia* under ''contacts.'' If an individual believes more than one component maintains Privacy Act records concerning him or her the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, 245 Murray Drive SW., Building 410, STOP–0655, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov* or 1–866–431–0486. In addition you should:

- Explain why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created;
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records; and

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without the above information the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

**RECORD ACCESS PROCEDURES:**

See ''Notification procedure'' above.

**CONTESTING RECORD PROCEDURES:**

See ''Notification procedure'' above.

**RECORD SOURCE CATEGORIES:**

Records are obtained from several sources including:

(A) Information collected from employers about their employees relating to employment eligibility verification;

(B) Information collected from E-Verify users used to provide account access and monitoring;

(C) Information collected from Federal and state databases listed below:

- Social Security Administration Numident System
- CBP Nonimmigrant Information System (NIIS) and Border Crossing Information (BCI)
- ICE Student and Exchange Visitor Identification System (SEVIS)
- ICE ENFORCE Integrated Database (EID) Enforcement Alien Removal Module (EARM) Alien Number
- USCIS Aliens Change of Address System (AR–11)
- USCIS Central Index System (CIS)
- USCIS Customer Profile Management System (CPMS)
- USCIS Computer-Linked Application Information Management System Version 3 (CLAIMS 3)
- USCIS Computer-Linked Application Information Management System Version 4 (CLAIMS 4)
- USCIS Citizenship and Immigration Services Centralized Operational Repository (CISCOR)
- USCIS National File Tracking System (NFTS)
- USCIS Microfilm Digitization Application System (MiDAS)
- USCIS Marriage Fraud Amendment System (MFAS)
- USCIS Enterprise Document Management System (EDMS)
- USCIS Refugees, Asylum, and Parole System (RAPS)
- US–VISIT Arrival Departure Information System (ADIS)
- Department of State Consular Consolidated Database (CCD)
- Department of Justice Executive Office Immigration Review System (EOIR) State Motor Vehicle Administrations, if participating in the E-Verify RIDE initiative.

(D) Information created by E-Verify.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

Dated: July 27, 2012.

**Mary Ellen Callahan,**

*Chief Privacy Officer, Department of Homeland Security.*

[FR Doc. 2012–19204 Filed 8–7–12; 8:45 am]

**BILLING CODE 9111–97–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[Docket No. USCG—2012—0763]**

### Merchant Marine Personnel Advisory Committee

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of Federal Advisory Committee Meeting.

**SUMMARY:** The Merchant Marine Personnel Advisory Committee (MERPAC) will meet in Washington, DC, to discuss various issues related to the training and fitness of merchant marine personnel. This meeting will be open to the public.

**DATES:** MERPAC working groups will meet on September 11, 2012, from 8 a.m. until 4 p.m., and the full committee will meet briefly on the morning of September 11 and on September 12, 2012, from 8 a.m. until 4 p.m. This meeting may adjourn early if all business is finished. Written comments to be distributed to committee members and placed on MERPAC's Web site are due August 31, 2012.

**ADDRESSES:** The Committee will meet in Room 2501 of the U.S. Coast Guard Headquarters Building, 2100 Second Street SW., Washington, DC 20593. Attendees will be required to provide a picture identification card and pass through a magnetometer in order to gain admittance to the U.S. Coast Guard Headquarters Building. Visitors should also arrive at least 30 minutes in advance of the meeting in case of long lines at the entrance.

For information on facilities or services for individuals with disabilities or to request special assistance, contact Mr. Rogers Henderson at 202–372–1408 as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the Committee and working groups as listed in the ''Agenda'' section below. Written comments must be identified by Docket No. USCG–2012–0763 and submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments (preferred method to avoid delays in processing).
- *Fax:* 202–372–1918.
- *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. The telephone number is 202–366–9329.

*Instructions:* All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov*, including any personal information provided. You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

*Docket:* For access to the docket to read documents or comments related to this notice, go to *http://www.regulations.gov*.

Any requests to make oral presentations should be made in advance using one of the methods highlighted above. This notice may be viewed in our online docket, USCG–2012–0763, at *http://www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Mr. Rogers Henderson, Alternate Designated Federal Officer (ADFO), telephone 202–372–1408. If you have any questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is given under the *Federal Advisory Committee Act,* 5 U.S.C. App. (Pub. L. 92–463).

MERPAC is an advisory committee established under the Secretary's authority in section 871 of the Homeland Security Act of 2002, Title 6, United States Code, section 451, and chartered under the provisions of the FACA. The Committee acts solely in an advisory capacity to the Secretary of the Department of Homeland Security (DHS) through the Commandant of the Coast Guard and the Director of Commercial Regulations and Standards on matters relating to personnel in the U.S. merchant marine, including but not limited to training, qualifications, certification, documentation, and fitness standards. The Committee will advise, consult with, and make

recommendations reflecting its independent judgment to the Secretary.

**Agenda of Meeting**

*Day 1*

The agenda for the September 11, 2012, work group meeting is as follows:

(1) The full committee will meet briefly to discuss the working groups' business/task statements, which are listed under paragraph 2 below.

(2) Working groups addressing the following task statements, available for viewing at *http://homeport.uscg.mil/merpac* will meet to deliberate:

(a) Task Statement 58, concerning Stakeholder Communications during Merchant Mariner Licensing and Documentation Program (MLD) Restructuring and Centralization;

(b) Task Statement 71 (amended), concerning Review of Examination Infrastructure—process, exam topics and questions in support of national endorsements and Standards of Training, Certification and Watchkeeping for Seafarers (STCW) endorsements;

(c) Task Statement 76, concerning Review of Performance Measures (Assessment Criteria) which can be used to assess mariner competencies listed in the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978 as amended;

(d) Task Statement 77, concerning Development of Performance Measures (Assessment Criteria) which can be used to assess mariner competencies listed in the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978 as amended; and

(e) Task Statement 79, concerning Recommended Practices for the Safe Operation of Dynamically Positioned Vessels in the Outer Continental Shelf.

(3) Working groups will report the status and address any immediate issues arising from the following task statements, which are available for viewing at *http://homeport.uscg.mil/merpac*, may meet to deliberate:

(a) Task Statement 30, concerning Utilizing Military Education, Training and Assessment for STCW (the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (1978), as amended) and U.S. Coast Guard Certifications;

(b) Task Statement 73, concerning Development of Training Guidance for Engineers Serving on Near-Coastal Vessels; and

(c) Task Statement 74, concerning Merchant Mariner Credential (MMC) Components: List all possible officer and rating endorsements, domestic and international, which should be included in the endorsement section of the MMC; and, list all possible limitations which might be included in the MMC endorsement section.

(4) Public comment period.

(5) Reports of working groups. At the end of the day, the working groups will make a report to the full committee on what was accomplished in their meetings. The full committee will not take action on these reports on this date. Any official action taken as a result of this working group meeting will be taken on day 2 of the meeting.

(6) Adjournment of meeting.

*Day 2*

The agenda for the September 12, 2012, Committee meeting is as follows:

(1) Introduction;

(2) Remarks from Coast Guard Leadership, Mr. Jeffrey Lantz, Director of Commercial Regulations and Standards;

(3) Introduction of the members;

(4) Roll call of committee members and determination of a quorum;

(5) Designated Federal Officer (DFO) announcements;

(6) Reports from the following working groups;

(a) Task Statement 58;

(b) Task Statement 71 (amended);

(c) Task Statement 76;

(d) Task Statement 77; and,

(e) Task Statement 79.

(7) Reports from the following working groups if they have anything new to report:

(a) Task Statement 30, concerning Utilizing Military Education, Training and Assessment for STCW and U.S. Coast Guard Certifications;

(b) Task Statement 73, concerning Development of Training Guidance for Engineers Serving on Near-Coastal Vessels; and

(c) Task Statement 74, concerning Merchant Mariner Credential (MMC) Components.

(8) Other items that will be discussed:

(a) Implementation of the 2010 amendments to the STCW Convention—questions and challenges;

(b) Report on National Maritime Center (NMC) activities;

(c) Report on Mariner Credentialing Program Policy Division activities;

(d) Report on International Maritime Organization (IMO)/International Labor Organization (ILO) related activities; and

(e) Briefings concerning on-going Coast Guard projects related to personnel in the U.S. Merchant Marine.

(f) New task statement—Competency requirements for personnel working on Liquefied Natural Gas (LNG)-fueled vessels.

(9) Public comment period/presentations.

(10) Discussion of working group recommendations. The committee will review the information presented on each issue, deliberate on any recommendations presented by the working groups and approve/formulate recommendations for the Department's consideration. Official action on these recommendations may be taken on this date.

(11) Closing remarks/plans for next meeting.

(12) Adjournment of meeting.

**Procedural**

A copy of all meeting documentation is available at the FACA database Web site, *http://www.fido.gov/facadatabase*, or by contacting Rogers Henderson. Once you have accessed the FACA site's main page, click on ''Public Access;'' at the next page highlight ''2012'' then click ''Explore Data.'' At the next page, click on ''Department of Homeland Security.'' Click on the MERPAC Committee page, click on the ''meetings'' tab and then the ''View'' button for the meeting dated September 11, 2012 to access the information for this meeting. Minutes will be available 90 days after this meeting. Both minutes and documents applicable for this meeting can also be found at an alternative site using the following Web address: *https://homeport.uscg.mil* and use these key strokes: Missions; Port and Waterways Safety; Advisory Committees; MERPAC; and then use the event key.

A public oral comment period will be held each day. Speakers are requested to limit their comments to 3 minutes. Please note that the public oral comment period may end before the prescribed ending time indicated following the last call for comments. Contact Rogers Henderson at *rogers.w.henderson@uscg.mil* to register as a speaker.

Dated: August 2, 2012.

**J.G. Lantz,**

*Director of Commercial Regulations and Standards.*

[FR Doc. 2012–19342 Filed 8–7–12; 8:45 am]

BILLING CODE 9110–04–P

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

**[OMB Control Number 1615–0100]**

### Agency Information Collection Activities: Request for the Return of Original Documents, Form Number G–884; Extension, Without Change, of a Currently Approved Collection

**ACTION:** 60-Day Notice.

**SUMMARY:** The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act (PRA) of 1995. The information collection notice is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until October 9, 2012.

**DATES:** During this 60-day period, USCIS will be evaluating whether to revise the Form G–884. Should USCIS decide to revise Form G–884, we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the PRA. The public will then have 30 days to comment on any revisions to the Form G–884.

**ADDRESSES:** Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529. Comments may be submitted to DHS via email at *uscisfrcomment@dhs.gov* and must include OMB Control Number 1615–0100 in the subject box. Comments may also be submitted via the Federal eRulemaking Portal Web site at *http://www.Regulations.gov* under e-Docket ID number USCIS–2008–0010.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies 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 agencies 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, without change, of a currently approved collection.

(2) *Title of the Form/Collection:* Request for the Return of Original Documents.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* G–884; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The information will be used by USCIS to determine whether a person is eligible to obtain original document(s) contained in an alien file.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 7,500 respondents and an estimated average burden per response of 0.5 hours (30 minutes).

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,750 annual burden hours.

If you need a copy of the proposed information collection instrument with instructions, or additional information, please visit the Federal eRulemaking Portal site at: *http://www.regulations.gov.* We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529, Telephone number 202–272–1470.

Dated: August 3, 2012.

**Samantha Deshommes,**

*Acting Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. 2012–19455 Filed 8–7–12; 8:45 am]

**BILLING CODE 9111–97–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

**[OMB Control Number 1615–0060]**

### Agency Information Collection Activities: Medical Certification for Disability Exceptions, Form N–648, Extension, Without Change, of a Currently Approved Collection; Comment Request; Correction

**ACTION:** 30-Day Notice.

**SUMMARY:** On May 10, 2012, U.S. Citizenship and Immigration Services (USCIS) published a 60-day notice in the **Federal Register** at 77 FR 27474 to extend, without change, this information collection, but incorrectly stated in the title, ''Revision of an Existing Information Collection Request'' due to a typographical error. USCIS, however, correctly stated in the body of this 60-day notice that the type of information collection request was for an ''Extension of an existing information collection.'' This document corrects the typographical error in title of the 60-day notice to read, ''Extension, without Change, of a Currently Approved Collection.''

The Department of Homeland Security (DHS), USCIS will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on May 10, 2012, at 77 FR 27474, allowing for a 60-day public comment period. USCIS received one comment submission in connection with the 60-day notice and USCIS acknowledges receipt in item 8 of the supporting statement.

**DATES:** This notice allows an additional 30 days for public comments.

Comments are encouraged and will be accepted until September 7, 2012. This process is conducted in accordance with 5 CFR 1320.10.

**ADDRESSES:** Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to DHS, and to the OMB USCIS Desk Officer. Comments may be submitted to: DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via email at *uscisfr.comment@dhs.gov,* to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via email at *oira_submission@omb.eop.gov* and via the Federal eRulemaking Portal Web site at *http://www.Regulations.gov* under e-Docket ID number USCIS–2008–0021. When submitting comments by email, please make sure to add 1615–0060 in the subject box.

All submissions received must include the agency name, OMB Control Number and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

**Note:** The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies 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 agencies 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 Request:* Extension, without change, of a currently approved collection.

(2) *Title of the Form/Collection:* Medical Certification for Disability Exceptions.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* N–648; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. USCIS uses Form N–648 issued by the medical professional to substantiate a claim for an exception to the requirements of section 312 (a) of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 13,801 responses at 2 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 27,602 annual burden hours.

If you need a copy of the information collection instrument with supplementary documents, or need additional information, please visit *http://www.regulations.gov.* We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2020; Telephone 202–272–1470.

Dated: August 3, 2012.

**Samantha Deshommes,**

*Acting Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. 2012–19452 Filed 8–7–12; 8:45 am]

**BILLING CODE 9111–97–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Accreditation and Approval of Chem Gas International LLC, as a Commercial Gauger and Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of Chem Gas International LLC, as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Chem Gas International LLC, 12002 Highway 146, Dickinson, TX 77539, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

*http://cbp.gov/linkhandler/cgov/trade/automated/labs_scientific_svcs/commercial_gaugers/gaulist.ctt/gaulist.pdf.*

**DATES:** The accreditation and approval of Chem Gas International LLC, as commercial gauger and laboratory became effective on October 19, 2011. The next triennial inspection date will be scheduled for October 2014.

**FOR FURTHER INFORMATION CONTACT:** Christopher Mocella, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: July 26, 2012.

**Ira S. Reese,**

*Executive Director.*

[FR Doc. 2012–19441 Filed 8–7–12; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Accreditation and Approval of SGS North America, Inc., as a Commercial Gauger and Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of SGS North America, Inc., as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, SGS North America, Inc., 614 Heron Drive, Bridgeport, NJ 08014, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

*http://cbp.gov/linkhandler/cgov/trade/automated/labs_scientific_svcs/commercial_gaugers/gaulist.ctt/gaulist.pdf*

**DATES:** The accreditation and approval of SGS North America, Inc., as commercial gauger and laboratory became effective on May 9, 2012. The next triennial inspection date will be scheduled for May 2015.

**FOR FURTHER INFORMATION CONTACT:** Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: August 1, 2012.

**Ira S. Reese,**

*Executive Director.*

[FR Doc. 2012–19446 Filed 8–7–12; 8:45 am]

BILLING CODE 9111–14–P

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Accreditation and Approval of Saybolt LP, as a Commercial Gauger and Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of Saybolt LP, as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Saybolt LP, 201 Deerwood Glen Drive, Deer Park, TX 77536, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/linkhandler/cgov/trade/automated/labs_scientific_svcs/commercial_gaugers/gaulist.ctt/gaulist.pdf.*

**DATES:** The accreditation and approval of Saybolt LP, as commercial gauger and laboratory became effective on April 25, 2012. The next triennial inspection date will be scheduled for April 2015.

**FOR FURTHER INFORMATION CONTACT:** Christopher Mocella, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: July 26, 2012.

**Ira S. Reese,**

*Executive Director.*

[FR Doc. 2012–19440 Filed 8–7–12; 8:45 am]

BILLING CODE 9111–14–P

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Accreditation and Approval of Saybolt LP, as a Commercial Gauger and Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of Saybolt LP, as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Saybolt LP, 710 Loop 197 North, Texas City, TX 77590, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/linkhandler/cgov/trade/automated/labs_scientific_svcs/commercial_gaugers/gaulist.ctt/gaulist.pdf.*

**DATES:** The accreditation and approval of Saybolt LP, as commercial gauger and laboratory became effective on April 03, 2012. The next triennial inspection date will be scheduled for April 2015.

**FOR FURTHER INFORMATION CONTACT:** Christopher Mocella, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: July 26, 2012.

**Ira S. Reese,**

*Executive Director.*

[FR Doc. 2012–19437 Filed 8–7–12; 8:45 am]

BILLING CODE 9111–14–P

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Agency Information Collection Activities: Protest

**AGENCY:** U.S. Customs and Border Protection (CBP), Department of Homeland Security.

**ACTION:** 60 Day Notice and request for comments; Extension of an existing collection of information: 1651–0017.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning Protest (CBP Form 19). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

**DATES:** Written comments should be received on or before October 9, 2012, to be assured of consideration.

**ADDRESSES:** Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC 20229–1177.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC 20229–1177, at 202–325–0265.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The comments should address: (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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

*Title:* Protest.

*OMB Number:* 1651–0017.

*Form Number:* Form 19.

*Abstract:* CBP Form 19, *Protest,* is used by an importer, filer, or any party at interest to petition CBP, or protest any action or charge made by the port director with respect to imported merchandise. The information collected on CBP Form 19 is authorized by Sections 514 and 514(a) of the Tariff Act of 1930 and provided for by 19 CFR part 174. This form is accessible at *http://forms.cbp.gov/pdf/CBP_Form_19.pdf.*

*Action:* CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to CBP Form 19.

*Type of Review:* Extension (without change).

*Affected Public:* Businesses.

*Estimated Number of Respondents:* 3,750.

*Estimated Number of Total Annual Responses:* 45,000.

*Estimated Time per Response:* 1 hour.

*Estimated Total Annual Burden Hours:* 45,000.

Dated: August 3, 2012.

**Tracey Denning,**

*Agency Clearance Officer, U.S. Customs and Border Protection.*

[FR Doc. 2012–19429 Filed 8–7–12; 8:45 am]

BILLING CODE 9111–14–P

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Agency Information Collection Activities; Petroleum Refineries in Foreign Trade Sub-zones

**AGENCY:** U.S. Customs and Border Protection (CBP), Department of Homeland Security.

**ACTION:** 60-Day Notice and request for comments; Extension of an existing collection of information.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Petroleum Refineries in Foreign Trade Sub-zones. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

**DATES:** Written comments should be received on or before October 9, 2012, to be assured of consideration.

**ADDRESSES:** Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC 20229–1177.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC 20229–1177, at 202–325–0265.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The comments should address: (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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

*Title:* Petroleum Refineries in Foreign Trade Sub-zones.

*OMB Number:* 1651–0063.

*Form Number:* None.

*Abstract:* The Foreign Trade Zones Act, 19 U.S.C. 81c(d) contains specific provisions for petroleum refinery sub-zones. It permits refiners and U.S. Customs and Border Protection (CBP) to assess the relative value of such multiple products at the end of the manufacturing period during which these products were produced when the actual quantities of these products resulting from the refining process can be measured with certainty. Also, the amendment permits the products refined in a sub-zone during a manufacturing period to be attributed to a given crude introduced into production during the period, to the extent that such products were

producible or could have been produced the from quantities removed from the sub-zone if Industry Standards of Potential Production on a Practical Operating Basis (known as producibility) is utilized.

19 CFR 146.4(d) provides that the operator of the refinery sub-zone is required to retain all records relating to the above mentioned activities for five years after the merchandise is removed from the sub-zone. Further, the records shall be readily available for CBP review at the sub-zone.

Instructions on compliance with these record keeping provisions are available in the Foreign Trade Zone Manual which is accessible at: *http://www.cbp.gov/linkhandler/cgov/trade/cargo_security/cargo_control/ftz/ftzmanual.ctt/FTZManual2.doc.*

*Action:* CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

*Type of Review:* Extension (without change).

*Affected Public:* Businesses.

*Estimated Number of Respondents:* 81.

*Estimated Number of Total Annual Responses:* 81.

*Estimated Time per Response:* 1000 hours.

*Estimated Total Annual Burden Hours:* 81,000.

Dated: August 3, 2012.

**Tracey Denning,**

*Agency Clearance Officer, U.S. Customs and Border Protection.*

[FR Doc. 2012–19434 Filed 8–7–12; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Approval of SGS North America, Inc., as a Commercial Gauger

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of approval of SGS North America, Inc., as a commercial gauger.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.13, SGS North America, Inc., 2800 Loop 197 South, Texas City, TX 77592, has been approved to gauge petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

*http://cbp.gov/linkhandler/cgov/trade/automated/labs_scientific_svcs/commercial_gaugers/gaulist.ctt/gaulist.pdf.*

**DATES:** The approval of SGS North America, Inc., as commercial gauger became effective on April 3, 2012. The next triennial inspection date will be scheduled for April 2015.

**FOR FURTHER INFORMATION CONTACT:** Stephen Cassata, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: August 1, 2012.

**Ira S. Reese,**

*Executive Director, Laboratories and Scientific Services.*

[FR Doc. 2012–19442 Filed 8–7–12; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Approval of Saybolt LP, as a Commercial Gauger

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of approval of Saybolt LP, as a commercial gauger.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.13, Saybolt LP, 4025 Oak Lane, Sulfur, LA 70665, has been approved to gauge petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/linkhandler/cgov/trade/automated/labs_scientific_svcs/commercial_gaugers/gaulist.ctt/gaulist.pdf.*

**DATES:** The approval of Saybolt LP, as commercial gauger became effective on June 2, 2011. The next triennial inspection date will be scheduled for June 2014.

**FOR FURTHER INFORMATION CONTACT:** Christopher Mocella, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: July 26, 2012.

**Ira S. Reese,**

*Executive Director, Laboratories and Scientific Services.*

[FR Doc. 2012–19436 Filed 8–7–12; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5607–N–25]**

### Notice of Proposed Information Collection: Comment Request; Section 8 Renewal Policy Guide

**AGENCY:** Office of the Assistant Secretary for Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* October 9, 2012.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, Room 9120 or the number for the Federal Information Relay Service (1–800–877–8339).

**FOR FURTHER INFORMATION CONTACT:** Catherine Brennan, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 7th Street

SW., Washington, DC 20410, telephone (202) 708–3000, extension 6732 (this is not a toll free number) for copies of the proposed forms and other available information.

**SUPPLEMENTARY INFORMATION:** The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Section 8 Renewal Policy Guide.

*OMB Control Number, if applicable:* 2502–0587.

*Description of the need for the information and proposed use:* The modifications of the Section 8 renewal policy and recent legislation are implemented to address the essential requirement to preserving low income rental housing affordability and availability. The Section 8 Renewal Policy Guide will include recent legislation modifications for renewing of expiring Section 8 policy(ies) Guidebook, as authorized by the Code of Federal Regulations 24 CFR part 401 and 24 CFR part 402.

The Multifamily Housing Reform and Affordability Act of 1997 (MAHRA) for fiscal year 1998 (Pub. L. 105–65, enacted on October 27, 1997), required that expiring Section 8 project-based assistance contracts be renewed under MAHRA. Established in the MAHRA policies renewal of Section 8 project-based contracts rent are based on market rents instead of the Fair Market Rent (FMR) standard.

MAHRA renewals submission should include a Rent Comparability Study (RCS). If the RCS indicated rents were at or below comparable market rents, the contract was renewed at current rents adjusted by Operating Cost Adjustment Factor (OCAF), unless the Owner submitted documentation justifying a budget-based rent increase or participation in Mark-Up-To-Market. The case is that no renewal rents could exceed comparable market rents. If the RCS indicated rents were above comparable market rents, the contract was referred to the Office of Affordable Housing Preservation (OAHP) for debt restructuring and/or rent reduction.

The Preserving Affordable Housing for Senior Citizens and Families Into the 21st Century Act of 1999 (Pub. L. 106–74, enacted on October 20, 1999), modified MAHRA.

The Section 8 Renewal Policy Guide sets forth six renewal options from which a project owner may choose when renewing their expiring Section 8 contract: Option One—Mark-Up-To-Market, Option Two—Other Contract Renewal with Current Rents at or Below Comparable Market Rents, Option Three—Referral to the Office of Affordable Preservation (OAHP), Option Four—Renewal of Projects Exempted From OMHAR, Option Five—Renewal of Portfolio Reengineering Demonstration or Preservation Projects, and Option Six—Opt Outs.

Owners should select one of six options which are applicable to their project and should submit contract renewal on an annual basis to renew contract.

The Section 8 Renewal Guide sets forth six renewal options from which a project owner may choose when renewing their expiring Section 8 contracts.

Option One (Mark-Up-To-Market)
Option Two (Other Contract Renewals With Current Rents at or Below Comparable Market Rents)
Option Three (Referral to the Office of Multifamily Housing Assistant Restructuring—OHAP)
Option Four (Renewal of Projects Exempted From OHAP)
Option Five (Renewal of Portfolio Reengineering Demonstration or Preservation Projects)
Option Six (Opt-Outs)

*Agency form numbers, if applicable:*

Contract Renewal Request Form (HUD–9624) (decreased usage)
OCAF Rent Adjustment Worksheet (HUD–9625) (decreased usage)
Comparability Study Comparison Worksheet, (HUD–9626) (Auto OCAF Letters)
Section 515 and Section 221(d)(3) BMIR Worksheet (HUD–9627) (Auto OCAF Letters)
Other New Construction and Sub-Rehab Worksheet (HUD–9628)
Appraiser Certification (HUD–9629)
Rent Comparability Grid (HUD–9630)
One Year Notification Owner Does Not Intend To Renew (HUD–9631)
One Year Notification Letter Owner Intends To Renew (HUD–9632)
Use Agreement (HUD–9633)
Addendum to Agreement To Enter Into Housing Assistance Payments Contract (HUD–9634)
Appendix 15–3 Project Capital Needs Assessments and Replacement Reserve Escrow (HUD–9635)
Projects Preparing a Budget-Based Rent Increase (HUD–9636)
Basic Renewal Contract—One Year Term (HUD–9637)
Basic Renewal Contract—Multi-Year Term (HUD–9638)
Renewal Contract for Mark-Up-To-Market Project (HUD–9639)
Housing Assistance Payments Preservation Renewal Contract (HUD–9640)
Interim (Full) Mark-To-Market Renewal Contract (HUD–9641)
Interim (Lite) Mark-To-Market Renewal Contract (HUD–9642)
Full Mark-To-Market Renewal Contract (HUD–9643)
Watch List Renewal Contract (HUD–9644)
Project Based Assistance Payments Amendment Contract Moderate Rehabilitation (HUD–9645)
Project Based Section Housing Assistance Payments Extension of Renewal Contract (HUD–9646)
Consent to Assignment of HAP Contract as Security for Financing (HUD–9649)
Consent to Assignment of HAP Contract as Security for FNMA Financing (HUD–9651)
Request To Renew Using Non-Section 8 Units in the Section 8 Project as a Market Rent Ceiling (HUD–9652)
Request To Renew Using FMR's as Market Ceiling (HUD–9653)
Addendum To Renewal Contract (HUD–9654)
Rent Comparability Study (HUD–9655)
Rent Comparability Grid (HUD–9656)
Completing the Rent Comparability Grid (HUD–9657)
Required Contents for Rent Comparability Study (HUD–9658)

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* The number of burden hours is 33,477. The number of respondents is 33,477, the number of responses is 33,477, the frequency of response is on occasion, and the burden hour per response is 1.

*Status of the proposed information collection:* This is a revision of a collection.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C., chapter 35, as amended.

Dated: August 1, 2012.

**Laura M. Marin,**

*Acting General Deputy Assistant Secretary for Housing-Acting General Deputy Federal Housing Commissioner*

[FR Doc. 2012–19326 Filed 8–7–12; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### 21st Century Conservation Service Corps Advisory Committee

**AGENCY:** Office of the Secretary, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** We, the Department of the Interior, announce a public meeting of the 21st Century Conservation Service Corps Advisory Committee (Committee).

**DATES:** *Meeting:* Thursday, August 23, 2012 from 3 p.m. to 6 p.m. (Eastern Time). *Meeting Participation:* Notify Lisa Young (see **FOR FURTHER INFORMATION CONTACT**) by close of business Wednesday, August 22, 2012, if requesting to make an oral presentation (limited to 2 minutes per speaker). The meeting will accommodate no more than a total of 15 minutes for all public speakers.

**ADDRESSES:** The meeting will be held via WebEx, to participate in the call as an interested member of the public, please contact Lisa Young (see **FOR FURTHER INFORMATION CONTACT**).

**FOR FURTHER INFORMATION CONTACT:** Lisa Young, Designated Federal Officer (DFO), 1849 C Street NW., MS 3559, Washington, DC 20240; telephone (202) 208–7586; fax (202) 208–5873; or email *Lisa_Young@ios.doi.gov*.

**SUPPLEMENTARY INFORMATION:** In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App. 2, we announce that the 21st Century Conservation Service Corps Advisory Committee will hold a meeting.

#### Background

Chartered in November 2011, the Committee is a discretionary advisory committee established under the authority of the Secretary of the Interior. The purpose of the Committee is to provide the Secretary of Interior with recommendations on: (1) Developing a framework for the 21CSC, including program components, structure, and implementation, as well as accountability and performance evaluation criteria to measure success; (2) the development of certification criteria for 21CSC providers and individual certification of 21CSC members; (3) strategies to overcome existing barriers to successful 21CSC program implementation; (4) identifying partnership opportunities with corporations, private businesses or entities, foundations, and non-profit groups, as well as state, local, and tribal governments, to expand support for conservation corps programs, career training and youth employment opportunities; and (5) developing pathways for 21 CSC participants for future conservation engagement and natural resource careers. Background information on the Committee is available at *www.doi.gov/21csc*.

#### Meeting Agenda

The Committee will convene to finalize the initial report from the Committee; and other Committee business. The public will be able to make comment on Thursday, August 23, 2012 starting at 3:15 p.m. The final agenda will be posted on *www.doi.gov/21csc* prior to the meeting.

#### Public Input

Interested members of the public may present, either orally or through written comments, information for the Committee to consider during the public meeting. Due to the nature of this meeting, interested members of the public are strongly encouraged to submit written statements to the committee by COB Wednesday, August 22, 2012 so they can be reviewed and considered during the full committee meeting on Thursday, August 23, 2012.

Individuals or groups requesting to make comment at the public Committee meeting will be limited to 2 minutes per speaker, with no more than a total of 15 minutes for all speakers. Interested parties should contact Lisa Young, DFO, in writing (preferably via email), by Wednesday, August 22, 2012. (See **FOR FURTHER INFORMATION CONTACT**), to be placed on the public speaker list for this meeting.

In order to attend this meeting, you must register by close of business Wednesday, August 22, 2012. The meeting is open to the public. Calls in lines are limited, so all interested in attending should pre-register, and at that time will be given the call in information. Please submit your name, email address and phone number to Lisa Young via email at *Lisa_Young@ios.doi.gov* or by phone at (202) 208–7586.

Dated: August 3, 2012.

**Lisa Young,**

*Designated Federal Officer.*

[FR Doc. 2012–19439 Filed 8–7–12; 8:45 am]

**BILLING CODE 4310–10–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R6–ES–2012–N168; FXES11130600000D2–123–FF06E00000]**

### Endangered and Threatened Wildlife and Plants; Recovery Permit Application[s]

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered or threatened species. The Endangered Species Act of 1973, as amended (Act), prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing these permits.

**DATES:** To ensure consideration, please send your written comments by September 7, 2012.

**ADDRESSES:** You may submit comments or requests for copies or more information by any of the following methods. Alternatively, you may use one of the following methods to request hard copies or a CD–ROM of the documents. Please specify the permit you are interested in by number (e.g., Permit No. TE–123456).

- *Email: permitsR6ES@fws.gov.* Please refer to the respective permit number (e.g., Permit No. TE–123456) in the subject line of the message.
- *U.S. Mail:* Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 25486–DFC, Denver, CO 80225.
- *In-Person Drop-off, Viewing, or Pickup:* Call (303) 236–4256 to make an appointment during regular business hours at 134 Union Blvd., Suite 645, Lakewood, CO 80228.

**FOR FURTHER INFORMATION CONTACT:** Kris Olsen, Permit Coordinator Ecological Services, (303) 236–4256 (phone); *permitsR6ES@fws.gov* (email).

**SUPPLEMENTARY INFORMATION:**

#### Background

The Act (16 U.S.C. 1531 *et seq.*) prohibits activities with endangered and threatened species unless a Federal

permit allows such activity. Along with our implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR 17, the Act provides for permits, and requires that we invite public comment before issuing these permits.

A permit granted by us under section 10(a)(1)(A) of the Act authorizes applicants to conduct activities with U.S. endangered or threatened species for scientific purposes, enhancement of propagation or survival, or interstate commerce (the latter only in the event that it facilitates scientific purposes or enhancement of propagation or survival). Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

**Applications Available for Review and Comment**

We invite local, State, and Federal agencies, and the public to comment on the following applications. Please refer to the appropriate permit number (e.g., Permit No. TE–123456) for the application when submitting comments.

Documents and other information the applicants have submitted with these applications are available for review, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552).

**Permit Application Number: 79842A**

*Applicant:* Jeremy White, University of Nebraska, Omaha, Nebraska.

The applicant requests a permit to take (harass by survey) Indiana bat *(Myotis sodalis)* in conjunction with surveys and population monitoring activities in Nebraska for the purpose of enhancing the species' survival.

**Permit Application Number: 047252**

*Applicant:* John Ko, SWCA Environmental Consultants, Broomfield, Colorado.

The applicant requests renewal of an existing permit to take (harass by survey) Southwestern willow flycatcher *(Empidonax traillii extimus)* in conjunction with population monitoring activities in Colorado, Utah, and Wyoming, for the purpose of enhancing the species' survival.

**National Environmental Policy Act (NEPA)**

In compliance with the NEPA (42 U.S.C. 4321 *et seq.*), we have made an initial determination that the proposed activities in these permits are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement (516 DM 6 Appendix 1, 1.4C(1)).

**Public Availability of Comments**

All comments and materials we receive in response to this request will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Authority:** We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*).

Dated: July 18, 2012.

**Michael G. Thabault,**

*Acting Regional Director, Mountain-Prairie Region.*

[FR Doc. 2012–19433 Filed 8–7–12; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R5–R–2012–N125; BAC–4311–K9–S3]**

### Presquile National Wildlife Refuge, Chesterfield County, VA; Comprehensive Conservation Plan and Environmental Assessment

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft comprehensive conservation plan (CCP) and environmental assessment (EA) for Presquile National Wildlife Refuge (NWR) for public review and comment. Presquile NWR is located in Chesterfield County, Virginia, and is administered by staff at Eastern Virginia Rivers NWR Complex. The draft CCP/EA describes two alternatives for managing Presquile NWR for the next 15 years. Alternative B is identified as the Service-preferred alternative. Also available for public review and comment are the draft compatibility determinations, which are included as appendix B in the draft CCP/EA.

**DATES:** To ensure consideration of your written comments, please send them by September 7, 2012. We will also hold public meetings. We will announce those meetings and other opportunities for public input in local news media, via our project mailing list, and on the refuge planning Web site: *http://www.fws.gov/northeast/presquile/refuge_planning.html.*

**ADDRESSES:** You may submit comments or requests for copies or more information by any of the following methods. You may request hard copies or a CD–ROM of the documents.

*Email:* *EasternVirginiaRiversNWRC@fws.gov.* Please include ''Presquile CCP'' in the subject line of the message.

*U.S. Mail:* Meghan Carfioli, Natural Resource Planner, U.S. Fish and Wildlife Service, 11116 Kimages Road, Charles City, VA 23030.

*Fax:* Attention: Meghan Carfioli, 804–829–9606.

*In-Person Drop-off, Viewing, or Pickup:* Call Meghan Carfioli at 804–829–5413, or Andy Hofmann, Refuge Manager, at 804–333–1470 extension 112 during regular business hours to make an appointment to view the document.

**FOR FURTHER INFORMATION CONTACT:** Meghan Carfioli, Natural Resource Planner, U.S. Fish and Wildlife Service; mailing address: 11116 Kimages Road, Charles City, VA 23030; 804–829–5413 (phone); 804–829–9606 (fax); *EasternVirginiaRiversNWRC@fws.gov* (email) (please put ''Presquile NWR'' in the subject line).

**SUPPLEMENTARY INFORMATION:**

**Introduction**

With this notice, we continue the CCP process for Presquile NWR. We published our original notice of intent to prepare a CCP in the **Federal Register** on April 14, 2011 (76 FR 21001).

The 1,329-acre Presquile NWR is an island in the James River near Hopewell, Virginia, 20 miles southeast of Richmond. It was established in 1953 as ''an inviolate sanctuary, or for any other management purpose, for migratory birds.'' It is one of many important migratory bird stopover sites along the Atlantic Flyway and provides protected breeding habitat for Federal and State-listed threatened and endangered species, as well as many neotropical migrant bird species. The refuge is comprised of a variety of wildlife habitats, including the open waters of the James River, tidal swamp forest, tidal freshwater marshes, grasslands, mixed mesic forest, and river escarpment.

Presquile NWR also offers a wide range of wildlife-dependent recreational opportunities, including environmental education programs for approximately 120 school-aged students each year and a 3-day deer hunt each fall.

**Background**

*The CCP Process*

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Refuge Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years, in accordance with the Refuge Administration Act.

*Public Outreach*

In March 2011, we distributed a planning newsletter to over 160 parties on our project mailing list. The newsletter informed people about the planning process and asked recipients to contact us about issues or concerns they would like us to address. We also posted the newsletter on our Web site for people to access electronically. In addition, we notified the general public of our planning project, and our interest in hearing about issues and concerns, by publishing news releases in local newspapers. We also held afternoon and evening public scoping meetings on April 19, 2011, in Chester, Virginia, and an evening meeting on April 20, 2011, in Richmond, Virginia. The purpose of the three meetings was to share information on the planning process and to solicit management issues and concerns. Throughout the process, refuge staff have conducted additional outreach via participation in community meetings, events, and other public forums. We have considered and evaluated all of the comments we received and addressed them in various ways in the alternatives presented in the draft CCP/EA.

**CCP Alternatives We Are Considering**

During the scoping process, which initiated work on our draft CCP/EA, we, other governmental partners, and the public raised the following general issues that are further detailed and addressed in the draft CCP/EA:

- How will the refuge respond to potential impacts of climate change on existing refuge habitats?
- How will the refuge improve its biological integrity in light of landscape-level ecological concerns such as biological connectivity with other nearby habitats or impacts from air and noise pollution from surrounding industry?
- How will the refuge address erosion and sediment deposition issues on and adjacent to the refuge?
- How will the refuge manage invasive, nonnative, and overabundant species?
- What will the refuge do to manage approximately 200 acres of grassland habitat?
- To what extent would the refuge interpret or educate the public about cultural resources, historical landscapes, and American Indian history and culture on or around the refuge?
- What will the refuge do to improve its environmental education, interpretation, wildlife-dependent recreation, and compatible public uses?
- How does the refuge plan to accommodate an increase in visitor population while maintaining protection of sensitive fish and wildlife resources?
- To what extent will the Service use partnerships with area agencies, businesses, and organizations to achieve the refuge's resource conservation and visitation goals?
- At what levels does the Service plan to continue staffing and management of the refuge?

We developed two management alternatives in the draft CCP/EA for Presquile NWR to address these issues and to achieve the refuge's establishment purposes, and the vision and goals we developed. The alternatives identify several actions in common. Both alternatives include measures to continue to share staff across the Eastern Virginia Rivers NWR Complex, require a permit for refuge access, maintain existing facilities, control invasive species, protect cultural resources, monitor for climate change impacts, distribute refuge revenue sharing payments, support research on the refuge, and participate in conservation and education partnerships. There are other actions that differ among the alternatives. The draft CCP/EA provides a full description of both alternatives and relates each to the issues and concerns that arose during the planning process. Below, we provide summaries for the two alternatives.

*Presquile NWR Alternatives*

Alternative A (Current Management)

This alternative is the ''no action'' alternative required by the National Environmental Policy Act. Alternative A defines our current management activities, including those planned, funded, or underway, and serves as the baseline against which to compare alternative B. Under alternative A, we would continue to protect tidal swamp forest and marsh habitats for priority refuge resources of concern on the refuge, such as the bald eagle, prothonotary warbler, American black duck and other waterfowl, and the federally threatened sensitive joint-vetch. We would accomplish this through continued partnerships with universities and the Virginia Department of Game and Inland Fisheries, and by limiting public access in sensitive areas. For James River aquatic resources, we would continue to improve riparian habitat, work with the James River Association (JRA) on water quality monitoring, and support efforts by Virginia Commonwealth University and other partners to restore sustainable, healthy populations of the federally endangered Atlantic sturgeon. We would also continue to maintain approximately 200 acres of grassland habitat for breeding and migrating songbirds.

Additionally, we would continue to provide environmental education programs both on- and off-refuge in partnership with the JRA, support wildlife-dependent recreation, and implement the 3-day fall deer hunt.

Alternative B (Focus on Species of Conservation Concern; Service-preferred Alternative)

Alternative B is the Service-preferred alternative. It combines the actions we believe would best achieve the refuge's purposes, vision, and goals and respond to public issues. Under alternative B, we would emphasize the management of specific refuge habitats to support priority species whose habitat needs would benefit other species of conservation concern that are found in the area. Species of conservation concern include migrating waterfowl, waterbirds, and forest-dependent birds, the federally endangered Atlantic sturgeon, and the federally threatened

sensitive joint-vetch. We would emphasize maintaining and restoring the forest integrity of tidal freshwater marsh, tidal swamp forest, the James River and associated backwater habitats, and mature mixed mesic forest habitats through increased monitoring and data collection, and a more aggressive response to habitat changes associated with invasive species, global climate change, or storm events. We would also convert 200 acres of grassland habitat to transitional mixed mesic forest habitat.

This alternative would enhance our visitor services programs to improve opportunities for environmental education and wildlife-dependent recreation. The improvements would include expanding the on-refuge environmental education program through a partnership with the JRA and enhancing interpretive materials. We would also evaluate opportunities to expand the hunting program to include turkey hunting, a 5-day hunt for deer, and a youth deer or turkey hunt.

We would also expand our conservation, research, monitoring, and management partnerships to help restore and conserve the refuge.

**Public Availability of Documents**

In addition to any methods in **ADDRESSES**, you can view or obtain documents from the agency Web site at: *http://www.fws.gov/northeast/presquile/refuge_planning.html.*

**Next Steps**

After this comment period ends, we will analyze the comments and address them in the form of a final CCP and finding of no significant impact.

**Public Availability of Comments**

Before including your address, phone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: July 17, 2012.

**Henry Chang,**

*Acting Regional Director, Northeast Region.*

[FR Doc. 2012–19394 Filed 8–7–12; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R5–R–2012–N166; BAC–4311–K9–S3]**

### Prime Hook National Wildlife Refuge, Sussex County, DE; Draft Comprehensive Conservation Plan and Environmental Impact Statement

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; reopening of comment period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), advise the public that we are reopening the public comment period for the draft comprehensive conservation plan and draft environmental impact statement (draft CCP/EIS) for Prime Hook National Wildlife Refuge (NWR), located in Sussex County, Delaware. If you have previously submitted comments, please do not resubmit them. We have already incorporated them in the public record and will fully consider them in the final decision.

**DATES:** To ensure consideration, please send your comments no later than August 27, 2012.

**ADDRESSES:** You may submit comments by any one of the following methods. You may also request hard copies or a CD–ROM of the documents.

*Email: northeastplanning@fws.gov.* Please include ''Prime Hook NWR Draft CCP'' in the subject line of the message.

*Fax:* Attention: Thomas Bonetti, 413–253–8468.

*U.S. Mail:* Thomas Bonetti, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035.

*In-Person Drop-off, Viewing, or Pickup:* Call 302–684–8419 to make an appointment (necessary for view/pickup only) during regular business hours at Prime Hook NWR, 11978 Turkle Pond Road, Milton, DE 19968.

**FOR FURTHER INFORMATION CONTACT:** Michael Stroeh, Project Leader, 302–653–9345 (phone), or Thomas Bonetti, Planning Team Leader, 413–253–8307 (phone); *northeastplanning@fws.gov* (email).

**SUPPLEMENTARY INFORMATION:** On May 31, 2012, we published a **Federal Register** notice (77 FR 32131) announcing the availability of and requesting comments on the draft CCP/EIS for Prime Hook NWR in accordance with National Environmental Policy Act (40 CFR 1506.6(b)) requirements. We originally opened this comment period from May 31, 2012, to August 6, 2012. For background and more information on the draft CCP/EIS, please see that notice. We are reopening the public comment period on the draft CCP/EIS in response to requests we have received.

**Public Availability of Documents**

In addition to any methods in **ADDRESSES**, you can view or obtain documents on the refuge Web site: *http://www.fws.gov/northeast/planning/Prime%20Hook/ccphome.html.*

**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.

Dated: July 17, 2012.

**Henry Chang,**

*Acting Regional Director, Northeast Region.*

[FR Doc. 2012–19395 Filed 8–7–12; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLOR957000–L63100000–HD0000: HAG12–0257]**

### Filing of Plats of Survey: Oregon/Washington

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management Oregon/Washington State Office, Portland, Oregon, 30 days from the date of this publication.

**Willamette Meridian**

*Oregon*

T. 9 S., 19 E., accepted July 23, 2012
T. 18 S., R. 1 W., accepted July 23, 2012
T. 3 S., R. 3 E., accepted July 23, 2012
T. 27 S., R. 3 W., accepted July 27, 2012
T. 25 S., R. 4 W., accepted July 27, 2012

*Washington*

Tps. 23 & 24 N., Rs. 10 & 10 ½ W., accepted July 27, 2012.

**ADDRESSES:** A copy of the plats may be obtained from the Land Office at the Bureau of Land Management, Oregon/Washington State Office, 333 SW. 1st Avenue, Portland, Oregon 97204, upon required payment. A person or party who wishes to protest against a survey

must file a notice that they wish to protest (at the above address) with the Oregon/Washington State Director, Bureau of Land Management, Portland, Oregon.

**FOR FURTHER INFORMATION CONTACT:** Kyle Hensley, (503) 808–6124, Branch of Geographic Sciences, Bureau of Land Management, 333 SW. 1st Avenue, Portland, Oregon 97204. 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:** 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.

**Kyle E. Hensley,**

*Acting, Chief, Cadastral Surveyor of Oregon/Washington.*

[FR Doc. 2012–19430 Filed 8–7–12; 8:45 am]

**BILLING CODE 4310–33–P**

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[LLMTB07900 09 L10100000 PH0000 LXAMANMS0000]**

## Western Montana Resource Advisory Council

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Western Montana Resource Advisory Council (RAC) will meet as indicated below.

**DATES:** The meeting will be held September 12, 2012. The meeting will begin at 9 a.m. with a 30-minute public comment period starting at 11:30 a.m. and will adjourn at 3 p.m.

**ADDRESSES:** The meeting will be in the BLM's Dillon Field Office, 1005 Selway Drive, in Dillon, MT.

**FOR FURTHER INFORMATION CONTACT:** David Abrams, Western Montana Resource Advisory Council Coordinator, Butte Field Office, 106 North Parkmont, Butte, MT 59701, 406–533–7617, *dabrams@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:** This 15-member council advises the Secretary of the Interior on a variety of management issues associated with public land management in Montana. During this meeting the council will participate in/discuss/act upon several topics, including updates from the BLM's Butte, Missoula and Dillon field offices.

All RAC meetings are open to the public. The public may present written comments to the RAC. Each formal RAC meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

**Rick Hotaling,**

*District Manager, Western Montana District.*

[FR Doc. 2012–19386 Filed 8–7–12; 8:45 am]

**BILLING CODE 4310–DN–P**

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[WY–923–1310–FI; WYW164744]**

## Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW164744, WY

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** Under the provisions of the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement from WYNR, LLC, for competitive oil and gas lease WYW164744 for land in Washakie County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, Julie L. Weaver, Chief, Fluid Minerals Adjudication, at 307–775–6176. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The lessee has agreed to the amended lease terms for rentals and royalties at rates of $20 per acre, or fraction thereof, per year and 18–2/3 percent, respectively. The lessee has paid the required $500 administrative fee and $159 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate lease WYW164744 effective October 1, 2011, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a valid lease to any other interest affecting the lands.

**Julie L. Weaver,**

*Chief, Fluid Minerals Adjudication.*

[FR Doc. 2012–19237 Filed 8–7–12; 8:45 am]

**BILLING CODE 4310–22–P**

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[WY–923–1310–FI; WYW174758]**

## Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW174758, WY

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** Under the provisions of the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement from Hot Springs Resources Ltd. for competitive oil and gas lease WYW174758 for land in Natrona County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, Julie L. Weaver, Chief, Fluid Minerals Adjudication, at 307–775–6176. Persons who use a telecommunications device

for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $159 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate lease WYW174758 effective October 1, 2011, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a valid lease to any other interest affecting the lands.

**Julie L. Weaver,**

*Chief, Fluid Minerals Adjudication.*

[FR Doc. 2012–19241 Filed 8–7–12; 8:45 am]

**BILLING CODE 4310–22–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WY–923–1310–FI; WYW164512]**

### Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW164512, WY

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** Under the provisions of the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement from WYNR, LLC, for competitive oil and gas lease WYW164512 for land in Big Horn County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, Julie L. Weaver, Chief, Fluid Minerals Adjudication, at 307–775–6176. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $159 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate lease WYW164512 effective October 1, 2011, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a valid lease to any other interest affecting the lands.

**Julie L. Weaver,**

*Chief, Fluid Minerals Adjudication.*

[FR Doc. 2012–19261 Filed 8–7–12; 8:45 am]

**BILLING CODE 4310–22–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### Notice to Extend the Public Comment Period for the Draft Report Assessing Rural Water Activities and Related Programs

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of extension.

**SUMMARY:** The Bureau of Reclamation is extending the public comment period for the Draft Report Assessing Rural Water Activities to September 10, 2012. The notice to solicit public comments was published in the **Federal Register** on June 15, 2012 (77 FR 36001). The public comment period was originally to end on August 14, 2012.

**DATES:** Submit comments on the Draft Report by 5:00 p.m., September 10, 2012.

**ADDRESSES:** Send written comments to James Hess, Bureau of Reclamation, 1849 C Street NW., MC: 96–42000, Washington, DC 20240; or by email to *jhess@usbr.gov*. The draft report is available for public review at *www.usbr.gov/ruralwater*.

**FOR FURTHER INFORMATION CONTACT:** James Hess at (202) 513–0543 about the report, or Christopher Perry at (303) 445–2887 about the prioritization criteria.

**SUPPLEMENTARY INFORMATION:** In response to technical issues that were identified after the notice of availability was sent to the **Federal Register**, Reclamation is extending the close of the public comment period.

**Public Disclosure**

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—maybe made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: August 2, 2012.

**David Murillo,**

*Deputy Commissioner, Operations.*

[FR Doc. 2012–19424 Filed 8–7–12; 8:45 am]

**BILLING CODE 4310–MN–P**

## DEPARTMENT OF JUSTICE

**[OMB Number 1103–NEW]**

### Agency Information Collection Activities: Proposed Collection; Comments Requested; Employment Reference Questionnaire

**ACTION:** 30-Day Notice of Information Collection Under Review.

The Department of Justice (DOJ), Justice Management Division, Human Resources Division 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 77, Number 84, page 25749, on May 1, 2012, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until September 7, 2012. 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:

—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 agencies 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.

**Overview of This Information Collection**

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Employment Reference Questionnaire.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: none. Abstract: The form is part of DOJ's employment selection process.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 10,000 respondents will complete a 20 minute form.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 3,333 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Two Constitution Square, 145 N Street NE., Washington, DC 20530.

Dated: August 2, 2012.

**Jerri Murray,**

*Department Clearance Officer, PRA, United States Department of Justice.*

[FR Doc. 2012–19349 Filed 8–7–12; 8:45 am]

**BILLING CODE 4410–CG–P**

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## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Notification of Methane Detected in Underground Metal and Nonmetal Mine Atmospheres

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) is submitting the Mine Safety and Health Administration (MSHA) sponsored information collection request (ICR) titled, ''Notification of Methane Detected in Underground Metal and Nonmetal Mine Atmospheres,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

**DATES:** Submit comments on or before September 7, 2012.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–MSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), email: *OIRA_submission@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

**Authority:** 44 U.S.C. 3507(a)(1)(D).

**SUPPLEMENTARY INFORMATION:** Regulations section 30 CFR 57.22004(c) requires Metal/Non-Metal mine operators to notify the MSHA as soon as possible when any of the following events occur: There is an outburst that results in 0.25 percent or more methane in the mine atmosphere, there is a blowout that results in 0.25 percent or more methane in the mine atmosphere, there is an ignition of methane, or air sample results indicate 0.25 percent or more methane in the mine atmosphere of a I–B, I–C, II–B, V–B, or Category VI mine. Under sections 57.22239 and 57.22231, if methane reaches 2.0 percent in a Category IV mine or if methane reaches 0.25 percent in the mine atmosphere of a Subcategory I–B, II–B, V–B, or VI mine, the MSHA shall be immediately notified.

Regulations sections 30 CFR 57.22229 and 57.22230 require that the mine atmosphere be tested for methane and/or carbon dioxide at least once every seven days by a competent person or atmospheric monitoring system or a combination of both. Section 57.2229 applies to underground Metal/Non-Metal mines categorized as I–A, III, and V–A mines where the atmosphere is tested for both methane and carbon dioxide. Section 57.22230 applies to underground Metal/Non-Metal mines categorized as II–A mines where the atmosphere is tested for methane. Where examinations disclose hazardous conditions, affected miners must be informed. Sections 57.22229(d) and 57.22230(c) require that the person performing the tests certify by signature and date that the tests have been conducted. Certifications of examinations shall be kept for at least one year and made available to authorized representatives of the Secretary of Labor.

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 if the collection of information 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 1219–0103. The current approval is scheduled to expire on August 31, 2012; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review.

For additional information, see the related notice published in the **Federal Register** on April 18, 2012 (77 FR 23293).

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 1219–0103. 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–MSHA.

*Title of Collection:* Notification of Methane Detected in Underground Metal and Nonmetal Mine Atmospheres.

*OMB Control Number:* 1219–0103.

*Affected Public:* Private Sector—Businesses or other for profits.

*Total Estimated Number of Respondents:* 6.

*Total Estimated Number of Responses:* 319.

*Total Estimated Annual Burden Hours:* 27.

*Total Estimated Annual Other Costs Burden:* $0.

Dated: August 1, 2012.

**Michel Smyth,**

*Departmental Clearance Officer.*

[FR Doc. 2012–19329 Filed 8–7–12; 8:45 a.m.]

**BILLING CODE 4510–43–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Notice of Research Exception Under the Genetic Information Nondiscrimination Act of 2008

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''Notice of Research Exception under the Genetic Information Nondiscrimination Act of 2008,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

**DATES:** Submit comments on or before September 7, 2012.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–EBSA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), email: *OIRA_submission@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

**Authority:** 44 U.S.C. 3507(a)(1)(D).

**SUPPLEMENTARY INFORMATION:** Title I of the Genetic Information Nondiscrimination Act of 2008 (GINA), Public Law 110–233, amended the Employee Retirement Income Security Act of 1974, the Public Health Service Act, the Internal Revenue Code of 1986, and the Social Security Act to prohibit discrimination in health coverage based on genetic information. GINA sections 101 through 103 generally prevent employment-based group health plans and health insurance issuers in the group and individual markets from discriminating based on genetic information, and from collecting such information. The GINA and its implementing interim final regulations at 29 CFR 2590.702A(c)(5) provide a research exception to the limitations on requesting or requiring genetic testing that allow a group health plan or group health insurance issuer to request, but not require, a participant or beneficiary to undergo a genetic test if specified conditions are satisfied that include making certain disclosures to the participant or beneficiary.

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 if the collection of information does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1210–0136. The current approval is scheduled to expire on August 31, 2012; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on April 5, 2012 (77 FR 20650).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1210–0136. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

*Agency:* DOL–EBSA.

*Title of Collection:* Notice of Research Exception under the Genetic Information Nondiscrimination Act of 2008.

*OMB Control Number:* 1210–0136.

*Affected Public:* Private Sector—Businesses or other for-profits.

*Total Estimated Number of Respondents:* 3.

*Total Estimated Number of Responses:* 3.

*Total Estimated Annual Burden Hours:* 1.

*Total Estimated Annual Other Costs Burden:* $11.

Dated: August 1, 2012.

**Michel Smyth,**

*Departmental Clearance Officer.*

[FR Doc. 2012–19331 Filed 8–7–12; 8:45 a.m.]

**BILLING CODE 4510–29–P**

## DEPARTMENT OF LABOR

### Office of Disability Employment Policy

### Office of the Assistant Secretary for Office of Disability Employment Program National Center on Leadership for Employment and Advancement of People With Disabilities

**AGENCY:** Office of Disability Employment Policy, Department of Labor.

*Announcement Type:* New Notice of Availability of Funds and Solicitation for Grant Applications (SGA) for Cooperative Agreements. The full announcement is posted on *http://www.grants.gov.*

*Funding Opportunity Number:* SGA–12–14.

*Key Dates:* The closing date for receipt of applications is August 31, 2012.

**Funding Opportunity Description**

The U.S. Department of Labor (DOL or Department), Office of Disability Employment Policy (ODEP) announces the availability of approximately $1.1 to fund one cooperative agreement to establish the National Center on Leadership for the Employment and Advancement of People with Disabilities (LEAD). The Center will seek to improve employment outcomes and promote the economic advancement of people with disabilities by focusing on five strategic goal areas.

First, the Center will stimulate and bring to scale innovative practices and solutions-oriented models focused on both sustainable systems change and improved practices at the individual level. Second, the Center will coordinate and provide state-of-the-art technical assistance, training and knowledge transfer capacity to workforce-related federal, state and local staff, grantees, subcontracting entities and external partners on evidence-based strategies and best practices. Third, the Center will translate emerging and successful solutions identified through demonstration projects and research focused on retention and return-to-work issues for individuals with disabilities, particularly mature workers. Fourth, the Center will assist ODEP in the development of policy by performing, upon request, rapid response to policy analysis and policy implementation questions. Finally, the Center will provide real-time accurate information related to disability employment and serve as a central locus and repository of information on best practices and successful employment strategies to both individual job seekers and the systems that assist them in securing, retaining, and advancing in employment.

This cooperative agreement will be funded for one year with up to four option years available, pending acceptable performance and availability of funding.

This solicitation provides background information, describes the application submission requirements, outlines the process that eligible entities must use to apply for funds covered by this solicitation, and outlines the evaluation criteria used as a basis for selecting the grantee.

The full Solicitation for Grant Applications is posted on *http://www.grants.gov* under U.S. Department of Labor/ODEP. Applications submitted through *http://www.grants.gov* or hard copy will be accepted. If you need to speak to a person concerning these grants, you may telephone Cassandra Mitchell at 202–693–4570 (not a toll-free number). If you have issues regarding access to the *http://www.grants.gov* Web site, you may telephone the Contact Center Phone at 1–800–518–4726.

Signed in Washington, DC, this 2nd day of August 2012.

**Cassandra R. Mitchell,**

*Grant Officer.*

[FR Doc. 2012–19370 Filed 8–7–12; 8:45 am]

**BILLING CODE 4510–FK–P**

## DEPARTMENT OF LABOR

### Office of the Assistant Secretary for Office of Disability Employment Program Accessible Technology Action Center (ATAC)

**AGENCY:** Office of Disability Employment Policy, Department of Labor.

*Announcement Type:* New Notice of Availability of Funds and Solicitation for Grant Applications (SGA) for Cooperative Agreements. The full announcement is posted on http://www.grants.gov.

*Funding Opportunity Number:* SGA 12–13.

*Key Dates:* The closing date for receipt of applications is August 31, 2012.

**Funding Opportunity Description**

The U.S. Department of Labor (DOL or Department), Office of Disability Employment Policy (ODEP) announces the availability of approximately $950,000 to fund a cooperative agreement to develop and operate the Accessible Technology Action Center (ATAC), a new national resource to facilitate and promote the use of accessible technology in the hiring, employment, retention, and career advancement of individuals with disabilities.

DOL is using this funding to strategically (1) develop, coordinate and publicize resources on accessible technology in the workplace; (2) promote effective employer practices and strategies on accessible technology issues in the workplace related to leadership, self-assessment, policies and practices, infrastructure, and continuous improvement; (3) facilitate policy advancement on specific issues facing employers, developers, and the technology industry related to ensuring accessible, usable and interoperable technology in all types of work settings; and (4) translate that policy knowledge into adoption and implementation.

The tasks to be carried out by the Accessible Technology Action Center include, but are not limited to the following:

• Developing and maintaining a comprehensive web portal with resources related to accessible technology in the workplace, including resources that meet the varied needs of

individuals with disabilities, private and public sector employers, and information technology professionals and developers.

• Conducting trainings/webinars on issues related to accessible technology in the workplace, including use of emerging technologies to facilitate employment and creating accessible human resource management systems (e.g., accessible online job application portals).

• Collecting, analyzing and publicizing exemplary practices related to accessible technology in the workplace through collaboration with public and private sector employers.

• Conducting outreach and establishing and maintaining strategic partnerships and effective working collaborations with outside entities with the goal of sharing knowledge and promoting the adoption and implementation of policies and effective practices related to accessible technology in the workplace.

Funding of $950,000 will be awarded through a competitive process for a 12-month period of performance, with the possibility of up to four (4) option years of funding depending on the availability of funds and satisfactory performance.

This solicitation provides background information, describes the application submission requirements, outlines the process that eligible entities must use to apply for funds covered by this solicitation, and outlines the evaluation criteria used as a basis for selecting the grantee.

The full Solicitation for Grant Applications is posted on *http://www.grants.gov under U.S. Department of Labor/ODEP*. Applications submitted through *http://www.grants.gov* or hard copy will be accepted. If you need to speak to a person concerning these grants, you may telephone Cassandra Mitchell at 202–693–4570 (not a toll-free number). If you have issues regarding access to the *http://www.grants.gov* Web site, you may telephone the Contact Center Phone at 1–800–518–4726.

Signed in Washington, DC, this 2nd day of August 2012.

**Cassandra R. Mitchell,**

*Grant Officer.*

[FR Doc. 2012–19371 Filed 8–7–12; 8:45 am]

**BILLING CODE 4510–FK–P**

## NATIONAL SCIENCE FOUNDATION

### Notice of Permit Application Received Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of Permit Applications Received Under the Antarctic Conservation Act.

**SUMMARY:** Notice is hereby given that the National Science Foundation (NSF) has received a waste management permit application for Dr. Harry Anderson to conduct a flight from Punta Arenas, Chile to the Chilean base Lieutenant Rodolfo Marsh Martin Aerodrome airport on King George Island where he will land, refuel, and take off for return to Punta Arenas. The application by Dr. Harry Anderson of Bainbridge Island, WA is submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to this permit application within September 7, 2012. Permit applications may be inspected by interested parties at the Permit Office, address below.

**ADDRESSES:** Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

**FOR FURTHER INFORMATION CONTACT:** Dr. Polly A. Penhale at the above address or (703) 292–8030.

**SUPPLEMENTARY INFORMATION:** NSF's Antarctic Waste Regulation, 45 CFR part 671, requires all U.S. citizens and entities to obtain a permit for the use or release of a designated pollutant in Antarctica, and for the release of waste in Antarctica. NSF has received a permit application under this Regulation for conduct of a flight of a 2001 Lancair Columbia 300 aircraft (N788W) from Punta Arenas, Chile to the Chilean aerodrome on King George Island. Activities include refueling the aircraft, possible generation of wastes.

Designated pollutants that would be associated with the flight are typically air emissions and waste water (urine and human solid waste. All wastes would be packaged and stored on the aircraft for proper disposal in Chile under approved guidelines after return of the aircraft to Punta Arenas, Chile.

The permit applicant: Harry R. Anderson, Ph.D., Bainbridge Island, Permit application No. 2013 WM–003.

**Nadene G. Kennedy,**

*Permit Officer.*

[FR Doc. 2012–19323 Filed 8–7–12; 8:45 am]

**BILLING CODE 7555–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. NRC–2012–0066]**

### Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of the OMB review of information collection and solicitation of public comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on May 18, 2012 (77 FR 29697).

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* Title 10 of the Code of Federal Regulations (10 CFR) Part 51—Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.

3. *Current OMB approval number:* 3150–0021.

4. *The form number if applicable:* N/A.

5. *How often the collection is required:* Upon submittal of an application for a construction permit, operating license, operating license renewal, early site review, design certification review, decommissioning or termination review, or manufacturing license, or upon submittal of a petition for rulemaking.

6. *Who will be required or asked to report:* Licensees and applicants requesting approvals for actions proposed in accordance with the provisions of 10 CFR Parts 30, 32, 33, 34, 35, 36, 39, 40, 50, 52, 54, 60, 61, 70, and 72.

7. *An estimate of the number of annual responses:* 48.31.

8. *The estimated number of annual respondents:* 48.31.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 100,783.

10. *Abstract:* The NRC's regulations at 10 CFR Part 51 specifies information to be provided by applicants and licensees

so that the NRC can make determinations necessary to adhere to the policies, regulations, and public laws of the United States, which are to be interpreted and administered in accordance with the policies set forth in the National Environmental Policy Act of 1969, as amended.

The public may examine and have copied for a fee publicly available documents, including the final supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by September 7, 2012. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Chad Whiteman, Desk Officer, Office of Information and Regulatory Affairs (3150–0021), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be emailed to *Chad_S_Whiteman@omb.eop.gov* or submitted by telephone at 202–395–4718.

The NRC Clearance Officer is Tremaine Donnell; telephone: 301–415–6258.

Dated at Rockville, Maryland, this 2nd day of August 2012.

For the Nuclear Regulatory Commission.

**Tremaine Donnell,**

*NRC Clearance Officer, Office of Information Services.*

[FR Doc. 2012–19312 Filed 8–7–12; 8:45 am]

**BILLING CODE 7590–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 30160; 812–13964]**

## BlackRock Preferred Partners LLC, et al.; Notice of Application

August 2, 2012.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 18(c) and 18(i) of the Act and for an order pursuant to section 17(d) of the Act and rule 17d–1 under the Act.

**SUMMARY:** *Summary of Application:* Applicants request an order to permit certain registered closed-end management investment companies to issue multiple classes of shares and to impose asset-based distribution and service fees and contingent deferred sales loads (''CDSCs'').

*Applicants:* BlackRock Preferred Partners LLC (the ''Fund''), BlackRock Advisors, LLC (the ''Adviser'') and BlackRock Investments, LLC (the ''Distributor'').

**DATES:** *Filing Dates:* The application was filed on September 23, 2011, and amended on June 22, 2012.

*Hearing or Notification of Hearing:* An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 27, 2012, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants, c/o Janey Ahn, Esq., BlackRock Advisors, LLC, 55 East 52nd Street, New York, New York 10055.

**FOR FURTHER INFORMATION CONTACT:** Emerson S. Davis, Senior Counsel, at (202) 551–6868 or Daniele Marchesani, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

### Applicants' Representations

1. The Fund is a continuously offered non-diversified closed-end management investment company registered under the Act and organized as a Delaware limited liability company. The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940 and serves as investment adviser to the Fund. The Distributor, a broker-dealer registered under the Securities Exchange Act of 1934, acts as principal underwriter to the Fund. The Distributor is under common control with the Adviser and is an affiliated person, as defined in section 2(a)(3) of the Act, of the Adviser.

2. The Fund continuously offers its limited liability company interests (''Units'') to the public pursuant to a registration statement under the Securities Act of 1933. The Units of the Fund are not listed on any securities exchange and are not traded on an over-the-counter system such as NASDAQ. Applicants do not expect that any secondary market will develop for the Units.

3. The Fund currently offers an initial class of Units (''Initial Class'') at net asset value subject to a front-end sales load and an ongoing asset-based distribution fee and proposes to offer multiple classes of Units. The Fund would offer new Unit classes (''New Class'') at net asset value and may also charge a front-end sales load and an annual service and/or distribution fee. The Fund intends to continue to offer Initial Class Units, subject to minimum purchase requirements.

4. In order to provide a degree of liquidity to members (''Members''), the Fund may from time to time offer to repurchase Units at net asset value in accordance with rule 13e–4 under the Exchange Act of 1934 Act, as amended (the ''1934 Act'').[1] A Fund will repurchase Units at the times, in the amounts and on the terms as may be determined by the Board of Directors (''Board'') of the Fund in its sole discretion. The Adviser expects to recommend ordinarily that the Board authorize each Fund to offer to repurchase Units from Members quarterly.

5. Applicants request that the order also apply to any other continuously offered registered closed-end management investment companies existing now or in the future for which

[1] For the Initial Class, a 2% early repurchase fee will be charged to any Member that tenders its Units to the Fund in connection with a tender offer with a valuation date that is prior to the business day immediately preceding the one-year anniversary of the Member's purchase of the respective Units. Any early repurchase fee, and the Fund's waiver of, scheduled variation in, or elimination of, such early repurchase fee, will equally apply to all Members of the Fund, within the applicable category of Members, regardless of class, consistent with section 18 of the Act and rule 18f–3 thereunder.

the Adviser, the Distributor, or any entity controlling, controlled by or under common control with the Adviser or the Distributor acts as investment adviser or principal underwriter, and which provides periodic liquidity with respect to its Units pursuant to rule 13e–4 under the 1934 Act (such investment companies, together with the Fund, the ''Funds'').[2]

6. Applicants represent that any asset-based service and distribution fees will comply with the provisions of rule 2830(d) of the Conduct Rules of the National Association of Securities Dealers, Inc. (''NASD Conduct Rule 2830'').[3] Applicants also represent that each Fund will disclose in its prospectus, the fees, expenses and other characteristics of each class of Units offered for sale by the prospectus as is required for open-end multiple class funds under Form N–1A. The Fund will disclose fund expenses in Member reports as if it were an open-end management investment company, and disclose any arrangements that result in breakpoints in, or elimination of, sales loads in its prospectus.[4] The Fund and the Distributor will also comply with any requirements that may be adopted by the Commission or FINRA regarding disclosure at the point of sale and in transaction confirmations about the costs and conflicts of interest arising out of the distribution of open-end investment company shares, and regarding prospectus disclosure of sales loads and revenue sharing arrangements as if those requirements applied to the Fund and the Distributor.[5]

7. The Fund will allocate all expenses incurred by it among the various classes of Units based on the respective net assets of the Fund attributable to each class, except that the net asset value and expenses of each class will reflect distribution fees, service fees, and any other incremental expenses of that class. Expenses of the Fund allocated to a particular class of Units will be borne on a pro rata basis by each outstanding Unit of that class. Applicants state that the Fund will comply with the provisions of rule 18f–3 under the Act as if it were an open-end investment company.

8. In the event the Fund imposes a CDSC, the Applicants will comply with the provisions of rules 6c–10, as if that rule applied to closed-end management investment companies. With respect to any waiver of, scheduled variation in, or elimination of the CDSC, the Fund will comply with rule 22d–1 under the Act as if the Fund were an open-end investment company.

*Applicants' Legal Analysis*

Multiple Classes of Shares

1. Section 18(c) of the Act provides, in relevant part, that a closed-end investment company may not issue or sell any senior security if, immediately thereafter, the company has outstanding more than one class of senior security. Applicants state that the creation of multiple classes of Units of the Funds may be prohibited by section 18(c).

2. Section 18(i) of the Act provides that each share of stock issued by a registered management investment company will be a voting stock and have equal voting rights with every other outstanding voting stock. Applicants state that permitting multiple classes of Units of the Funds may violate section 18(i) of the Act because each class would be entitled to exclusive voting rights with respect to matters solely related to that class.

3. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction or any class or classes of persons, securities or transactions from any provision of the Act, or from any rule under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under section 6(c) from sections 18(c) and 18(i) to permit the Funds to issue multiple classes of Units.

4. Applicants submit that the proposed allocation of expenses and voting rights among multiple classes is equitable and will not discriminate against any group or class of Members. Applicants submit that the proposed arrangements would permit the Fund to facilitate the distribution of its Units and provide investors with a broader choice of Member options. Applicants assert that the proposed closed-end investment company multiple class structure does not raise the concerns underlying section 18 of the Act to any greater degree than open-end investment companies' multiple class structures that are permitted by rule 18f–3 under the Act. Applicants state that each Fund will comply with the provisions of rule 18f–3 as if it were an open-end investment company.

CDSCs

1. Applicants believe that the requested relief meets the standards of section 6(c) of the Act. Rule 6c–10 under the Act permits open-end investment companies to impose CDSCs, subject to certain conditions. Applicants state that any CDSC imposed by the Fund will comply with rule 6c–10 under the Act as if the rule were applicable to closed-end investment companies. The Fund also will disclose CDSCs in accordance with the requirements of Form N–1A concerning CDSCs as if the Fund were open-end investment companies. Applicants further state that the Fund will apply the CDSC (and any waivers or scheduled variations of the CDSC) uniformly to all Members in a given class and consistently with the requirements of rule 22d–1 under the Act.

Asset-Based Service and Distribution Fees

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company or an affiliated person of such person, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates unless the Commission issues an order permitting the transaction. In reviewing applications submitted under section 17(d) and rule 17d–1, the Commission considers whether the participation of the investment company in a joint enterprise or joint arrangement is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

2. Rule 17d–3 under the Act provides an exemption from section 17(d) and rule 17d–1 to permit open-end investment companies to enter into distribution arrangements pursuant to

[2] Any Fund relying on this relief in the future will do so in a manner consistent with the terms and conditions of the application. Applicants represent that any investment company presently intending to rely on the requested relief is listed as an applicant.

[3] All references to NASD Conduct Rule 2830 include any successor or replacement rule that may be adopted by the Financial Industry Regulatory Authority (''FINRA'').

[4] *See* Shareholder Reports and Quarterly Portfolio Disclosure of Registered Management Investment Companies, Investment Company Act Release No. 26372 (Feb. 27, 2004) (adopting release) (requiring open-end investment companies to disclose fund expenses in shareholder reports); and Disclosure of Breakpoint Discounts by Mutual Funds, Investment Company Act Release No. 26464 (June 7, 2004) (adopting release) (requiring open-end investment companies to provide prospectus disclosure of certain sales load information).

[5] *See,* e.g., Confirmation Requirements and Point of Sale Disclosure Requirements for Transactions in Certain Mutual Funds and Other Securities, and Other Confirmation Requirement Amendments, and Amendments to the Registration Form for Mutual Funds, Investment Company Act Release No. 26341 (Jan. 29, 2004) (proposing release).

rule 12b–1 under the Act. Applicants request an order under section 17(d) and rule 17d–1 under the Act to permit the Funds to impose asset-based service and/or distribution fees. Applicants have agreed to comply with rules 12b–1 and 17d–3 as if those rules applied to closed-end investment companies.

*Applicants' Condition*

Applicants agree that any order granting the requested relief will be subject to the following condition:

Applicants will comply with the provisions of rules 12b–1, 17d–3 and 18f–3 under the Act, as amended from time to time or replaced, as if those rules applied to closed-end management investment companies, and will comply with NASD Conduct Rule 2830, as amended from time to time or replaced, as if that rule applied to all closed-end management investment companies. Additionally, in the event the Fund imposes a CDSC, the Applicants will comply with the provisions of rules 6c–10 and 22d–1 under the Act, as amended from time to time or replaced, as if those rules applied to closed-end management investment companies, and to the extent the Fund may determine to waive, impose scheduled variations of, or eliminate the early repurchase fee, it will do so consistently with the requirements of rule 22d–1 under the Act, as amended from time to time or replaced.

For the Commission, by the Division of Investment Management, under delegated authority.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–19366 Filed 8–7–12; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67558; File No. SR–BATS–2012–030]**

## Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of Proposed Rule Change To Amend BATS Rule 14.11, Entitled ''Other Securities''

August 1, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on July 20, 2012, BATS Exchange, Inc. (''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 14.11, entitled ''Other Securities,'' to modify the criteria for certain securities listed on BATS Exchange as Index Fund Shares. 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. The proposed rule text can be found in Exhibit 5.

### 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

Proposal To Amend Index Fund Shares Rules

The Exchange proposes certain changes to Rule 14.11(c), relating to Index Fund Shares, to conform the Exchange's listings criteria for Index Fund Shares with the analogous criteria in place for NYSE Arca Equities, Inc. (''NYSE Arca'').[3] Specifically, the Exchange proposes to amend Exchange Rule 14.11(c) (''Index Fund Shares'') to: (1) Modify the weight and volume requirement for component stocks comprising the applicable index or portfolio for any U.S. index or portfolio and any international or global index or portfolio upon which Index Fund Shares are based; (2) exclude Index Fund Shares, Portfolio Depositary Receipts, Trust Issued Receipts, and Managed Fund Shares (collectively, ''Derivative Securities Products'')[4] when applying the quantitative generic listing criteria in Rule 14.11(c); and (3) modify the minimum number of component stocks for any U.S. index or portfolio and any international or global index or portfolio upon which Index Fund Shares are based to adopt certain exceptions for any index or portfolio that is partially or wholly comprised of Index Fund Shares or other Derivative Securities Products.

Rule 14.11(c)(3) provides that the Exchange may approve a series of Index Fund Shares for listing and trading pursuant to Rule 19b–4(e)[5] under the Act if such series satisfies the criteria set forth in that rule. The Exchange proposes to amend Rule 14.11(c)(3) to amend the index weight requirements and adopt notional volume traded per month[6] to the initial listing standards for Index Fund Shares, commonly referred to as exchange-traded funds. The Exchange proposes to amend the minimum component stock weight requirement for monthly trading volumes from 90% to 70% of the weight of the underlying index. In addition, the Exchange proposes to adopt an alternative notional volume traded per month.

Currently for U.S. component stock indexes, Rule 14.11(c)(3)(A)(i)(b) provides that component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum monthly trading volume during each of the last six months of at least 250,000 shares. The Exchange proposes to amend the minimum component stock weight requirement from 90% to 70% of the weight of the underlying index or portfolio. Further, the Exchange is proposing to adopt an average minimum trading volume requirement of 250,000 shares over a six-month period instead of in each of the last six months and to adopt a notional volume traded per month of $25,000,000 averaged over the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange notes that NYSE Arca uses the term Investment Company Units to describe the same products that the Exchange calls Index Fund Shares.

[4] Rule 14.11 includes criteria for derivative securities that may be listed or traded on the Exchange, such as Portfolio Depositary Receipts, Trust Issued Receipts, and Managed Fund Shares.

[5] 17 CFR 240.19b–4(e). Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization (''SRO'') shall not be deemed a proposed rule change, pursuant to Rule 19b–4(c)(1), if the Commission has approved, pursuant to Section 19(b) of the Exchange Act, the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivatives securities product, and the SRO has a surveillance program for the product class.

[6] The notional volume traded per month is the number of shares traded in a calendar month multiplied by the monthly closing price.

last six months as an option for meeting the listing requirements.

Currently for international or global indexes, Rule 14.11(c)(3)(A)(ii)(b) provides that component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum worldwide monthly trading volume during each of the last six months of at least 250,000 shares. The Exchange proposes to amend the minimum component stock weight requirement from 90% to 70% of the weight of the underlying index or portfolio. Further, the Exchange is proposing to adopt an average minimum trading volume requirement of 250,000 shares over a six-month period instead of in each of the last six months and to adopt a worldwide notional volume traded per month of $25,000,000 averaged over the last six months as an option for meeting the listing requirements. Further, the Exchange proposes to clarify that the component stock trading volumes are determined on a global basis.

With regard to the Exchange's proposal to amend the minimum component stock weight requirement for monthly trading volumes from 90% to 70% of the weight of the underlying index, the Exchange believes the proposed standard reasonably ensures that securities with substantial monthly trading volumes account for a substantial portion of the underlying index and, when applied in conjunction with the other applicable listing requirements, remain sufficiently broad-based in scope to minimize potential manipulation. The Exchange notes that the Commission has previously approved the listing and trading of exchange-traded funds based upon indices that were composed of stocks that did not meet the 90% monthly trading volume weight, but were above the proposed 70% monthly trading volume weight criteria.[7] In addition, this standard would conform to existing NYSE Arca requirements approved by the Commission.[8]

With respect to adopting, as an alternative to monthly trading volume, the notional volume traded for each of the last six months to the initial listing standards for both domestic and international indexes, the Exchange believes that notional volume traded averaged per month is a better measure of the liquidity of component stocks of the underlying index or indexes. Specifically, notional volume nullifies the volume discrepancies that generally occur between low priced and high priced stocks.[9]

With respect to adopting a six-month average, instead of in each of the last six-months, criterion for volume and notional volume, the Exchange believes that the averaged six-month period is a better indicator of the current liquidity on an index and serves to eliminate seasonal volume fluctuations of component securities. Further, investors, exchange-traded fund issuers, and third-party index sponsors would also benefit from the Exchange's ability to list—without the delay associated with a stand-alone rule filing—Index Fund Shares based on a broader group of indexes promoting competition.

The Exchange also proposes to exclude Derivative Securities Products when applying the quantitative listing requirements of Rule 14.11(c)(3)(A)(i)(a), (b), and (c) and 14.11(c)(3)(A)(ii)(a), (b), and (c) relating to listing of Index Fund Shares based on a U.S index or portfolio or an international or global index or portfolio, respectively. Component stocks in the aggregate, excluding Derivative Securities Products, would be required to meet the criteria of these provisions. Thus, for example, when determining the component weight for the most heavily weighted stock and the five most heavily weighted component stocks for an underlying index that includes a Derivative Securities Product, the weight of any Derivative Securities Products included in the underlying index or portfolio would not be considered.

In addition, the Exchange proposes to modify the requirement in Rule 14.11(c)(3)(A)(i)(d) that an index or portfolio shall include a minimum of 13 component stocks for an index or portfolio that includes Derivative Securities Products. Specifically, the Exchange proposes that there shall be no minimum number of component stocks if (a) one or more series of Index Fund Shares or Portfolio Depositary Receipts (as defined in Exchange Rule 14.11(b)) constitute, at least in part, components underlying a series of Index Fund Shares, or (b) one or more series of Derivative Securities Products account for 100% of the weight of the index or portfolio. Thus, for example, if the index or portfolio underlying a series of Index Fund Shares includes one or more series of Index Fund Shares or Portfolio Depositary Receipts, or if it consists entirely of other Derivative Securities Products, then there would not be required to be any minimum number of component stocks (*i.e.,* one or more components would be acceptable). However, if the index or portfolio consists of Derivative Securities Products other than Index Fund Shares or Portfolio Depositary Receipts (*e.g.,* Managed Fund Shares) as well as securities that are not Derivative Securities Products (*e.g.,* common stocks), then there would have to be at least 13 components in the underlying index or portfolio.

In addition, the Exchange proposes to modify the requirement in 14.11(c)(3)(A)(ii)(d) that an index or portfolio shall include a minimum of 20 component stocks for an international or global index or portfolio that includes Derivative Securities Products. Specifically, the Exchange proposes that there shall be no minimum number of component stocks if (a) one or more series of Index Fund Shares or Portfolio Depositary Receipts (as defined in Exchange Rule 14.11(b)) constitute, at least in part, components underlying a series of Index Fund Shares, or (b) one or more series of Derivative Securities Products account for 100% of the weight of the index or portfolio. Thus, for example, if the index or portfolio underlying a series of Index Fund Shares includes one or more series of Index Fund Shares or Portfolio Depositary Receipts, or if it consists entirely of other Derivative Securities Products, then there would not be required to be any minimum number of component stocks (*i.e.,* one or more components would be acceptable). However, if the index or portfolio consists of Derivative Securities Products other than Index Fund Shares or Portfolio Depositary Receipts (*e.g.,* Managed Fund Shares) as well as securities that are not Derivative Securities Products (*e.g.,* common stocks), then there would have to be at

[7] *See* Securities Exchange Act Release No. 46306 (August 2, 2002), 67 FR 51916 (August 9, 2002) (SR–NYSE–2002–28) (approving the following funds for trading pursuant to unlisted trading privileges on NYSE: (1) Vanguard Total Stock Market VIPERs; (2) iShares Russell 2000 Index Funds; (3) iShares Russell 2000 Value Index Funds; and (4) iShares Russell 2000 Growth Index Fund); Securities Exchange Act Release No. 55953 (June 25, 2007), 72 FR 36084 (July 2, 2007) (SR–NYSE–2007–46) (approving listing on NYSE of HealthShares Orthopedic Repair Exchange-Traded Fund); and Securities Exchange Act Release No. 56695 (October 24, 2007), 72 FR 61413 (October 30, 2007) (SR–NYSEArca–2007–111) (approving listing on NYSE Arca of HealthShares Ophthalmology Exchange-Traded Fund).

[8] *See* NYSE Arca Rule 5.2(j)(3), Commentary .01(a)(A) and (B); *see also* Securities Exchange Act Release No. 61240 (December 24, 2009), 75 FR 168 (January 4, 2010) (SR–NYSEArca–2009–101) (approving proposed rule change to amend NYSE Arca Equities Rule 5.2(j)(3)).

[9] For example, a stock priced at $10 per share that trades 2,500,000 shares in a month has a notional volume of $25,000,000. Conversely, a stock priced at $100 per share that trades 250,000 shares in a month has a notional volume of $25,000,000.

least 20 components in the underlying index or portfolio.

The Exchange believes it is appropriate to exclude Derivative Securities Products from the generic criteria specified above for Index Fund Shares and to adopt the above-described exceptions in so far as Derivative Securities Products that may be included in an index or portfolio underlying a series of Index Fund Shares are themselves subject to specific listing and continued listing requirements of the national securities exchange on which they are listed. Such Derivative Securities Products would have been listed and traded on a national securities exchange pursuant to a filing submitted pursuant to Section 19(b)(2) [10] or 19(b)(3)(A) [11] of the Act, or would have been listed by a national securities exchange pursuant to the requirements of Rule 19b–4(e)[12] under the Act. Finally, Derivative Securities Products are derivatively priced, and, therefore, it is not necessary to apply the generic quantitative criteria (market capitalization, trading volume, index or portfolio component weighting) applicable to non-Derivative Securities Products (*e.g.,* common stocks) to such products.

In addition to the changes set forth above, the Exchange proposes to correct a typographical error in Rule 14.11(c)(4), where there currently are two sub-sections (c)(4)(B). The Exchange proposes to change the second reference to (c)(4)(C).

General Provisions

To the extent not specifically addressed in the proposed rules, the following general provisions of the Exchange's rules will continue to apply to all subject securities affected by the proposed rules (''securities'').

Information Circular

Prior to the commencement of trading, the Exchange will inform its Members in an Information Circular of the special characteristics and risks associated with trading the securities. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of the securities (and/or that the securities are not individually redeemable); (2) Exchange Rule 3.7, which imposes suitability obligations on Exchange Members with respect to recommending transactions in the securities to customers; (3) how information regarding the Intraday Indicative Value is disseminated; (4) the risks involved in trading the securities during the Pre-Opening [13] and After Hours Trading Sessions [14] when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (5) the requirement that Members deliver a prospectus to investors purchasing newly issued securities prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Information Circular will advise Members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the securities. Members purchasing securities for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Circular will reference that the securities are subject to various fees and expenses described in the registration statement. The Information Circular will also disclose the trading hours of the securities and, if applicable, the Net Asset Value (''NAV'') calculation time for the securities. The Information Circular will disclose that information about the securities and the corresponding indexes, if applicable, will be publicly available on the Web site for the securities.

Trading Rules

The Exchange deems the securities to be equity securities, thus rendering trading in the securities subject to the Exchange's existing rules governing the trading of equity securities. The securities will trade on the Exchange from 8:00 a.m. until 5:00 p.m. Eastern Time. The Exchange has appropriate rules to facilitate transactions in the securities during all trading sessions. The minimum price increment for quoting and entry of orders in equity securities traded on the Exchange is $0.01, with the exception of securities that are priced less than $1.00 for which the minimum price increment for order entry is $0.0001.[15]

Surveillance

The Exchange believes that its surveillance procedures are adequate to address any concerns about the trading of the securities on the Exchange. Trading of the securities on the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including the securities. The Exchange may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members or affiliates of the ISG [16] or with which the Exchange has entered into a comprehensive surveillance sharing agreement. The Exchange has a general policy prohibiting the distribution of material, non-public information by its employees.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the securities. Trading in the securities may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the securities inadvisable. These may include: (1) The extent to which trading in the underlying asset or assets is not occurring; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in the securities will be subject to trading halts caused by extraordinary market volatility pursuant to Rule 11.18 or by the halt or suspension of the trading of the current underlying asset or assets.

If the applicable Intraday Indicative Value, value of the underlying index, or the value of the underlying asset or assets (*e.g.,* securities, commodities, currencies, futures contracts, or other assets) is not being disseminated as required, the Exchange may halt trading

[10] 15 U.S.C. 78s(b)(2).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(e).

[13] The Pre-Opening Session is from 8:00 a.m. to 9:30 a.m. Eastern Time.

[14] The After Hours Trading Session is from 4:00 p.m. to 5:00 p.m. Eastern Time.

[15] *See, e.g.,* Rule 11.11(a). Regulation NMS Rule 612, Minimum Pricing Increment, provides:

a. No national securities exchange, national securities association, alternative trading system, vendor, or broker or dealer shall display, rank, or accept from any person a bid or offer, an order, or an indication of interest in any NMS stock priced in an increment smaller than $0.01 if that bid or offer, order, or indication of interest is priced equal to or greater than $1.00 per share.

b. No national securities exchange, national securities association, alternative trading system, vendor, or broker or dealer shall display, rank, or accept from any person a bid or offer, an order, or an indication of interest in any NMS stock priced in an increment smaller than $0.0001 if that bid or offer, order, or indication of interest is priced less than $1.00 per share.

c. The Commission, by order, may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any person, security, quotation, or order, or any class or classes of persons, securities, quotations, or orders, if the Commission determines that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

[16] For a list of the current members and affiliate members of ISG, *see www.isgportal.com.*

during the day in which such interruption to the dissemination occurs. If the interruption to the dissemination of the applicable Intraday Indicative Value, value of the underlying index, or the value of the underlying asset or assets persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the NAV with respect to a series of the securities is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the NAV is available to all market participants.

Suitability

Currently, Exchange Rule 3.7 governs Recommendations to Customers (Suitability). Prior to the commencement of trading of any inverse, leveraged, or inverse leveraged securities, the Exchange will inform its Members of the suitability requirements of the Exchange Rule 3.7 in an Information Circular. Specifically, Members will be reminded in the Information Circular that, in recommending transactions in these securities, they must have a reasonable basis to believe that (1) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such Member, and (2) the customer can evaluate the special characteristics, and is able to bear the financial risks, of an investment in the securities. In connection with the suitability obligation, the Information Circular will also provide that Members must make reasonable efforts to obtain the following information: (1) The customer's financial status; (2) the customer's tax status; (3) the customer's investment objectives; and (4) such other information used or considered to be reasonable by such Member or registered representative in making recommendations to the customer.

In addition, FINRA has implemented increased sales practice and customer margin requirements for FINRA members applicable to inverse, leveraged, and inverse leveraged securities and options on such securities, as described in FINRA Regulatory Notices 09–31 (June 2009), 09–53 (August 2009) and 09–65 (November 2009) (''FINRA Regulatory Notices''). Members that carry customer accounts will be required to follow the FINRA guidance set forth in the FINRA Regulatory Notices. The Information Circular will reference the FINRA Regulatory Notices regarding sales practice and customer margin requirements for FINRA members applicable to inverse, leveraged, and inverse leveraged securities and options on such securities.

The Exchange notes that, for such inverse, leveraged, and inverse leveraged securities, the corresponding funds seek leveraged, inverse, or leveraged inverse returns on a daily basis, and do not seek to achieve their stated investment objective over a period of time greater than one day because compounding prevents the funds from perfectly achieving such results. Accordingly, results over periods of time greater than one day typically will not be a leveraged multiple (+200%), the inverse (-100%), or a leveraged inverse multiple (-200%) of the period return of the applicable benchmark and may differ significantly from these multiples. The Exchange's Information Circular, as well as the applicable registration statement, will provide information regarding the suitability of an investment in such securities.

2. Statutory Basis

The rule change proposed in this submission 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.[17] Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,[18] because 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. The Exchange believes that the proposed rules will facilitate the listing and trading of additional types of exchange-traded products on the Exchange that will enhance competition among market participants, to the benefit of investors and the marketplace. In addition, the listing and trading criteria set forth in the proposed rules are intended to protect investors and the public interest.

The Exchange's listing requirements as proposed herein are at least as stringent as those of another national securities exchange and, consequently, the proposed rule change is consistent with the protection of investors and the public interest. Additionally, the proposal is designed to prevent fraudulent and manipulative acts and practices, as all of the proposed new products are subject to existing Exchange trading rules, together with surveillance procedures, suitability, and prospectus requirements, and requisite Exchange approvals, all set forth above.

The proposal is also designed to promote just and equitable principles of trade by way of initial and continued listing standards which, if not maintained, will result in the discontinuation of trading in the affected products. These requirements, together with the applicable Exchange equity trading rules (which apply to the proposed products), ensure that no investor would have an unfair advantage over another respecting the trading of the subject products. On the contrary, all investors will have the same access to, and use of, information concerning the specific products and trading in the specific products, all to the benefit of public customers and the marketplace as a whole.

Furthermore, the proposal is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system by adopting listing standards that will lead ultimately to the trading of the proposed new products on the Exchange, just as they are currently traded on other exchanges. The Exchange believes that individuals and entities permitted to make markets on the Exchange in the proposed new products should enhance competition within the mechanism of a free and open market and a national market system, and customers and other investors in the national market system should benefit from more depth and liquidity in the market for the proposed new products.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change imposes any burden on competition.

*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 Changes and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i)

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve or disapprove the proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BATS–2012–030 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–2012–030. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549, on official business days between 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the Exchange's principal office. 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–2012–030 and should be submitted on or before August 29, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–19350 Filed 8–7–12; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67571; File No. SR–BX–2012–055]**

## Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Period of the Trading Pause for NMS Stocks Other Than Rights and Warrants

August 2, 2012.

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 July 19, 2012, NASDAQ OMX BX, Inc. (''Exchange''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot period of the trading pause for individual NMS stocks other than rights and warrants, so that the pilot will now expire on February 4, 2013.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

**IM–4120–3. Circuit Breaker Securities Pilot**

The provisions of paragraph (a)(11) of this Rule shall be in effect during a pilot set to end on *February 4, 2013* [July 31, 2012]. During the pilot, the term ''Circuit Breaker Securities'' shall mean all NMS stocks except rights and warrants.

* * * * *

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

On June 10, 2010, the Commission granted accelerated approval for a pilot period to end December 10, 2010, for a proposed rule change submitted by the Exchange, together with related rule changes of the BATS Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., International Securities Exchange LLC, The NASDAQ Stock Market LLC (''NASDAQ''), New York Stock Exchange LLC (''NYSE''), NYSE MKT LLC (''NYSE MKT'') (formerly, NYSE Amex LLC), NYSE Arca, Inc. (''NYSE Arca''), and National Stock Exchange, Inc. (collectively, the ''Exchanges''), to pause trading during periods of extraordinary market volatility in S&P 500 stocks.[3] The rules require the Listing Markets[4] to issue five-minute trading pauses for individual securities for which they are the primary Listing Market if the transaction price of the security moves ten percent or more from a price in the preceding five-minute period. The Listing Markets are required to notify the other Exchanges and market participants of the imposition of a trading pause by immediately disseminating a special indicator over the consolidated tape. Under the rules, once the Listing Market issues a trading pause, the other Exchanges are required to pause trading in the security on their markets. On September 10, 2010, the

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[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (SR–BX–2010–037).

[4] The term ''Listing Markets'' refers collectively to NYSE, NYSE MKT, NYSE Arca, and the Exchange.

Commission approved the respective rule filings of the Exchanges to expand application of the pilot to the Russell 1000® Index and specified Exchange Traded Products.[5] On December 7, 2010, the Exchange filed an immediately effective filing to extend the existing pilot program for four months, so that the pilot would expire on April 11, 2011.[6] On March 31, 2011, the Exchange filed an immediately effective filing to extend the pilot period an additional four months, so that the pilot would expire on August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies.[7] On June 23, 2011, the Commission approved the expansion of the pilot to all NMS stocks, but with different pause-triggering thresholds.[8] On August 8, 2011, the Exchange filed an immediately effective filing that removed language from the rule that tied the expiration of the pilot to the adoption of a limit up/limit down mechanism to address extraordinary market volatility, and further extended the pilot period, so that the pilot would expire on January 31, 2012.[9] On November 18, 2011, the Exchange filed an immediately effective filing that excluded rights and warrants from the pilot.[10] On January 23, 2012, the Commission approved an extension of the pilot to July 31, 2012.[11]

On May 31, 2012, the Commission approved, on a pilot basis, the National Market System Plan to Address Extraordinary Market Volatility.[12] This plan creates a market-wide limit up-limit down mechanism that is intended to address extraordinary market volatility in NMS Stocks, which will be implemented on February 4, 2013. Once implemented, the limit up/limit down mechanism to address extraordinary market volatility will render the current stock trading pause pilot duplicative and unnecessary. Accordingly, the Exchange is proposing to extend the single stock trading pause pilot so that it will now expire on February 4, 2013, when the limit up/limit down mechanism to address extraordinary market volatility is to be implemented.

The Exchange believes that the pilot program has been successful in reducing the negative impacts of sudden, unanticipated price movements in the securities covered by the pilot. The Exchange also believes that an additional extension of the pilot is warranted so that it may continue to apply the circuit breaker to reduce the negative impacts of sudden, unanticipated price movements until it is replaced by the limit up/limit down mechanism.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[13] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[14] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning decisions to pause trading in a security when there are significant price movements. In addition, the Exchange believes extending the pilot to February 4, 2013 is consistent with the requirement to protect investors because it will permit the circuit breaker to continue to reduce the negative impacts of sudden, unanticipated price movements until it is replaced by the preferred limit up/limit down mechanism.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[15] and Rule 19b–4(f)(6) thereunder.[16] 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[17] and Rule 19b–4(f)(6)(iii) thereunder.[18]

A proposed rule change filed under Rule 19b–4(f)(6)[19] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii)[20] 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, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[21]

[5] Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (SR–BX–2010–044).

[6] Securities Exchange Act Release No. 63527 (December 10, 2010), 75 FR 78781 (December 16, 2010) (SR–BX–2010–088).

[7] Securities Exchange Act Release No. 64176 (April 4, 2011), 76 FR 19821 (April 8, 2011) (SR–BX–2011–018).

[8] Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (SR–BX–2011–025, *et al.*).

[9] Securities Exchange Act Release No. 65093 (August 10, 2011), 76 FR 50781 (August 16, 2011) (SR–BX–2011–055).

[10] Securities Exchange Act Release No. 65815 (November 23, 2011), 76 FR 74109 (November 30, 2011) (SR–BX–2011–079).

[11] Securities Exchange Act Release No. 66215 (January 23, 2012), 77 FR 4387 (January 27, 2012) (SR–BX–2012–003).

[12] Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78k–1(a)(1).

[15] 15 U.S.C. 78s(b)(3)(A)(iii).

[16] 17 CFR 240.19b–4(f)(6).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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.

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 240.19b–4(f)(6)(iii).

[21] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on

Continued

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 No. SR–BX–2012–055 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 No. SR–BX–2012–055. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BX–2012–055 and should be submitted on or before August 29, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–19353 Filed 8–7–12; 8:45 am]

**BILLING CODE 8011–01–P**

efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[22] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67574; File No. SR–CBOE–2012–0690]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to the Extension of the CBSX Individual Stock Trading Pause Pilot Program

August 2, 2012.

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 July 20, 2012, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the 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) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the individual stock trading pause pilot program pertaining to the CBOE Stock Exchange, LLC (''CBSX,'' the CBOE's stock trading facility). This rule change simply seeks to extend the pilot. No other changes to the pilot are being proposed. The text of the proposed rule change is available on the Exchange's Web site (*www.cboe.org/Legal*), at the Exchange's Office of the Secretary and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

Rule 6.3C, *Individual Stock Trading Pauses Due to Extraordinary Market Volatility,* was approved by the Commission on June 10, 2010 on a pilot basis. The pilot is currently set to expire on July 31, 2012.[5] The rule was developed in consultation with U.S. listing markets to provide for uniform market-wide trading pause standards for certain individual stocks that experience rapid price movement.[6] As the duration of the pilot expires on July 31, 2012, the Exchange is proposing to

[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).

[5] *See* Securities Exchange Act Release Nos. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (SR–CBOE–2010–047) (approval order establishing pilot through December 10, 2010); 63502 (December 9, 2010), 75 FR 78306 (December 15, 2010) (SR–CBOE–2010–112) (extension of pilot through April 11, 2011); 64194 (April 5, 2011), 76 FR 2–389 (April 12, 2011) (SR–CBOE–2011–031) (extension of pilot through the earlier of August 11, 2011 or the date on which a limit up-limit down mechanism to address extraordinary market volatility, if adopted, applies to the Circuit Breaker Stocks); 65070 (August 9, 2011), 76 FR 50516 (August 15, 2011) (SR–CBOE–2011–076) (extension of pilot through January 31, 2012); and 66166 (January 17, 2012), 77 FR 3311 (January 23, 2012) (extension of pilot through July 31, 2012).

[6] The pilot list of stocks originally included all stocks in the S&P 500 Index, but it has been expanded over time to include all NMS stocks, other than rights and warrants. *See* Securities Exchange Act Release Nos. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (SR–CBOE–2010–065) (order approving expansion of the individual stock trading pause pilot to include all stocks in the Russell 1000 index and a pilot list of Exchange Traded Products); 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (SR–CBOE–2011–049) (order approving further expansion of the individual stock trading pause pilot to include all NMS stocks effective August 8, 2011); and 65824 (November 23, 2011), 76 FR 74111 (November 30, 2011) (SR–CBOE–2011–111) (immediately effective rule change to amend the individual stock trading pause pilot to exclude all rights and warrants).

extend the effectiveness of Rule 6.3C through February 4, 2013. A February 4, 2013 extension date would coincide with the date on which the pilot National Market System Plan to Address Extraordinary Market Volatility (the ''Limit Up-Limit Down Plan'') becomes effective.[7]

2. Statutory Basis

Extension of the pilot period will allow the Exchange to continue to operate the pilot on an uninterrupted basis until the Limit Up-Down Plan pilot becomes effective. Accordingly, the Exchange believes the proposed rule change is consistent with the Act[8] and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[9] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. The proposed rule change is also designed to support the principles of Section 11A(a)(1)[11] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning decisions to pause trading in a stock when there are significant price movements.

*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.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposal.

## 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[12] and Rule 19b–4(f)(6) thereunder.[13] 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[14] and Rule 19b–4(f)(6)(iii) thereunder.[15]

A proposed rule change filed under Rule 19b–4(f)(6)[16] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii)[17] 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, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[18]

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 No. SR–CBOE–2012–069 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 No. SR–CBOE–2012–069. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CBOE–2012–069 and should be submitted on or before August 29, 2012.

[7] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012).

[8] 15 U.S.C. 78a *et seq.*

[9] 15 U.S.C. 78(f)(b).

[10] 15 U.S.C. 78(f)(b)(5).

[11] 15 U.S.C. 78k–1(a)(1).

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–19356 Filed 8–7–12; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67576; File No. SR–NSX–2012–11]**

## Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Rules To Extend Pilot Program Regarding Clearly Erroneous Executions

August 2, 2012.

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 July 25, 2012, the National Stock Exchange, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the 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

National Stock Exchange, Inc. (''NSX®'' or ''Exchange'') is proposing to amend its rules to extend a certain pilot program regarding clearly erroneous executions.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nsx.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 self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

With this rule change, the Exchange is proposing to extend the pilot program currently in effect regarding clearly erroneous executions under NSX Rule 11.19. Currently, unless otherwise extended or approved permanently, this pilot program will expire on July 31, 2012. The instant rule filing proposes to extend the pilot program until February 4, 2013 as defined in Commentary .05 of Rule 11.20.

NSX Rule 11.19 (Clearly Erroneous Executions) was approved by the Securities and Exchange Commission (the ''Commission'') on September 10, 2010 on a pilot basis to end on December 10, 2010.[3] The pilot program end date was subsequently extended until April 11, 2011.[4] Similar rule changes were adopted by other markets in the national market system in a coordinated manner. During the pilot period, the Exchange, in conjunction with the Commission and other markets, has continued to assess the effectiveness of the pilot program. The pilot program end date was further extended until August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted applies.[5] The pilot program was then again lengthened until January 31, 2012.[6] Finally, the date was extended until July 31, 2012.[7] The Exchange, in consultation with the Commission and other markets, is now proposing that this pilot program be extended until February 4, 2013 to coordinate with the implementation of a limit up/limit down mechanism to address extraordinary market volatility. Accordingly, pursuant to the instant rule filing, the expiration date of the pilot program referenced in the first two sentences of Rule 11.19 is proposed to be changed from ''July 31, 2012'' to ''February 4, 2013.''

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) and Section 11A of the Securities Exchange Act of 1934[8] (the ''Act''), in general, and Section 6(b)(5) of the Act,[9] in particular, in that it is designed, among other things, to promote clarity, transparency and full disclosure, in so doing, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to maintain fair and orderly markets and protect investors and the public interest. Moreover, the proposed rule change is not discriminatory in that it uniformly applies to all ETP Holders. The Exchange believes that the extension of the pilot program will promote uniformity among markets with respect to clearly erroneous executions and should continue uninterrupted until the February 4, 2013 implementation date of the marketwide limit up/limit down mechanism to address extraordinary market volatility.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden 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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–NSX–2010–07).

[4] *See* Securities Exchange Act Release No. 63484 (December 9, 2010), 75 FR 78330 (December 15, 2010) (SR–NSX–2010–16).

[5] *See* Securities Exchange Act Release No. 34–64242 (April 7, 2011), 76 FR 20763 (April 15, 2011) (SR–NSX–2011–05).

[6] *See* Securities Exchange Act Release No. 34–65067 (August 9, 2011), 76 FR 50533 (August 15, 2011) (SR–NSX–2011–09).

[7] *See* Securities Exchange Act Release No. 34–66221 (January 24, 2012), 77 FR 4597 (January 30, 2012) (SR–NSX–2012–02).

[8] 15 U.S.C. 78f(b) and 15 U.S.C. 78k–1, respectively.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6).

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 [12] and Rule 19b–4(f)(6)(iii) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6) [14] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii) [15] 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, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[16]

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 No. SR–NSX–2012–11 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–NSX–2012–11. 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 Commissions 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. 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–NSX–2012–11 and should be submitted by August 29, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–19358 Filed 8–7–12; 8:45 am]

**BILLING CODE 8011–01–P**

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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.

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67580; File No. SR–CBOE–2012–073]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the CBOE Stock Exchange Fees Schedule

August 2, 2012.

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 July 26, 2012, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Fees Schedule for its CBOE Stock Exchange (''CBSX''). The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

CBSX proposes to amend its Fees Schedule regarding transactions in securities priced $1 or greater. Currently, the highest Maker fee tier is for Makers who add 15 million or more shares of liquidity in one day, with the fee for such Makers being $0.0015 per share. The Exchange proposes to add a higher Maker tier, for those Makers who add 25 million or more shares of liquidity in one day. Such Makers will be assessed a lower fee of $0.0014 per share. Makers who add 15,000,000—24,999,999 shares of liquidity in one day will still be assessed the $0.0015 per share fee.

As before, the different rates for different Maker tiers apply to all transactions in securities priced $1 or greater made by the same market participant in any day in which such participant adds the established amount of shares or more of liquidity that is determined for each tier. Market participants who share a trading acronym or MPID may aggregate their trading activity for purposes of these rates. Qualification for these rates will require that a market participant appropriately indicate his trading acronym and/or MPID in the appropriate field on the order.

The Exchange proposes this higher tier with accompanying lower fee in order to incentivize market participants to add more liquidity to CBSX. The proposed change is to take effect on August 1, 2012.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[3] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[4] which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. The proposed new Maker fee of $0.0014 per share for Makers who add 25 million or more shares of liquidity in one day is reasonable because the amount is lower than Makers who add that amount of shares in one day currently pay.

The reduced fee tier is equitable and not unfairly discriminatory because it will encourage market participants to trade on CBSX and bring greater liquidity to CBSX, which will benefit all market participants. By encouraging market participants to hit a threshold of executing greater amounts of shares a day (at which point such market participants would receive the corresponding lower Maker fees for all shares executed by the market participant that day), the Exchange incentivizes market participants who may be able to meet that threshold to add more volume and liquidity to the CBSX marketplace. This increased volume and liquidity would benefit all CBSX market participants, including those who do not trade at the higher levels, by providing them with more opportunities for execution. Orders that provide liquidity increase the likelihood that CBSX market participants seeking to access liquidity will have their orders filled. If the lower rates did not exist for market participants who execute increased amounts of shares a day, even those market participants who do not hit those thresholds would not receive the benefit of this added volume and liquidity. As such, the Exchange believes that it is reasonable and equitable to use pricing incentives, such as lower fees for creating large amounts of liquidity, to encourage market participants to increase their participation in the market.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE 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.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)[5] of the Act and paragraph (f) of Rule 19b–4[6] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2012–073 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2012–073. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f).

2012–073 and should be submitted on or before August 29, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–19360 Filed 8–7–12; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67582; File No. SR–NASDAQ–2012–092]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Options on the MSCI EM and MSCI EAFE Indexes

August 2, 2012.

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 July 24, 2012, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') proposes to amend the rules of The NASDAQ Options Market LLC (''NOM'') at Sections 2, 3, 5, 10, 11 and 13 of Chapter XIV, entitled ''Index Rules'' to list and trade options on the MSCI EM Index based upon the Full Value MSCI Emerging Markets (''EM'') Index (''MSCI EM Index'') and the MSCI EAFE (Europe, Australasia, and the Far East) Index based upon the Full Value MSCI EAFE Index (''MSCI EAFE Index'').[3]

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to amend Sections 2 (Definitions), 3 (Designation of A Broad-Based Index), 5 (Position Limits for Broad-Based Index Options), 10 (Trading Sessions) and 11 (Terms of Index Options Contracts) of Chapter XIV, entitled ''Index Rules'' to list and trade P.M.-cash-settled, European-style options, on the MSCI EM and MSCI EAFE Indexes. The Exchange also proposes to amend Section 13 (Disclaimers) of Chapter XIV to add detailed information pertaining to the indexes as required by the licensor including, but not limited to, liability and other representations on the part of MSCI Inc.

The MSCI EM Index is a free float-adjusted market capitalization index[4] that is designed to measure equity market performance of emerging markets. The MSCI EM Index consists of component securities from the following twenty-one (21) emerging market countries: Brazil, Chile, China, Colombia, Czech Republic, Egypt, Hungary, India, Indonesia, Korea, Malaysia, Mexico, Morocco, Peru, Philippines, Poland, Russia, South Africa, Taiwan, Thailand, and Turkey.

The MSCI EAFE Index is a free float-adjusted market capitalization index that is designed to measure the equity market performance of developed markets, excluding the U.S. and Canada. The MSCI EAFE Index consists of component securities from the following twenty-two (22) developed market countries: Australia, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Hong Kong, Ireland, Israel, Italy, Japan, the Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, and the United Kingdom.

Index Design and Composition

The MSCI EM Index is designed to measure equity market performance in the global emerging markets. The index is maintained by MSCI Inc. (''MSCI'').[5] The index was launched on December 31, 1987. The MSCI EAFE Index is designed to measure international equity performance. It consists of component securities from countries that represent developed markets outside of North America: Europe, Australasia and the Far East. The Index, similar to the MSCI EM Index, is maintained by MSCI. The Index was launched on December 31, 1969.

The MSCI EM Index and the MSCI EAFE Index are reviewed on a semi-annual basis. The index review is based on MSCI's Global Investable Markets Indices Methodology. A description of the methodology is available at *http://www.msci.com/eqb/methodology/meth_docs/MSCI_May12_IndexCalcMethodology.pdf.* The MSCI EM Index consists of large and midcap components from countries classified by MSCI as ''emerging markets.'' The MSCI EAFE Index consists of large and midcap components from countries classified by MSCI as developed and excludes North America.

Index Calculation and Index Maintenance

The base index value of the MSCI EM Index was 100 as of December 31, 1987. The base index value of the MSCI EAFE Index was 100 as of December 31, 1969. On June 1, 2012, the index value of the MSCI EM Index was 893.86. On June 1, 2012, the index value of the MSCI EAFE Index was 1312.34. The MSCI EM Index and the MSCI EAFE Index are calculated in U.S. Dollars on a real time basis from the open of the first market on which the components are traded to the closing of the last market on which the components are traded. The methodology used to calculate the value of the MSCI EM Index and the MSCI EAFE Index is similar to the methodology used to calculate the value of other well-known market-capitalization weighted indexes.[6] The level of the MSCI EM and EAFE Indexes reflect the free float-adjusted market

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NASDAQ has entered into a license agreement with MSCI Inc. to list these products.

[4] The free float adjusted market capitalization is used to calculate the weights of the securities in the indices. MSCI defines the free float of a security as the proportion of shares outstanding that is deemed to be available for purchase in the public equity markets by international investors.

[5] MSCI is a provider of investment decision support tools.

[6] Additional information about the methodology for calculating the MSCI EM and the MSCI EAFE Indexes can be found at: *http://www.msci.com/eqb/methodology/meth_docs/MSCI_May12_IndexCalcMethodology.pdf.*

value of the component stocks relative to a particular base date and is computed by dividing the total market value of the companies in each index by its respective index divisor.[7]

Static data is distributed daily to clients through MSCI as well as through major quotation vendors, including Bloomberg L.P. (''Bloomberg''), FactSet Research Systems, Inc. (''FactSet'') and Thomson Reuters (''Reuters''). Real time data is distributed at least every 15 seconds using MSCI's real-time calculation engine to Reuters, Bloomberg, SIX Telekurs and FactSet.

The MSCI EM Index and the MSCI EAFE Index are monitored and maintained by MSCI. Adjustments to these indexes are made on a daily basis with respect to corporate events and dividends. The MSCI EM Index and the MSCI EAFE Index are generally updated on a quarterly basis in February, May, August and November of each year to reflect amendments to shares outstanding and free float and full index reviews are conducted on a semi-annual basis in May and November of each year for purposes of rebalancing the indexes.

Exercise and Settlement Value

The settlement value for expiring options on the MSCI EM Index and the MSCI EAFE Index would be based on the closing prices of the component stocks on the last trading day prior to expiration, usually a Friday. The last trading day for expiring contracts is the last business day prior to expiration, usually the third Friday of the expiration month. The index multiplier is $100. The Options Clearing Corporation would be the issuer and guarantor.

Contract Specifications

MSCI EM Index

The MSCI EM Index is a broad-based index, as defined in Chapter XIV, Section 2(j).[8] Options on the MSCI EM Index would be European-style and P.M. cash-settled.[9] The Exchange's standard trading hours for index options (9:30 a.m. to 4:15 p.m. Eastern Time), as set forth in Chapter XIV, Section 10, would apply to options on the MSCI EM Index. The expiration date for this index option is the Saturday following the third Friday of the expiration month.

The Exchange also notes that the MSCI EM Index is a broad-based index as designated in Chapter XIV, Section 3.[10] In addition, the Exchange proposes to create specific listing and maintenance standards for options on the MSCI EM Index in Chapter XIV, Section 3. Specifically, in proposed Chapter XIV, Section 3(d)(i)(1) through (10) the Exchange proposes to require that the following conditions are satisfied: (1) The index is broad-based, as defined in Chapter XIV, Section 2(j); (2) Options on the index are designated as P.M.-settled index options; (3) The index is capitalization-weighted, price-weighted, modified capitalization-weighted or equal dollar-weighted; (4) The index consists of 500 or more component securities; (5) All of the component securities of the index will have a market capitalization of greater than $100 million; (6) No single component security accounts for more than fifteen percent (15%) of the weight of the index, and the five highest weighted component securities in the index do not, in the aggregate, account for more than fifty percent (50%) of the weight of the MSCI EM Index; (7) Non-U.S. component securities (stocks or ADRs) that are not subject to comprehensive surveillance agreements do not, in the aggregate, represent more than twenty-two and a half percent (22.5%) of the weight of the index; (8) The current index value is widely disseminated at least once every fifteen (15) seconds by one or more major market data vendors during the time options on the index are traded on the Exchange; (9) The Exchange reasonably believes it has adequate system capacity to support the trading of options on the index, based on a calculation of the Exchange's current Independent System Capacity Advisor (ISCA) allocation and the number of new messages per second expected to be generated by options on such index; and (10) The Exchange has written surveillance procedures in place with respect to surveillance of trading of options on the index.

Additionally, the Exchange proposes to require the following maintenance requirements, as set forth in proposed Chapter XIV, Section 3(d)(ii), for the MSCI EM Index options: (1) The conditions set forth in subparagraphs (d)(i)(1), (2), (3), (4), (7), (8), (9) and (10) must continue to be satisfied. The conditions set forth in subparagraphs (d)(i)(5) and (6), must be satisfied only as of the first day of January and July in each year; and (2) the total number of component securities in the index may not increase or decrease by more than thirty-five percent (35%) from the number of component securities in the index at the time of its initial listing.

The Exchange believes that the modified initial listing requirements are appropriate for trading options on the MSCI EM Index for various reasons. The Exchange believes that a P.M. settlement[11] is appropriate given the nature of this index, which encompasses multiple markets around the world. Specifically, the MSCI EM Index components open with the start of trading in Asia at 7:00 p.m. Eastern Time (prior day) and close with the end of trading in Mexico and Peru at 4:00 p.m. Eastern Time (the next day) as closing prices from Brazil, Chile, Peru and Mexico, including late prices,[12] are accounted for in the closing calculation. The closing index level value is distributed by MSCI around 6:00 p.m. Eastern Time each trading day.[13] The index has a higher market capitalization requirement than other broad based indexes. The MSCI EM Index currently contains more than 800 components and no single component comprises more than 5% of the index, making it not easily subject to market manipulation. Therefore, because the MSCI EM Index has a large number of component securities, representative of many countries, and trades a large volume with respect to ETFs today, the Exchange believes that the initial listing requirements are appropriate to trade options on this index. In addition, similar to other broad based index options, the Exchange proposes various maintenance requirements, which require continual compliance and periodic compliance.

MSCI EAFE Index

The MSCI EAFE Index is a broad-based index, as defined in Chapter XIV, Section 2(j). Options on the MSCI EAFE Index would be European-style and P.M.-cash-settled.[14] The Exchange's

[7] A divisor is an arbitrary number chosen at the starting date of an index to fix the index starting value. The divisor is adjusted periodically when capitalization amendments are made to the constituents of the index in order to allow the index value to remain comparable over time. Without a divisor the index value would change when corporate actions took place and would not reflect the true value of an underlying portfolio based upon the index.

[8] *See* Chapter XIV, Section 2(j) which defines a broad-based index as representative of a stock market as a whole or of a range of companies in unrelated industries.

[9] *See* proposed text at Chapter XIV, Section 3 and Section 11(a)(6).

[10] *See* Chapter XIV, Section 3 for the designation of a broad-based index.

[11] The settlement value of a P.M.-settled index option is based on closing prices of the component securities.

[12] Late prices indicate that while the last real-time stock tick comes in at 4 p.m. Eastern Time, the index will stay open for another few minutes to allow any late price information to be obtained. At 4:30 p.m. Eastern Time the final foreign currency rates are applied and the last real-time index value is disseminated.

[13] NYSE Liffe futures based on the MSCI EM Index utilize these P.M. closing prices.

[14] *See* text at Chapter XIV, Section 3 and Section 11(a)(6).

standard trading hours for index options (9:30 a.m. to 4:15 p.m. Eastern), as set forth in Chapter XIV, Section 10 would apply to options on the MSCI EAFE Index, with one exception. With respect to the MSCI EAFE Index, on the last trading day prior to expiration, transactions may be effected on the Exchange until 11:00 a.m. Eastern Time.[15] The expiration date for this index option is the Saturday following the third Friday of the expiration month.

The Exchange also notes that the MSCI EAFE Index is a broad-based index as designated in Chapter XIV, Section 3.[16] In addition, the Exchange proposes to create specific listing and maintenance standards for options on the MSCI EAFE Index in Chapter XIV, Section 3. Specifically, in proposed Chapter XIV, Section 3(e)(i)(1) through (10), the Exchange proposes to require that the following conditions are satisfied: (1) The index is broad-based, as defined in Chapter XIV, Section 2(j); (2) Options on the index are designated as P.M.-settled index options; (3) The index is capitalization-weighted, price-weighted, modified capitalization-weighted or equal dollar-weighted; (4) The index consists of 500 or more component securities; (5) All of the component securities of the index will have a market capitalization of greater than $100 million; (6) No single component security accounts for more than fifteen percent (15%) of the weight of the index, and the five highest weighted component securities in the index do not, in the aggregate, account for more than fifty percent (50%) of the weight of the MSCI EAFE Index; (7) Non-U.S. component securities (stocks or ADRs) that are not subject to comprehensive surveillance agreements do not, in the aggregate, represent more than twenty percent (20%) of the weight of the index; (8) The current index value is widely disseminated at least once every fifteen (15) seconds by one or more major market data vendors during the time options on the index are traded on the Exchange; (9) The Exchange reasonably believes it has adequate system capacity to support the trading of options on the index, based on a calculation of the Exchange's current Independent System Capacity Advisor (ISCA) allocation and the number of new messages per second expected to be generated by options on such index; and (10) The Exchange has written surveillance procedures in place with respect to surveillance of trading of options on the index.

Additionally, the Exchange proposes to require the following maintenance requirements, as set forth in proposed Chapter XIV, Section 3(e)(ii), for the MSCI EAFE Index options: (1) The conditions set forth in subparagraphs (e)(i)(1), (2), (3), (4), (7), (8), (9) and (10) must continue to be satisfied. The conditions set forth in subparagraphs (e)(i)(5) and (6), must be satisfied only as of the first day of January and July in each year; and (2) the total number of component securities in the index may not increase or decrease by more than thirty-five percent (35%) from the number of component securities in the index at the time of its initial listing.

The Exchange believes that the modified initial listing requirements are appropriate for trading options on the MSCI EAFE Index for various reasons. The Exchange believes that a p.m. settlement[17] is appropriate given the nature of this index, which encompasses multiple markets around the world. Specifically, the MSCI EAFE Index components open with the start of trading in Asia at 6:00 p.m. Eastern Time (prior day) and close with the end of trading in Europe at 12:30 p.m. Eastern Time (the next day) as closing prices from Ireland are accounted for in the closing calculation. The closing index level value is distributed by MSCI between 2:00 and 2:30 p.m. Eastern Time each trading day.[18] The index has a higher market capitalization requirement than other broad based index options. The MSCI EAFE Index currently contains more than 900 components and no single component comprises more than 5% of the index, making it not easily subject to market manipulation. Therefore, because the MSCI EAFE Index has a large number of component securities, representative of many countries, and trades a large volume with respect to ETFs today,[19] the Exchange believes that the initial listing requirements are appropriate to trade options on this index. In addition, similar to other broad based indexes, the Exchange proposes various maintenance requirements, which require continual compliance and periodic compliance.

Exchange Rules that apply to the trading of options on broad-based indexes also would apply to options on the Full Value MSCI EM Index and the Full Value MSCI EAFE Index. The trading of these options also would be subject to, among others, Exchange Rules governing margin requirements and trading halt procedures for index options.[20] Pursuant to proposed Chapter XIV, Section 5, the Exchange notes that the position limits for the MSCI EM Index option and the MSCI EAFE Index option will be 25,000 contracts on the same side of the market.[21] The Exchange proposes to apply existing index option margin requirements for the purchase and sale of options on the MSCI EM Index and the MSCI EAFE Index.[22]

The Exchange proposes to set strike price intervals for these options at $2.50 when the strike price of Full Value MSCI EM Index and the Full Value MSCI EAFE Index options are below $200, and at least $5.00 strike price intervals otherwise.[23] The minimum quoting increments for options contracts traded on NOM are $0.05 for series trading below $3.00 and $0.10 for a series trading at or above $3.00.[24] The minimum trading increment for options contracts traded on NOM is one cent for all series.[25]

Pursuant to Chapter XIV, Section 11, the Exchange proposes to open at least one expiration month and one series for each class of index options open for trading on the Exchange.[26] New series of index options contracts may be added up to the fifth business day prior to expiration.[27] When new series of index options with a new expiration date are opened for trading, or when additional series of index options in an existing expiration date are opened for trading as the current value of the underlying index to which such series relate moves substantially from the exercise prices of series already opened, the exercise prices of such new or additional series shall be reasonably related to the current value of the underlying index at the time such series are first opened for trading.[28]

[15] *See* proposed text at Chapter XIV, Section 10. The expiration date for options on the MSCI EAFE index is the Saturday following the third Friday of the expiration month. These options expire each month of the calendar year.

[16] *See* Chapter XIV, Section 3 for the designation of a broad-based index.

[17] The settlement value of a P.M.-settled index option is based on closing prices of the component securities.

[18] NYSE Liffe futures based on the MSCI EAFE Index utilize these P.M. closing prices.

[19] The MSCI EAFE ETF is one of the top ten ETFs in the United States based on assets.

[20] *See* Chapter XIII, Section 3 (Margin Requirements), Chapter XIII, Section 4 (Margin Required is Minimum) and Chapter XIV, Section 10 (Trading Sessions).

[21] *See* proposed text at Chapter XIV, Section 5(d). The exercise limits would also be 25,000 contracts as per Chapter XIV, Section 9 (Exercise Limits).

[22] *See* Chapter XII [sic], Section 3.

[23] *See* Chapter IV, Section 6 [sic].

[24] *See* Chapter VI, Section 5(a).

[25] *See* Chapter VI, Section 5(b). NOM, unlike NASDAQ OMX PHLX LLC (''Phlx''), has the ability to accept non-displayed pennies. *See* Chapter VI, Section 1(e)(6) defining Price Improving Orders.

[26] *See* Chapter XIV, Section 11.

[27] *See* Chapter XIV, Section 11(c)(2).

[28] *See* Chapter XIV, Section 11(c)(3). In the case of all classes of index options, the term ''reasonably related to the current value of the underlying

Continued

NOM proposes to define a P.M.-Settled Index Option at Chapter XIV, Section 11(a)(6). The last day of trading for P.M.-settled index options, which would include the options on the MSCI EM and MSCI EAFE Indexes, would be the business day prior to expiration. The current index value at expiration for these indexes would be determined by the last reported sale price of each component security. In the event that the primary market for the underlying security does not open for trading on the business day prior to expiration, the price would be the last reported sale price prior to expiration.

NOM may open for trading additional series of the same class of index options as the current index value of the underlying index moves substantially from the exercise price of those index options that already have been opened for trading on NOM. The exercise price of each series of index options opened for trading on NOM shall be reasonably related to the current index value of the underlying index to which such series relates at or about the time such series of options is first opened for trading on NOM.[29]

Options on the MSCI EM Index and the MSCI EAFE Index would be subject to the same rules that presently govern all Exchange index options, including sales practice rules, margin requirements and trading rules. These Exchange Rules are designed to protect public customer trading.

The Exchange proposes to require a 25,000 position and exercise limit for the MSCI EM and MSCI EAFE index options.[30] Specifically [sic], Chapter XI, Section 7 prohibits a NASDAQ Options Order Entry Firm (''OEF'') from accepting a Public Customer order to purchase or write an options contract unless the Public Customer's account has been approved for options transactions in accordance with Chapter XI, Section 7.[31] Additionally, Chapter XI, Section 9, regarding suitability, is designed to ensure that options are only sold to Public Customers capable of evaluating and bearing the risks associated with trading in this instrument.[32] Further, Chapter XI, Section 10 (Discretionary Accounts) permits OEFs to exercise discretionary power with respect to trading in options contracts in a Public Customer's account only if the OEF has received prior written authorization and the account had been accepted in writing by a Registered Options and Security Futures Principal.[33] Finally, Chapter XI, Section 8 (Supervision of Accounts), Chapter XI, Section 11 (Confirmation to Public Customers), and Chapter XI, Section 15 (Delivery of Current Options Disclosure Documents and Prospectus) will also apply to trading in options on the MSCI EM Index and MSCI EAFE Index.

Surveillance and Capacity

The Exchange represents that it has an adequate surveillance program in place for options on the MSCI EM Index and the MSCI EAFE Index and intends to apply those same procedures that it applies to the Exchange's other index options. Additionally, the Exchange is a member of the Intermarket Surveillance Group (''ISG'') under the Intermarket Surveillance Group Agreement, dated June 20, 1994. The members of the ISG include all of the national securities exchanges. ISG members work together to coordinate surveillance and share information regarding the stock and options markets. In addition, the major futures exchanges are affiliated members of the ISG, which allows for the sharing of surveillance information for potential intermarket trading abuses. In addition, the Exchange is an affiliate member of the International Organization of Securities Commissions (''IOSCO''). IOSCO has members from over 100 different countries. Each of the countries from which there is a component security in the MSCI EM Index and the MSCI EAFE Index is a member of IOSCO. These members regulate more than 90 percent of the world's securities markets. Additionally, the Exchange has entered into various Information Sharing Agreements and/or Memoranda of Understandings with various stock exchanges. Given the capitalization of these indexes and the deep and liquid markets for the securities underlying both the MSCI EM Index and the MSCI EAFE Index, the concerns for market manipulation and/or disruption in the underlying markets are greatly reduced. There is also an active trading volume for the ETFs on the MSCI EM Index, and additionally the MSCI EAFE ETF is one of the top ten ETFs in the United States based on assets and volume.

The Exchange also represents that it has the necessary systems capacity to support the new options series that would result from the introduction of options on the Full Value MSCI EM Index and the Full Value MSCI EAFE Index.

Finally, the Exchange proposes to add text to provide additional detailed information pertaining to the indexes as required by the licensor, including but not limited to, liability and other representations on the part of MSCI Inc.[34]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[35] in general, and furthers the objectives of Section 6(b)(5) of the Act[36] in particular, in that it will permit trading in options on Full Value MSCI EM Index and the Full Value MSCI EAFE Index pursuant to rules designed to prevent fraudulent and manipulative acts and practices, to protect investor and the public interest, and to promote just and equitable principles of trade.

The Exchange believes that because the MSCI EM Index currently contains more than 800 components and no single component comprises more than 5% of the index, it is not easily subject to market manipulation. The MSCI EAFE Index currently contains more than 900 components and no single component comprises more than 5% of the index, therefore it is not easily subject to market manipulation. Given the capitalization of these indexes and the deep and liquid markets for the securities underlying both the MSCI EM Index and the MSCI EAFE Index, the concerns for market manipulation and/or disruption in the underlying markets are greatly reduced. There is an active trading volume for the ETFs on the MSCI EM Index, and additionally the MSCI EAFE ETF is one of the top ten in the United States based on assets and trades a large volume with respect to ETFs today.

Further, because both the MSCI EM Index and the MSCI EAFE Index have large numbers of component securities, are representative of many countries, and trade a large volume with respect to ETFs today, the Exchange believes that the respective initial listing requirements are appropriate to trade options on each of these indexes. In addition, similar to other broad based

index'' shall have the meaning set forth in Chapter XIV, Section 11(c)(4) below.

[29] *See* Chapter XIV, Section 11(c)(4). The term ''reasonably related to the current index value of the underlying index'' means that the exercise price is within thirty percent (30%) of the current index value. NOM may also open for trading additional series of index options that are more than thirty percent (30%) away from the current index value, provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate, or individual customers or their brokers. Market-makers trading for their own account shall not be considered when determining customer interest under this provision.

[30] *See* proposed text at Chapter XIV, Section 5(d).

[31] *See* Chapter XI, Section 7 (Opening of Accounts).

[32] *See* Chapter XI, Section 9 (Suitability of Recommendations).

[33] *See* Chapter XI, Section 10.

[34] *See* proposed text at Chapter XIV, Section 13.

[35] 15 U.S.C. 78f(b).

[36] 15 U.S.C. 78f(b)(5).

index options, the Exchange proposes various maintenance requirements, which require continual compliance and periodic compliance.

The trading of these options also would be subject to, among others, Exchange Rules governing margin requirements [37] and trading halt procedures for index options.[38] The Exchange would apply the same position limits, namely 25,000 contracts on the same side of the market for the MSCI EM Index option and the MSCI EAFE Index option, as is the case today for these same index options on Phlx. The Exchange proposes to apply existing index option margin requirements for the purchase and sale of options on the MSCI EM Index and the MSCI EAFE Index.

The Exchange represents that it has an adequate surveillance program in place for options on these indexes. The Exchange also represents that it has the necessary systems capacity to support the new options series. As stated in this filing, the Exchange has rules in place designed to protect public customer trading.

With respect to the early closing of options on the MSCI EAFE Index on the last trading day prior to expiration, the Exchange believes that because these hours are similar to MSCI EAFE futures products, this would align both options and futures on the MSCI EAFE Index. The Exchange also believes that aligning the trading hours for products which trade on the MSCI EAFE Index would provide investors and market makers a greater ability to hedge.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that listing these products on NOM will provide investors with another venue to trade options on the MSCI EM and MSCI EAFE Indexes.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were either solicited or received.

[37] *See* Chapter XIII, Sec. 3 (Margin Requirements).

[38] *See* Chapter XIV, Sec. 10 (Trading Sessions).

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, 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 [39] and Rule 19b–4(f)(6) thereunder.[40]

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–NASDAQ–2012–092 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–NASDAQ–2012–092. 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–NASDAQ–2012–092 and should be submitted on or before August 29, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[41]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–19362 Filed 8–7–12; 8:45 am]

**BILLING CODE 8011–01–P**

[39] 15 U.S.C. 78s(b)(3)(A).

[40] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with 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 fulfilled this requirement.

[41] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67589; File No. SR–OPRA–2012–03]**

## Options Price Reporting Authority; Order Approving an Amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information To Revise the Definition of the Term ''Nonprofessional''

August 2, 2012.

**I. Introduction**

On May 31, 2012, the Options Price Reporting Authority (''OPRA'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 608 thereunder,[2] an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

and Quotation Information (''OPRA Plan'').[3] The proposed OPRA Plan amendment would revise OPRA's definition of the term ''Nonprofessional.'' The proposed OPRA Plan amendment was published for comment in the **Federal Register** on June 22, 2012.[4] The Commission received no comment letters in response to the Notice.

This order approves the proposed OPRA Plan amendment.

## II. Description of the Proposal

The purpose of the proposed amendment is to revise OPRA's definition of the term ''Nonprofessional.''[5]

A person may become an OPRA ''Subscriber'' in one of two ways.[6] The first way is that the person may sign a ''Professional Subscriber Agreement'' directly with OPRA. In this case, the person pays fees directly to OPRA on the basis of the number of the person's ''devices'' and/or ''UserIDs.'' The second way is that the person may enter into a ''Subscriber Agreement,'' not directly with OPRA, but with an OPRA ''Vendor''—an entity that has entered into a ''Vendor Agreement'' with OPRA authorizing the entity to redistribute OPRA Data to third persons. In this case, OPRA collects fees from the Vendor with respect to the receipt of the OPRA Data by the person entering into the Subscriber Agreement. If the person qualifies as a ''Nonprofessional Subscriber,'' OPRA caps the fee that it charges the Vendor, and the fees that the person is required to pay to the Vendor may be less than they would be if the person is classified as a ''Professional Subscriber.''

Under OPRA's current definition, to qualify as a ''Nonprofessional,'' a person must not be ''a securities broker-dealer, investment advisor, futures commission merchant, commodities introducing broker or commodity trading advisor, member of a securities exchange or association or futures contract market, or an owner, partner, or associated person of any of the foregoing.''[7] For persons employed by securities broker-dealers, OPRA has interpreted the term ''associated person'' by reference to the definition of the term ''associated person of a broker or dealer'' in Section 3(a)(18) of the Act.[8] According to OPRA, that definition includes ''any employee'' of a broker or dealer, and accordingly employees of broker-dealers have not been eligible to be treated as Nonprofessionals.

According to OPRA, two inconsistencies result from this language. First, OPRA's language on this point differs from the definition of ''Nonprofessional'' used by the Consolidated Tape Association (''CTA'') and the ''Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis'' (''Nasdaq/UTP Plan''). The CTA and the Nasdaq/UTP Plan define the term ''Nonprofessional'' substantially identically, and by reference to whether the person seeking to qualify as a Nonprofessional is required to register in some capacity, not by reference to whether the person is an associated person of an entity or person that is required to register in some capacity.[9] Second, because the definition of the term ''associated person'' is defined differently in the commodity futures industry, a person who is employed by a commodity futures merchant (subject to regulation under the Commodity Exchange Act) may be able to qualify as a Nonprofessional under the language of the current OPRA definition even though a person who is employed by a securities broker to perform identical functions cannot.[10]

In order to eliminate these inconsistencies, OPRA proposes to replace paragraphs 1(c) and 1(d) of each Addendum for Nonprofessionals with a new paragraph 1(c) that tracks the language used by the CTA and the UTP/Nasdaq Plan. The revised definition would allow a person who is not himself or herself registered in some capacity with the Commission or the CFTC, but who is employed by an entity that is so registered, to qualify as a ''Nonprofessional'' for purposes of the person's personal, non-business-related, investment activities. According to OPRA, the changes that it is proposing in its definition of the term ''Nonprofessional'' will add clarity to the definition and more closely align the OPRA Plan definition with the definitions used by the CTA and the UTP/Nasdaq Plan.[11]

## III. Discussion

After careful review, the Commission finds that the proposed OPRA Plan amendment is consistent with the requirements of the Act and the rules and regulations thereunder.[12] Specifically, the Commission finds that the proposed OPRA Plan amendment is consistent with Section 11A of the Act[13] and Rule 608 thereunder[14] in that it is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, and to remove impediments to, and perfect the mechanism of, a national market system. The Commission notes that OPRA's proposed changes to the definition of the term ''Nonprofessional'' are designed to add clarity to the definition and eliminate any inconsistencies between OPRA's definition and the definitions used by the CTA and the UTP/Nasdaq Plan. The revised language would allow a person

[3] The OPRA Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 608 thereunder. *See* Securities Exchange Act Release No. 17638 (March 18, 1981), 22 SE.C. Docket 484 (March 31, 1981). The full text of the OPRA Plan is available at *http://www.opradata.com.*

The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The ten participants to the OPRA Plan are BATS Exchange, Inc., BOX Options Exchange, LLC, Chicago Board Options Exchange, Incorporated, C2 Options Exchange, Incorporated, International Securities Exchange, LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, NASDAQ Stock Market LLC, NYSE Amex, LLC n/k/a NYSE MKT LLC, and NYSE Arca, Inc.

[4] *See* Securities Exchange Act Release No. 67210 (June 15, 2012), 77 FR 37720 (''Notice'').

[5] OPRA's current definition of the term ''Nonprofessional'' is set out in an ''Addendum for Nonprofessionals'' that is attached to its Electronic Form of Subscriber Agreement and its Hardcopy Form of Subscriber Agreement (collectively, ''Addenda''). These two forms, in turn, are Attachments B–1 and B–2 to OPRA's form of Vendor Agreement. *See www.opradata.com.*

[6] OPRA defines a ''Subscriber,'' in general, as an entity or person that receives OPRA Data for the person's own use.

[7] *See* Addenda, ¶ 1(c), *supra* note 5.

[8] Section 3(a)(18) of the Act provides as follows: ''The term 'person associated with a broker or dealer' or 'associated person of a broker or dealer' means any partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such broker or dealer, or *any employee* of such broker or dealer, except that any person associated with a broker or dealer whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of section 15(b) [of this title] (other than paragraph (6) thereof).'' (Emphasis added.)

[9] *See* the CTA ''Nonprofessional Subscriber Policy,'' available at *http://www.nyxdata.com/Docs/Market-Data/Policies. See also* Notice, *supra,* note 4 at 37721, n.9.

[10] *See* Notice, *supra,* note 4 at 37721, n.10.

[11] According to OPRA, in the vast majority of cases, its definition of the term ''Nonprofessional'' and those of the CTA and the UTP/Nasdaq Plan have always classified Subscribers as Professionals or Nonprofessionals consistently. OPRA believes that revising its definition in the manner described in this filing will reduce the small subset of cases in which its definition and those of the CTA and the UTP/Nasdaq Plan generate different results.

[12] In approving this proposed OPRA Plan Amendment, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78k–1.

[14] 17 CFR 242.608.

who is not registered in some capacity with the Commission or the CFTC, but who is employed by an entity that is required to so register to qualify as a ''Nonprofessional'' and therefore gain access to OPRA data at a potentially reduced cost. Accordingly, the Commission believes that the proposal may increase certain market participant's ability to access OPRA data on a timely basis. Therefore, the Commission believes that OPRA's proposal is consistent with Section 11A of the Act [15] and Rule 608 thereunder.[16]

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 11A of the Act,[17] and Rule 608 hereunder,[18] that the proposed OPRA Plan amendment (SR–OPRA–2012–03) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–19416 Filed 8–7–12; 8:45 am]

**BILLING CODE 8011–01–P**

[15] 15 U.S.C. 78k–1.

[16] 17 CFR 242.608.

[17] 15 U.S.C. 78k–1.

[18] 17 CFR 242.608.

[19] 17 CFR 200.30–3(a)(29).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67583; File No. SR–BATS–2012–033]**

## Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of Proposed Rule Change To List and Trade Shares of the iShares Ultrashort Duration Bond Fund

August 2, 2012.

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 July 27, 2012, BATS Exchange, Inc. (''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been substantially prepared by the Exchange. 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.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to list and trade shares of the iShares Ultrashort Duration Bond Fund (''Fund'') of the iShares U.S. ETF Trust (''Trust'') under BATS Rule 14.11(i) (''Managed Fund Shares''). The shares of the Fund are collectively referred to herein as the ''Shares.'' The text of the proposed rule addition 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

The Exchange proposes to list and trade the Shares under BATS Rule 14.11(i), which governs the listing and trading of Managed Fund Shares on the Exchange.[3] The Fund will be an actively managed ETF. The Shares will be offered by the Trust, which was established as a Delaware statutory trust on June 21, 2011. The Trust is registered with the Commission as an open-end investment company and has filed a registration statement on behalf of the Fund on Form N–1A (''Registration Statement'') with the Commission.[4]

BlackRock Fund Advisors is the investment adviser (''BFA'' or ''Adviser'') to the Fund.[5] BlackRock Financial Management, Inc. serves as sub-adviser for the Fund (''Sub-Adviser'').[6] State Street Bank and Trust Company is the administrator, custodian, and transfer agent for the Trust. BlackRock Investments, LLC (''Distributor'') serves as the distributor for the Trust.

BATS Rule 14.11(i)(7) provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[7] In addition, Rule

[3] The Commission approved BATS Rule 14.11(i) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018). Although the Fund would be the first actively-managed exchange-traded fund (''ETF'') listed on the Exchange, the Commission has previously approved the listing and trading of a number of actively managed ETFs on NYSE Arca, Inc. pursuant to Rule 8.600 of that exchange. *See, e.g.,* Securities Exchange Act Release Nos. 64550 (May 26, 2011), 76 FR 32005 (June 2, 2011) (SR–NYSEArca-2011–11) (order approving listing and trading of two actively managed ETFs, including Guggenheim Enhanced Ultra-Short Bond ETF); 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR–NYSEArca-2009–79) (order approving listing and trading of five actively managed ETFs, including PIMCO Enhanced Short Maturity Strategy Fund). The Exchange believes the proposed rule change raises no significant issues not previously addressed in those prior Commission orders.

[4] *See* Registration Statement on Form N–1A for the Trust, dated March 5, 2012 (File Nos. 333–179904 and 811–22649). The descriptions of the Fund and the Shares contained herein are based, in part, on information in the Registration Statement. The Commission has issued an order granting certain exemptive relief to the Company under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') (''Exemptive Order''). *See* Investment Company Act Release No. 29571 (January 24, 2011) (File No. 812–13601).

[5] BlackRock Fund Advisors is an indirect wholly owned subsidiary of BlackRock, Inc.

[6] The Adviser manages the Fund's investments and its business operations subject to the oversight of the Board of Trustees of the Trust (''Board''). While BFA is ultimately responsible for the management of the Fund, it is able to draw upon the trading, research, and expertise of its asset management affiliates for portfolio decisions and management with respect to portfolio securities. The Adviser also has ongoing oversight responsibility. The Sub-Adviser, subject to the supervision and oversight of the Adviser and the Board, is responsible for day-to-day management of the Fund and, as such, typically makes all decisions with respect to portfolio holdings.

[7] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an

Continued

14.11(i)(7) further requires that personnel who make decisions on the investment company's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the applicable investment company portfolio. Rule 14.11(i)(7) is similar to BATS Rule 14.11(b)(5)(A)(i); however, Rule 14.11(i)(7) in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser and Sub-Adviser are both affiliated with multiple broker-dealers and have both implemented ''fire walls'' with respect to such broker-dealers regarding access to information concerning the composition and/or changes to the Fund's portfolio. In addition, Adviser and Sub-Adviser personnel who make decisions regarding the Fund's portfolio are subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the Fund's portfolio. In the event that (a) the Adviser or the Sub-Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, they will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding such portfolio.

iShares Ultrashort Duration Bond Fund

According to the Registration Statement, the Fund will seek to maximize current income. To achieve its objective, the Fund will invest, under normal circumstances,[8] at least 80% of its net assets in a diversified portfolio of U.S. dollar-denominated investment grade fixed income securities (''Fixed Income Securities''). The Fund will not be a money market fund and thus will not seek to maintain a stable net asset value of $1.00 per Share. In the absence of normal circumstances, the Fund may temporarily depart from its normal investment process, provided that such departure is, in the opinion of the portfolio management team of the Fund, consistent with the Fund's investment objective and in the best interest of the Fund. For example, the Fund may hold a higher than normal proportion of its assets in cash in response to adverse market, economic, or political conditions.

The Fund will hold Fixed Income Securities of at least 13 non-affiliated issuers. The Fund will not purchase the securities of issuers conducting their principal business activity in the same industry if, immediately after the purchase and as a result thereof, the value of the Fund's investments in that industry would equal or exceed 25% of the current value of the Fund's total assets, provided that this restriction does not limit the Fund's: (i) Investments in securities of other investment companies; (ii) investments in securities issued or guaranteed by the U.S. government, its agencies or instrumentalities; or (iii) investments in repurchase agreements collateralized by U.S. government securities.[9]

The Fund intends to qualify each year as a regulated investment company (''RIC'') under Subchapter M of the Internal Revenue Code of 1986, as amended.[10] The Fund will invest its assets, and otherwise conduct its operations, in a manner that is intended to satisfy the qualifying income, diversification, and distribution requirements necessary to establish and maintain RIC qualification under Subchapter M. The Subchapter M diversification tests generally require that (1) the Fund invest no more than 25% of its total assets in securities (other than securities of the U.S. government or other RICs) of any one issuer or two or more issuers that are controlled by the Fund and that are engaged in the same, similar, or related trades or businesses, and (2) at least 50% of the Fund's total assets consist of cash and cash items, U.S. government securities, securities of other RICs, and other securities, with investments in such other securities limited in respect of any one issuer to an amount not greater than 5% of the value of the Fund's total assets and not greater than 10% of the outstanding voting securities of such issuer. The Fund will not invest in non-U.S. equity securities.

Fixed Income Securities

The Fund intends to achieve its investment objective by investing, under normal circumstances, at least 80% of its net assets in a diversified portfolio of U.S. dollar-denominated investment grade Fixed Income Securities, rated a minimum of BBB- or higher by Standard & Poor's Financial Services LLC and/or Fitch Inc., or Baa3 or higher by Moody's Investors Service, Inc., or, if unrated, determined by the portfolio management team of the Fund to be of equivalent quality.

Fixed Income Securities will primarily include fixed and floating rate debt securities of varying maturities, such as corporate[11] and government bonds, agency securities,[12] instruments of non-U.S. issuers, municipal bonds, money market instruments,[13] and

annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[8] The term ''under normal circumstances'' includes, but is not limited to, the absence of adverse market, economic, political, or other conditions, including extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot, or labor disruption, or any similar intervening circumstance.

[9] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests in more than 25% of the value of its total assets in any one industry. *See, e.g.,* Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

[10] 26 U.S.C. 851.

[11] While the Fund is permitted to invest without restriction in corporate bonds, the Adviser expects that, under normal market conditions, the Fund will generally seek to invest in corporate bond issuances that have at least $100 million par amount outstanding in developed countries and at least $200 million par amount outstanding in emerging market countries.

[12] While the Fund is permitted to invest without restriction in agency securities, the Adviser expects that, under normal market conditions, the Fund will generally not seek to invest more than 50% of the Fund's assets in agency securities. ''Agency securities'' for these purposes generally includes securities issued by the following entities: Government National Mortgage Association (Ginnie Mae), Federal National Mortgage Association (Fannie Mae), Federal Home Loan Banks (FHLBanks), Federal Home Loan Mortgage Corporation (Freddie Mac), Farm Credit System (FCS) Farm Credit Banks (FCBanks), Student Loan Marketing Association (Sallie Mae), Resolution Funding Corporation (REFCORP), Financing Corporation (FICO), and the Farm Credit System (FCS) Financial Assistance Corporation (FAC). Agency securities can include, but are not limited to, mortgage-backed securities.

[13] While the Fund will invest at least 80% of its net assets in a diversified portfolio of U.S. dollar-denominated investment grade Fixed Income Securities, the Adviser expects that, under normal circumstances, the Fund also intends to invest in money market securities (as described below) in a manner consistent with its investment objective in order to help manage cash flows in and out of the Fund, such as in connection with payment of dividends or expenses, and to satisfy margin requirements, to provide collateral or to otherwise back investments in derivative instruments. For these purposes, money market securities include: short-term, high-quality obligations issued or guaranteed by the U.S. Treasury or the agencies or instrumentalities of the U.S. government; short-term, high-quality securities issued or guaranteed by non-U.S. governments, agencies and instrumentalities; repurchase agreements backed by U.S. government securities; money market mutual funds; commercial paper; and deposits and other obligations of U.S. and non-U.S. banks and financial institutions. All money market securities

investment companies that invest in such Fixed Income Securities. The Adviser or its affiliates may advise the money market funds and investment companies in which the Fund may invest, in accordance with the 1940 Act. The Fund may invest up to 5% of its net assets in Fixed Income Securities and instruments of issuers that are domiciled in emerging market countries.

The Fund will invest in asset-backed and mortgage-backed Fixed Income Securities.[14] Asset-backed securities are fixed-income securities that are backed by a pool of assets, usually loans such as installment sale contracts or credit card receivables. Mortgage-backed securities are asset-backed securities based on a particular type of asset, a mortgage. There is a wide variety of mortgage-backed securities involving commercial or residential, fixed-rate or adjustable rate mortgages, and mortgages issued by banks or government agencies.[15] Most transactions in fixed-rate mortgage pass-through securities occur through standardized contracts for future delivery in which the exact mortgage pools to be delivered are not specified until a few days prior to settlement, known as TBA transactions. The Fund may enter into such contracts on a regular basis. The Fund, pending settlement of such contracts, will invest the relevant assets in high-quality, liquid short-term instruments, including shares of money market funds affiliated with BFA. Collateralized mortgage obligations (''CMOs'') are Fixed Income Securities that are backed by cash flows from pools of mortgages. CMOs may have multiple classes with different payment rights and protections.

The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. Under normal circumstances, the effective duration of the Fund's portfolio is expected to be one year or less, as calculated by the Adviser.[16]

Other Portfolio Holdings

In addition to money market securities in which the Fund invests as part of its principal investment strategies, as described above, the Fund may invest in money market securities in a manner consistent with its investment objective in order to help manage cash flows in and out of the Fund, such as in connection with payment of dividends or expenses, and to satisfy margin requirements, to provide collateral or to otherwise back investments in derivative instruments.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities.[17] The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

Pursuant to the Exemptive Order, the Fund will not invest in swap agreements, futures contracts, or option contracts. The Fund will also not invest in convertible securities or preferred stock, but may invest in currency forwards for hedging against foreign currency exchange rate risk and/or trade settlement purposes.

The Shares

The Fund will issue and redeem Shares on a continuous basis at the net asset value per share (''NAV'')[18] only in large blocks of a specified number of Shares or multiples thereof (''Creation Units'') in transactions with authorized participants who have entered into agreements with the Distributor. The Fund currently anticipates that a Creation Unit will consist of 100,000 Shares, though this number may change from time to time, including prior to listing of the Fund. The exact number of Shares that will comprise a Creation Unit will be disclosed in the Registration Statement of the Fund. Once created, Shares of the Fund trade on the secondary market in amounts less than a Creation Unit.

The consideration for purchase of Creation Units of the Fund generally will consist of the in-kind deposit of a designated portfolio of securities (including any portion of such securities for which cash may be substituted) (*i.e.*, ''Deposit Securities'') and the ''Cash Component'' computed as described below. Together, the Deposit Securities and the Cash Component constitute the ''Fund Deposit,'' which represents the minimum initial and subsequent investment amount for a Creation Unit of the Fund.

The portfolio of securities required for purchase of a Creation Unit may not be identical to the portfolio of securities the Fund will deliver upon redemption of Fund shares. The Deposit Securities and Fund Securities (as defined below), as the case may be, in connection with a purchase or redemption of a Creation Unit, generally will correspond pro rata, to the extent practicable, to the securities held by the Fund.

The Cash Component will be an amount equal to the difference between the NAV of the Shares (per Creation

acquired by the Fund will be rated investment grade. The Fund does not intend to invest in any unrated money market securities. However, it may do so, to a limited extent, such as where a rated money market security becomes unrated, if such money market security is determined by the Adviser or the Sub-Adviser to be of comparable quality.

[14] The Fund has not established a fixed limit to the amount of asset-backed and/or mortgage-backed debt securities in which it will invest, which is consistent with at least one analogous fund. *See, e.g.*, PIMCO Enhanced Short Maturity Strategy Fund (''MINT Fund'') as described in Amendment 1 to SR–NYSEArca–2009–79 (November 10, 2009) and approved by Securities Exchange Act Release No. 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR–NYSEArca–2009–79). As noted above, at least 80% of the Fund's net assets will be, under normal circumstances, invested in U.S. dollar-denominated investment grade Fixed Income Securities, including asset-backed and/or mortgage-backed debt securities. Neither high-yield asset-backed securities nor high-yield mortgage-backed securities are included in the Fund's principal investment strategies. The liquidity of a security, especially in the case of asset-backed and mortgage-backed debt securities, is a substantial factor in the Fund's security selection process.

[15] *See* note 12, *supra*.

[16] Effective duration is a measure of the potential responsiveness of a bond or portfolio price to small parallel shifts in interest rates. When measured across a portfolio, the effective duration of a portfolio is equivalent to the average portfolio duration.

[17] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); and Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

[18] The NAV of the Fund's Shares generally will be calculated once daily Monday through Friday as of the close of regular trading on the New York Stock Exchange, generally 4:00 p.m. Eastern Time (''NAV Calculation Time''). NAV per Share is calculated by dividing the Fund's net assets by the number of Fund Shares outstanding. For more information regarding the valuation of Fund investments in calculating the Fund's NAV, see the Registration Statement.

Unit) and the ''Deposit Amount,'' which will be an amount equal to the market value of the Deposit Securities, and serve to compensate for any differences between the NAV per Creation Unit and the Deposit Amount. The Fund generally offers Creation Units partially for cash. BFA will make available through the National Securities Clearing Corporation (''NSCC'') on each business day, prior to the opening of business on the Exchange, the list of names and the required number or par value of each Deposit Security and the amount of the Cash Component to be included in the current Fund Deposit (based on information as of the end of the previous business day) for the Fund.

The identity and number or par value of the Deposit Securities may change pursuant to changes in the composition of the Fund's portfolio as rebalancing adjustments and corporate action events occur from time to time. The composition of the Deposit Securities may also change in response to adjustments to the weighting or composition of the holdings of the Fund.

The Fund reserves the right to permit or require the substitution of a ''cash in lieu'' amount to be added to the Cash Component to replace any Deposit Security that may not be available in sufficient quantity for delivery or that may not be eligible for transfer through the Depository Trust Company (''DTC'') or the clearing process through the NSCC.

Except as noted below, all creation orders must be placed for one or more Creation Units and must be received by the Distributor in proper form no later than 4:00 p.m. Eastern Time, in each case on the date such order is placed in order for creation of Creation Units to be effected based on the NAV of Shares of the Fund as next determined on such date after receipt of the order in proper form. Orders requesting substitution of a ''cash in lieu'' amount generally must be received by the Distributor no later than 2:00 p.m. Eastern Time on the Settlement Date. The ''Settlement Date'' is generally the third business day after the transmittal date. On days when the Exchange or the bond markets close earlier than normal, the Fund may require orders to create or to redeem Creation Units to be placed earlier in the day.

Fund Deposits must be delivered through the Federal Reserve System (for cash and government securities), through DTC (for corporate and municipal securities), or through a central depository account, such as with Euroclear or DTC, maintained by State Street or a sub-custodian (''Central Depository Account'') by an authorized participant. Any portion of a Fund Deposit that may not be delivered through the Federal Reserve System or DTC must be delivered through a Central Depository Account. The Fund Deposit transfer must be ordered by the authorized participant in a timely fashion so as to ensure the delivery of the requisite number of Deposit Securities to the account of the Fund by no later than 3:00 p.m. Eastern Time on the Settlement Date.

A standard creation transaction fee will be imposed to offset the transfer and other transaction costs associated with the issuance of Creation Units.

Shares of the Fund may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Distributor and only on a business day. BFA will make available through the NSCC, prior to the opening of business on the Exchange on each business day, the designated portfolio of securities (including any portion of such securities for which cash may be substituted) that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day (''Fund Securities''). Fund Securities received on redemption may not be identical to Deposit Securities that are applicable to creations of Creation Units.

Unless cash redemptions are available or specified for the Fund, the redemption proceeds for a Creation Unit generally will consist of a specified amount of cash, Fund Securities, plus additional cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after the receipt of a request in proper form, and the value of the specified amount of cash and Fund Securities, less a redemption transaction fee. The Fund generally redeems Creation Units partially for cash.

A standard redemption transaction fee will be imposed to offset transfer and other transaction costs that may be incurred by the Fund.

Redemption requests for Creation Units of the Fund must be submitted to the Distributor by or through an authorized participant no later than 4:00 p.m. Eastern Time on any business day in order to receive that day's NAV. The authorized participant must transmit the request for redemption in the form required by the Fund to the Distributor in accordance with procedures set forth in the Authorized Participant Agreement.

Additional information regarding the Shares and the Fund, including investment strategies, risks, creation and redemption procedures, fees and expenses, portfolio holdings disclosure policies, distributions, taxes and reports to be distributed to beneficial owners of the Shares can be found in the Registration Statement or on the Web site for the Fund (*www.iShares.com*), as applicable.

Availability of Information

The Fund's Web site, which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Web site will include additional quantitative information updated on a daily basis, including, for the Fund: (1) The prior business day's reported NAV, mid-point of the bid/ask spread at the time of calculation of such NAV (''Bid/Ask Price''),[19] daily trading volume, and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. Daily trading volume information will be available in the financial section of newspapers, through subscription services such as Bloomberg, Thomson Reuters, and International Data Corporation, which can be accessed by authorized participants and other investors, as well as through other electronic services, including major public Web sites. On each business day, before commencement of trading in Shares during Regular Trading Hours[20] on the Exchange, the Fund will disclose on its Web site the identities and quantities of the portfolio of securities and other assets (''Disclosed Portfolio'') held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the business day.[21] The Disclosed Portfolio will include, as applicable, the names, quantity, percentage weighting, and market value of Fixed Income Securities and other assets held by the Fund, and the characteristics of such assets. The Web

[19] The Bid/Ask Price of the Fund will be determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[20] Regular Trading Hours are 9:30 a.m. to 4:00 p.m. Eastern Time.

[21] Under accounting procedures to be followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T + 1''). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

site and information will be publicly available at no charge.

In addition, for the Fund, an estimated value, defined in BATS Rule 14.11(i)(3)(C) as the ''Intraday Indicative Value,'' that reflects an estimated intraday value of the Fund's portfolio, will be disseminated. Moreover, the Intraday Indicative Value will be based upon the current value for the components of the Disclosed Portfolio and will be updated and widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Regular Trading Hours.[22] In addition, the quotations of certain of the Fund's holdings may not be updated during U.S. trading hours if such holdings do not trade in the United States or if updated prices cannot be ascertained.

The dissemination of the Intraday Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and provide a close estimate of that value throughout the trading day.

Intraday, executable price quotations on Fixed Income Securities and other assets are available from major broker-dealer firms. Such intraday price information is available through subscription services, such as Bloomberg, Thomson Reuters, and International Data Corporation, which can be accessed by authorized participants and other investors.

Information regarding market price and volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last-sale information for the Shares will be available on the facilities of the CTA.

Initial and Continued Listing

The Shares will be subject to BATS Rule 14.11(i), which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and/or continued listing, the Fund must be in compliance with Rule 10A–3 under the Act.[23] A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. The Exchange will halt trading in the Shares under the conditions specified in BATS Rule 11.18. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 14.11(i)(4)(B)(iv), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. BATS will allow trading in the Shares from 8 a.m. until 5 p.m. Eastern Time. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in BATS Rule 11.11(a), the minimum price variation for quoting and entry of orders in Managed Fund Shares traded on the Exchange is $0.01, with the exception of securities that are priced less than $1.00, for which the minimum price variation for order entry is $0.0001.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Managed Fund Shares. The Exchange may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members or affiliates of the ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.[24] The Exchange prohibits the distribution of material, non-public information by its employees.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) BATS Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (3) how information regarding the Intraday Indicative Value is disseminated; (4) the risks involved in trading the Shares during the Pre-Opening[25] and After Hours Trading Sessions[26] when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Fund. Members purchasing Shares from the Fund for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Circular will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Information Circular will also disclose the trading hours of the Shares of the Fund and the applicable NAV Calculation Time for the Shares. The Information Circular will disclose that information about the Shares of the Fund will be publicly available on the Fund's Web site. In addition, the Information Circular will reference that the Trust is subject to various fees and expenses described in the Fund's Registration Statement.

[22] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available Intraday Indicative Values published via the Consolidated Tape Association (''CTA'') or other data feeds.

[23] *See* 17 CFR 240.10A–3.

[24] For a list of the current members and affiliate members of ISG, see *www.isgportal.com*.

[25] The Pre-Opening Session is from 8 a.m. to 9:30 a.m. Eastern Time.

[26] The After Hours Trading Session is from 4 p.m. to 5 p.m. Eastern Time.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[27] in general, and Section 6(b)(5) of the Act,[28] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in BATS Rule 14.11(i). The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. If the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser to the investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio. The Adviser and Sub-Adviser are both affiliated with multiple broker-dealers and have implemented ''fire walls'' with respect to such broker-dealers regarding access to information concerning the composition and/or changes to the Fund's portfolio. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

According to the Registration Statement, the Fund expects that it will have at least 80% of its assets invested in U.S. dollar-denominated investment grade Fixed Income Securities. The Fund's exposure to any single industry will generally be limited to 25% of the Fund's assets. The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. The Fund also may invest its net assets in money market instruments at the discretion of the Adviser or Sub-Adviser. The Fund may invest up to 5% of its net assets in Fixed Income Securities and instruments of issuers that are domiciled in emerging market countries. While the Fund is permitted to invest without restriction in corporate bonds, the Adviser expects that, under normal circumstances, the Fund will generally seek to invest in corporate bond issuances that have at least $100 million par amount outstanding in developed countries and at least $200 million par amount outstanding in emerging market countries. The Fund will not invest in non-U.S. equity securities.

Additionally, the Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

Pursuant to the Exemptive Order, the Fund will not invest in swap agreements, futures contracts, or option contracts. The Fund will also not invest in convertible securities or preferred stock, but may invest in currency forwards for hedging against foreign currency exchange rate risk and/or trade settlement purposes.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. Moreover, the Intraday Indicative Value will be disseminated by one or more major market data vendors at least every 15 seconds during Regular Trading Hours. On each business day, before commencement of trading in Shares during Regular Trading Hours, the Fund will disclose on its Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. Pricing information will be available on the Fund's Web site including: (1) The prior business day's reported NAV, the Bid/Ask Price of the Fund, and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. Additionally, information regarding market price and trading of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last-sale information for the Shares will be available on the facilities of the CTA. The Web site for the Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Trading in Shares of the Fund will be halted under the conditions specified in BATS Rule 11.18. Trading may also be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Finally, trading in the Shares will be subject to BATS Rule 14.11(i)(4)(B)(iv), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last-sale information for the Shares.

Intraday, executable price quotations on Fixed Income Securities and other assets are available from major broker-dealer firms. Such intraday price information is available through subscription services, such as Bloomberg, Thomson Reuters, and International Data Corporation, which can be accessed by authorized participants and other investors.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a

[27] 15 U.S.C. 78f.

[28] 15 U.S.C. 78f(b)(5).

comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last-sale information for the Shares.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change imposes any burden on competition.

*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**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve or disapprove the proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BATS–2012–033 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–2012–033. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549, on official business days between 10:00 a.m. and 3:00 p.m. Copies of the filing will also 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–2012–033 and should be submitted on or before August 29, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–19415 Filed 8–7–12; 8:45 am]

**BILLING CODE 8011–01–P**

[29] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67579; File No. SR–FINRA–2012–038]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Period of Amendments to FINRA Rule 11892 Governing Clearly Erroneous Transactions

August 2, 2012.

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 July 23, 2012, the Financial Industry Regulatory Authority, Inc. (''FINRA'') 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 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**

FINRA is proposing to amend FINRA Rule 11892 (Clearly Erroneous Transactions in Exchange-Listed Securities) to extend the effective date of the pilot, which is currently scheduled to expire on July 31, 2012, until February 4, 2013.

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 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, FINRA included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

FINRA proposes to amend FINRA Rule 11892.02 to extend the effective date of the amendments set forth in File No. SR–FINRA–2010–032 (the ''pilot''), which are currently scheduled to expire on July 31, 2012,[3] until February 4, 2013.

The pilot was drafted in consultation with other self-regulatory organizations (''SROs'') and Commission staff to provide for uniform treatment: (1) Of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 66254 (January 26, 2012), 77 FR 5084 (February 1, 2012) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2012–005).

clearly erroneous execution reviews in Multi-Stock Events involving twenty or more securities; and (2) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary listing market and subsequent transactions that occur before the trading pause is in effect for transactions otherwise than on an exchange.[4] FINRA also implemented additional changes to the Rule as part of the pilot that reduce the ability of FINRA to deviate from the objective standards set forth in the Rule.[5]

The extension proposed herein would allow the pilot to continue to operate without interruption while FINRA, the other SROs and the Commission further assess the effect of the pilot on the marketplace, including whether additional measures should be added, whether the parameters of the rule should be modified or whether other initiatives should be adopted in lieu of the current pilot.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[6] 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. FINRA believes that the proposed rule change is consistent with the clearly erroneous rules of other SROs and will promote the goal of transparency and uniformity across markets concerning reviews of potentially clearly erroneous executions in various contexts.

Additionally, extension of the pilot to February 4, 2013 will allow the pilot to continue to operate without interruption while FINRA, the other SROs and the Commission further assess the effect of the pilot on the marketplace and coordinate the duration of the pilot with the implementation of the National Market System Plan to Address Extraordinary Market Volatility.[7]

*B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

FINRA 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)(iii) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6)[12] normally does not become operative for 30 days after the date of 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. FINRA 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, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[14]

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 No. SR–FINRA–2012–038 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–FINRA–2012–038. 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 Commissions 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. Copies of such filing also will be available for inspection and copying at the principal office of the

[4] *See* Securities Exchange Act Release No. 62885 (September 10, 2010), 75 FR 56641 (September 16, 2010) (''Order Approving File No. SR–FINRA–2010–032''). *See also* Securities Exchange Act Release No. 65101 (August 11, 2011), 76 FR 51097 (August 17, 2011) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2011–039).

[5] *See* Order Approving File No. SR–FINRA–2010–032.

[6] 15 U.S.C. 78*o*–3(b)(6).

[7] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (Order Approving, on a Pilot Basis, the National Market System Plan To Address Extraordinary Market Volatility).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires FINRA to give the Commission written notice of FINRA's 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. FINRA 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 also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

FINRA. 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–FINRA–2012–038 and should be submitted by August 29, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–19382 Filed 8–7–12; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67578; File No. SR–FINRA–2012–037]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Rules To Extend the Effective Date of the Trading Pause Pilot

August 2, 2012.

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 July 23, 2012, the Financial Industry Regulatory Authority, Inc. (''FINRA'') 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 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

FINRA is proposing to amend FINRA Rule 6121 (Trading Halts Due to Extraordinary Market Volatility) to extend the effective date of the pilot, which is currently scheduled to expire on July 31, 2012, until February 4, 2013.

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 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, FINRA included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

FINRA proposes to amend FINRA Rule 6121.01 to extend the effective date of the pilot by which such rule operates, which is currently scheduled to expire on July 31, 2012,[3] until February 4, 2013.

FINRA Rule 6121.01 provides that if a primary listing market has issued an individual stock trading pause under its rules, FINRA will halt trading otherwise than on an exchange in that security until trading has resumed on the primary listing market. The pilot was developed and implemented as a market-wide initiative by FINRA and other self-regulatory organizations (''SROs'') in consultation with Commission staff, and is currently applicable to all NMS stocks (other than rights and warrants) and specified exchange-traded products covered by the trading pause pilot rules of a primary listing market.[4]

The extension proposed herein would allow the pilot to continue to operate without interruption while FINRA, the other SROs and the Commission further assess the effect of the pilot on the marketplace or whether other initiatives should be adopted in lieu of the current pilot.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[5] 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. FINRA believes that the proposed rule change meets these requirements in that it promotes uniformity across markets concerning decisions to pause trading in a security when there are significant price movements.

Additionally, extension of the pilot to February 4, 2013 would allow the pilot to continue to operate without interruption while FINRA, the other SROs and the Commission further assess the effect of the pilot on the marketplace and coordinate the duration of the pilot with the implementation of the National Market System Plan to Address Extraordinary Market Volatility.[6]

*B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were neither solicited nor received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

FINRA has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] 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)

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 66270 (January 30, 2012), 77 FR 5610 (February 3, 2012) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2012–006).

[4] *See* Securities Exchange Act Release No. 65819 (November 23, 2011), 76 FR 74105 (November 30, 2011) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2011–068).

[5] 15 U.S.C. 78*o*–3(b)(6).

[6] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (Order Approving, on a Pilot Basis, the National Market System Plan To Address Extraordinary Market Volatility).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

of the Act [9] and Rule 19b–4(f)(6)(iii) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6) [11] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii) [12] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA 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, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[13]

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 No. SR–FINRA–2012–037 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–FINRA–2012–037. 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 Commissions 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. Copies of such filing also will be available for inspection and copying at the principal office of the FINRA. 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–FINRA–2012–037 and should be submitted by August 29, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–19381 Filed 8–7–12; 8:45 am]

**BILLING CODE 8011–01–P**

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires FINRA to give the Commission written notice of FINRA's 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. FINRA has satisfied this requirement.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67588; File No. SR–FINRA–2009–028]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Withdrawal of Proposed Rule Change To Adopt FINRA Rule 2231 (Customer Account Statements) in the Consolidated FINRA Rulebook

August 2, 2012.

On April 22, 2009, the Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change that would have adopted NASD Rule 2340 (''Customer Account Statements'') with certain changes as FINRA Rule 2231 in the consolidated FINRA rulebook (''Consolidated FINRA Rulebook'').[3] The proposed rule change would also have deleted NYSE Rule 409 (''Statements of Accounts of Customers''), except for paragraph (f) and certain of its related interpretations. The proposed rule change was published for comment in the **Federal Register** on May 21, 2009.[4] The Commission received 12 comments on the proposal.[5]

On July 12, 2011, FINRA filed Amendment No. 1 to the proposed rule change that was published in **Federal Register** on August 2, 2011.[6] On October 7, 2011, the Commission published a notice to correct the timing of required Commission action.[7] The Commission

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see* FINRA *Information Notice,* March 12, 2008 (Rulebook Consolidation Process). For convenience, the proposed rule change refers to Incorporated NYSE Rules as NYSE Rules.

[4] *See* Securities Exchange Act Release No. 59921 (May 14, 2009), 74 FR 23912 (May 21, 2009).

[5] *http://www.sec.gov/comments/sr-finra-2009-028/finra2009028.shtml* (last visited July 30, 2012).

[6] *See* Securities Exchange Act Release No. 64969 (July 26, 2011), 76 FR 46340 (August 2, 2011).

[7] *See* Exchange Act Release No. 64969A (Oct. 7, 2011), 76 FR 63969 (Oct. 14, 2011).

received 9 comments on the proposal as amended by Amendment No. 1.[8]

On July 30, 2012, FINRA withdrew the proposed change (SR–FINRA–2009–028).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

**Kevin O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–19365 Filed 8–7–12; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67585; File No. SR–NYSE–2012–33]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Implementing Certain Changes to the Credits Within the New York Stock Exchange Price List That Are Applicable to Supplemental Liquidity Providers

August 2, 2012.

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 July 25, 2012, New York Stock Exchange LLC (the ''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to certain changes to the credits within its Price List that are applicable to Supplemental Liquidity Providers (''SLPs''), which the Exchange proposes to become operative on August 1, 2012. 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 is proposing certain changes to the credits within its Price List that are applicable to SLPs, which the Exchange proposes to become operative on August 1, 2012.

SLPs are eligible for credits when adding liquidity to the NYSE.[3] The amount of the credit is currently determined by the ''tier'' that the SLP qualifies for, which is based on the SLP's level of quoting and the average daily volume (''ADV'')[4] of liquidity added by the SLP in assigned securities.

The Exchange proposes to amend the Price List, such that only the following three credit rates would apply to SLPs:[5]

1. [sic] The current standard credit of $0.0015 per share (or $0.0010 per share if a Non-Displayed Reserve Order) would apply when adding liquidity to the Exchange in securities with a per share price of $1.00 or more, if the SLP does not qualify for the higher credit set forth in paragraph 2, below.

2. [sic] The current credit of $0.0020 per share (or $0.0015 per share if a Non-Displayed Reserve Order) would be increased to $0.0021 per share (or $0.0016 per share if a Non-Displayed Reserve Order) and would apply when adding liquidity to the Exchange in securities with a per share price of $1.00 or more if the SLP (i) meets the 10% average or more quoting requirement in the assigned security pursuant to Rule 107B[6] and (ii) adds liquidity of an ADV of more than 10 million shares for all assigned SLP securities in the aggregate.[7] The current requirement related to adding liquidity of a certain percentage of consolidated ADV (''CADV'') for an assigned security in the applicable month would no longer be applicable.

3. [sic] The current credit of $0.005 per share when adding liquidity to the Exchange in securities with a per share price of less than $1.00 if the SLP (i) meets the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B[8] and (ii) adds liquidity of an ADV of more than 10 million shares for all assigned SLP securities in the aggregate.[9]

The result of this proposed change is that the current credit tiers of $0.0021 per share (or $0.0016 per share if a Non-Displayed Reserve Order) and $0.0024 per share (or $0.0019 per share if a Non-Displayed Reserve Order) will be removed from the Price List, as will the corresponding threshold requirements that are currently applicable to these credits.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[10] in general, and furthers the objectives of Section 6(b)(4) of the Act,[11] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed rule change is reasonable, equitable and not unfairly discriminatory because it would encourage SLPs to send additional orders to the Exchange for execution in order to qualify for an incrementally higher credit for such executions that add liquidity on the Exchange. In this regard, the Exchange believes that this may incentivize SLPs to increase the orders sent directly to the Exchange and therefore provide liquidity that supports the quality of price discovery and promotes market transparency.

[8] *See supra* note 5.

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] SLP credits are not applicable to executions of securities with a per share price of $1.00 or more at the close.

[4] For purposes of SLP liquidity credits, ADV calculations exclude early closing days.

[5] SLP execution of securities with a per share price of $1.00 or more at the close would continue to be free.

[6] Quotes of an SLP that is a proprietary trading unit of a member organization (''SLP–Prop'') and an SLP registered as a market maker at the Exchange (''SLMM'') of the same member organization are not aggregated for purposes of this calculation.

[7] This calculation includes shares of both an SLP–Prop and an SLMM of the same member organization.

[8] *See supra* note 3.

[9] *See supra* note 4.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

The Exchange also believes that the proposed rule change is reasonable, equitable and not unfairly discriminatory because it would streamline the Price List with respect to determining the particular credit applicable to an SLP. Specifically, the Exchange believes that eliminating the requirement that an SLP add liquidity of a certain percentage of CADV for an assigned security in the applicable month, as well as the additional tiers that currently correspond to such percentages, would simplify the method by which SLPs are provided with credits for adding liquidity.

The Exchange believes that the rate of $0.0021 per share (or $0.0016 per share if a Non-Displayed Reserve Order) is reasonable because it is consistent with a rate that is currently available to SLPs. The Exchange also believes that the proposed rate is reasonable because it is directly related to an SLP's activity during the month in assigned securities (i.e., the applicable 10% and 10 million share thresholds). In this regard, the proposed change is intended to incentivize SLPs to provide liquidity on the Exchange in order to satisfy the applicable percentage and volume thresholds and would result in a credit that is reasonably related to an exchange's market quality that is associated with higher volumes.

The Exchange believes that the proposed rule change is equitable and not unfairly discriminatory because it will apply to all SLPs on an equal and non-discriminatory basis. All similarly situated members on the Exchange are subject to the same fee structure, and access to the Exchange is offered on terms that are not unfairly discriminatory. In this regard, the Exchange notes that the standard credit is available to all SLPs. Likewise, all SLPs are eligible to qualify for the increased credit, which, as discussed above, is based on whether an SLP satisfies the applicable percentage and volume thresholds.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

*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.

*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 foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [12] of the Act and subparagraph (f)(2) of Rule 19b–4 [13] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2012–33 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–2012–33. 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–2012–33 and should be submitted on or before August 29, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–19364 Filed 8–7–12; 8:45 am]

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[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(2).

[14] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67584; File No. SR–NASDAQ–2012–066]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, To Adopt a New Market Maker Peg Order Available to Exchange Market Makers

August 2, 2012.

**I. Introduction**

On June 6, 2012, The NASDAQ Stock Market LLC (''Exchange'' or ''NASDAQ'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt a new Market Maker Peg Order to provide similar functionality as the automated functionality provided to market makers under Rules

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

4613(a)(2)(F) and (G). The proposed rule change was published for comment in the **Federal Register** on June 20, 2012.[3] The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

## II. Background

NASDAQ is proposing to adopt a new Market Maker Peg Order (as defined in proposed Rule 4751(f)(15)) to provide a similar functionality presently available to Exchange market makers under Rules 4613(a)(2)(F) and (G).[4] NASDAQ adopted Rules 4613(a)(2)(F) and (G) as part of an effort to address issues uncovered by the aberrant trading that occurred on May 6, 2010.[5] According to the Exchange, the automated quote management functionality (''AQ'') offered by these rules is designed to help Exchange market makers meet the enhanced market maker obligations adopted post May 6, 2010,[6] and avoid execution of market maker ''stub quotes'' in instances of aberrant trading.[7] As part of these obligations, NASDAQ requires market makers for each stock in which they are registered to continuously maintain a two-sided quotation within a designated percentage of the National Best Bid and National Best Offer,[8] as appropriate. According to NASDAQ, AQ presents difficulties to market makers in meeting their obligations under Rule 15c3–5 under the Act (the ''Market Access Rule'')[9] and Regulation SHO.[10] Specifically, the current AQ functionality offered to market makers reprices and ''refreshes'' a market maker's quote when it is executed against, without any action required by the market maker. When a market maker's quote is refreshed by the Exchange, however, the market maker has an obligation to ensure that the requirements of the Market Access Rule and Regulation SHO are met. To meet these obligations, a market maker must actively monitor the status of its quotes and ensure that the requirements of the Market Access Rule and Regulation SHO are being satisfied.

*Market Maker Peg Order*

In an effort to simplify market maker compliance with the requirements of the Market Access Rule and Regulation SHO, NASDAQ proposes to adopt a new order type available only to Exchange market makers, which offers AQ-like functionality but also allows a market maker to comply with the requirements of the Market Access Rule and Regulation SHO. Specifically, NASDAQ proposes to replace AQ functionality with the Market Maker Peg Order. The Market Maker Peg Order would be a one-sided limit order and similar to other peg orders available to market participants in that the order is tied or ''pegged'' to a certain price,[11] but it would not be eligible for routing pursuant Rule 4758 and would always be displayed and attributable (as defined in Rule 4751). The Market Maker Peg Order would be limited to market makers and would have its price automatically set and adjusted, both upon entry and any time thereafter, in order to comply with the Exchange's rules regarding market maker quotation requirements and obligations.[12] It is expected that market makers will perform the necessary checks to comply with Regulation SHO, as discussed above, prior to entry of a Market Maker Peg Order. Upon entry and at any time the order exceeds either the Defined Limit, as described in Rule 4613(a)(2)(E), or moves a specified number of percentage points away from the Designated Percentage towards the then current National Best Bid or National Best Offer, as described in Rule 4613(a)(2)(F), the Market Maker Peg Order would be priced by the Exchange at the Designated Percentage[13] away from the then current National Best Bid and National Best Offer, or, if no National Best Bid or National Best Offer, to the Designated Percentage away from the last reported sale from the responsible single plan processor. According to NASDAQ, in the absence of a National Best Bid or National Best Offer and last reported sale, the order will be cancelled or rejected. Adjustment to the Designated Percentage is designed to avoid an execution against a Market Maker Peg Order that would initiate a single stock circuit breaker. In the event of an execution against a Market Maker Peg Order that reduces the size of the Market Maker Peg Order below one round lot, the market maker would need to enter a new order, after performing the regulatory checks discussed above, to satisfy their obligations under Rule 4613.[14] In the event that pricing the Market Maker Peg Order 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, to the Designated Percentage away from the last reported sale from the responsible single plan processor would result in the order exceeding its limit price, the order will be cancelled or rejected.

NASDAQ is also proposing to allow a market maker to designate an offset more aggressive (*i.e.,* smaller) than the Designated Percentage for any given Market Maker Peg Order. This functionality will allow a market maker

[3] *See* Securities Exchange Act Release No. 67203 (Jun. 20, 2012), 77 FR 37086 (''Notice''). The Commission notes that on August 2, 2012, the Exchange submitted Amendment No. 1 to the proposed rule change to make certain amendments that, in part, clarified the operation of the new Market Maker Peg Order functionality if, after entry, the Market Maker Peg Order is priced based on the consolidated last sale and such Market Maker Peg Order is established as the National Best Bid or National Best Offer.

[4] NASDAQ will continue to offer the present automated quote management functionality provided to market makers under Rules 4613(a)(2)(F) and (G) for a period of 3 months after the implementation of the proposed Market Maker Peg Order. The purpose of this transition period, during which both the present automated quote management functionality under Rules 4163(a)(2)(F) and (G) and the Market Maker Peg Order will operate concurrently, is to afford market makers with the opportunity to adequately test the new Market Maker Peg Order and migrate away from the present automated quote management functionality under Rules 4613(a)(2)(F) and (G). Prior to the end of this three month period, NASDAQ represents that it will submit a rule filing to retire the automated quote management functionality under Rules 4613(a)(2)(F) and (G). *See* Notice, *supra* note 3 at 37087.

[5] Securities Exchange Act Release No. 63255 (November 5, 2010), 75 FR 69484 (November 12, 2010) (SR–NASDAQ–2010–115, *et al.*).

[6] *Id.*

[7] For each issue in which a market maker is registered, AQ automatically creates a quotation for display to comply with market making obligations. Compliant displayed quotations are thereafter allowed to rest and are not further adjusted unless the relationship between the quotation and its related national best bid or national best offer, as appropriate, shrinks to the greater of: (a) 4 percentage points, or, (b) one-quarter the applicable percentage necessary to trigger an individual stock trading pause as described in Rule 4120(a)(11), or expands to within that same percentage less 0.5%, whereupon AQ will immediately re-adjust and display the market maker's quote to the appropriate designated percentage. Quotations originally entered by market makers are 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 System (as defined in Rule 4751(a)) created compliant quotation, the market maker's quote is refreshed by AQ 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. Rule 4613(F) & (G).

[8] As defined by Regulation NMS Rule 600(b)(42). 17 CFR 242.600.

[9] *See* Notice, *supra* note 3 at 37087.

[10] 17 CFR 242.200 through 204.

[11] Rule 4751(f)(4) defines Pegged Orders.

[12] The Market Maker Peg Order is one-sided so a market maker seeking to use Market Maker Peg Orders to comply with the Exchange's rules regarding market maker quotation requirements would need to submit both a bid and an offer using the order type.

[13] The Designated Percentage is the individual stock pause trigger percentage under Rule 4120(a)(11) (or comparable rule of another exchange) less two (2) percentage points. *See* Rule 4613(a)(2)(D).

[14] Rule 4613 generally sets forth NASDAQ market maker requirements, which include quotation and pricing obligations, and the firm quote obligation.

to quote at price levels that are closer to the National Best Bid and National Best Offer if it elects to do so. To use this functionality, a market maker must designate the desired offset upon order entry.[15] Thereafter and unlike the default [16] Market Maker Peg Order, a Market Maker Peg Order with a market maker-designated offset will have its price automatically adjusted on a tick-by-tick basis by the System to maintain the market maker-designated offset from the National Best Bid or National Best Offer until the order is executed or cancelled.[17] In the absence of a National Best Bid or National Best Offer, Market Maker Peg Orders with a market maker-designated offset will be cancelled or rejected. In the event that pricing the Market Maker Peg Order at the market maker-designated offset away from the then current National Best Bid and National Best Offer would result in the order exceeding its limit price, the order will be cancelled or rejected.[18]

NASDAQ claims that this order-based approach is superior in terms of the ease in complying with the requirements of the Market Access Rule and Regulation SHO while also providing similar quote adjusting functionality to its market makers.[19] NASDAQ also states that market makers would have control of order origination, 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. The Exchange claims that this will allow market makers to fully 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.[20]

## III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[21] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[22] which requires, among other things, the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Commission finds that the proposed rule change also is designed to support the principles of Section 11A(a)(1) [23] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets.

The Commission finds that the Exchange's proposal is consistent with the Act because it provides a means through which market makers may meet their minimum quoting requirements, which may assist in the maintenance of fair and orderly markets, provide additional liquidity to the Exchange, and prevent excessive volatility. At the same time, the proposal is reasonably designed to assist market makers in complying with the regulatory requirements of the Market Access Rule and Regulation SHO. The Commission notes, however, that the Market Maker Peg Order, like the current AQ system, does not ensure that the market maker is satisfying the requirements of the Market Access Rule or Regulation SHO, including the satisfaction of the locate requirement of Rule 203(b)(1) or an exception thereto. The Commission also notes that, in the event a Market Maker Peg Order is executed against such that the Market Maker Peg Order is reduced in size to below one round lot, the market maker would need to perform the necessary regulatory checks pursuant to the Market Access Rule and Regulation SHO prior to entering a new Market Maker Peg Order.

The Commission also believes that providing Exchange market makers with a transition period, during which they may adequately test the new functionality of the Market Maker Peg Order, will serve to minimize the potential market impact caused by the implementation of that order type. In addition, by allowing market makers to enter a Market Maker Peg Order that is priced more aggressively than the Designated Percentage, the proposed rules are reasonably designed to provide that quotations submitted by market makers to the Exchange, and displayed to market participants, bear some relationship to the prevailing market price.

## V. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[24] that the proposed rule change, as modified by Amendment No. 1, (SR–NASDAQ–2012–066) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

**Kevin M. O'Neill,**

*Deputy Secretary.*

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**BILLING CODE 8011–01–P**

[15] If a market maker wishes, it can designate a more aggressive bid while using the Defined Percentage and Defined Limit for its offer, or vice versa.

[16] In the absence of an offset designation, a Market Maker Peg Order will default to using the Defined Percentage and Defined Limit, and the repricing process whereby, upon reaching the Defined Limit, the price of a Market Maker Peg Order bid or offer will be adjusted by the System to the Designated Percentage away from the then current National Best Bid or National Best Offer, or, if no National Best Bid or National Best Offer, to the Designated Percentage away from the last reported sale from the responsible single plan processor.

[17] Market Maker Peg Orders with a market maker-designated offset may be able to qualify as bona-fide market making for purposes of Regulation SHO, depending on the facts and circumstances. A market maker entering such an order must consider the factors set forth by the Commission in determining whether reliance on the exception from the ''locate'' requirement of Rule 203 for bona-fide market making is appropriate with respect to the particular Market Maker Peg Order and its designated offset. *See supra* note 11.

[18] The Market Maker Peg Order will be accepted and executable during System hours. During pre and post-market hours, the wider Designated Percentage and Defined Limit associated with the 9:30 a.m.–9:45 a.m. and 3:35 p.m.–4:00 p.m. periods under Rule 4613(a)(2)(D) and (E) will be applied.

[19] *See* Notice, *supra* note 3 at 37088.

[20] *See id.*

[21] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[22] 15 U.S.C. 78f(b)(5).

[23] 15 U.S.C. 78k–1(a)(1).

[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67581; File No. SR–CBOE–2012–074]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish a Rule Regarding Records of Written Complaints for the CBOE Stock Exchange

August 2, 2012.

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 July 31, 2012, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to establish a rule regarding records of written complaints that is specific to the CBOE Stock Exchange (''CBSX''). The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to establish Rule 53.7—CBSX Record of Written Complaints to formally establish a record keeping procedure for complaints specific to CBSX. CBOE has the options-specific Rule 9.23—Customer Complaints. However, to date there has been no equities-specific customer complaint rule for CBSX. Historically, the majority of CBSX trading activity was proprietary. In recent months, CBSX has seen an increase in customer trading. As such, CBSX desires to adopt a rule regarding records of customer complaints that is specific to CBSX to assist the Exchange's Regulatory Services Division in investigations regarding CBSX-specific customer complaints. Therefore, CBSX proposes to establish Rule 53.7—CBSX Record of Written Complaints. This proposed rule is substantively identical to BATS Exchange, Inc. (''BATS'') Rule 4.3—Record of Written Complaints,[3] with one exception (discussed below). The substance of proposed Rule 53.7 is nearly identical to that of BATS Rule 4.3 (which is very similar to record of written complaints rules on other exchanges) so that market participants trading on multiple stock exchanges can follow as uniform as possible a set of rules regarding records of written complaints.

Paragraph (a) of Rule 53.7 will establish that each CBSX Trader shall keep and preserve for a period of not less than five years a file of all written complaints of customers and action taken by the CBSX Trader in respect thereof, if any. Further, for the first two years of the five-year period, the CBSX Trader shall keep such file in a place readily accessible to examination or spot checks. This paragraph (a) of CBOE Rule 53.7 is substantively identical to BATS Rule 4.3(a).

Paragraph (b) of Rule 53.7 will establish that upon request by CBSX, a CBSX Trader shall forward promptly to CBSX any written complaints requested and a report of the action taken thereon. BATS Rule 4.3 has no provision requiring BATS members to forward written complaints to BATS upon request. However, CBSX desires to include such a stipulation in order to ensure CBSX has access to such complaints for regulatory purposes.

Paragraph (c) of Rule 53.7 will establish that a ''complaint'' shall mean any written statement of a customer or any person acting on behalf of a customer alleging a grievance involving the activities of a CBSX Trader or persons under the control of the CBSX Trader in connection with either the solicitation or execution of any transaction conducted or contemplated to be conducted through the facilities of the CBSX, or the disposition of securities or funds of that customer which activities are related to such a transaction. This paragraph (c) of CBOE Rule 53.7 is substantively identical to BATS Rule 4.3(b).

The proposed Rule 53.7 encompasses electronically submitted complaints (including email). CBSX will issue a Regulatory Circular providing instructions on how to forward formal written complaints specific to CBSX.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[4] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[5] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, establishing a CBSX-specific rule regarding records of written complaints will assist CBSX's regulatory processes by ensuring that customer complaints are kept by CBSX Traders and are available to be forwarded to CBSX for regulatory purposes. This helps ensure that customer complaints are adequately addressed, thereby removing impediments to, and perfecting the mechanism for a free and open market and a national market system and, in general, protecting investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE 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.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not 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[6] and Rule 19b–4(f)(6) thereunder.[7]

The Exchange has requested that the Commission waive the 30-day operative delay. The Exchange believes that the

[3] *See* BATS Rule 4.3.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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.

proposed rule change is consistent with the protection of investors and the public interest because it would permit the Exchange to immediately implement the proposed rule change that would allow CBSX to begin ensuring that customer complaints are adequately kept and addressed by CBSX Traders.[8] The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Such waiver would allow the Exchange, without delay, to require CBSX Traders to establish a process to maintain, and make available to CBSX upon request, certain customer complaints. The Commission notes that the proposed rule change is based on and similar to BATS Rule 4.3.[9] Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[10]

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 Exchange Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2012–074 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2012–074. 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 a.m. and 3 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–CBOE–2012–074 and should be submitted on or before August 29, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–19361 Filed 8–7–12; 8:45 am]

**BILLING CODE 8011–01–P**

[8] *See* SR–CBOE–2012–074, Item 7.

[9] *See supra* note 3.

[10] 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).

[11] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67577; File No. SR–NSX–2012–10]**

## Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Rules To Extend Pilot Program Regarding Trading Pauses in Individual Securities Due to Extraordinary Market Volatility

August 2, 2012.

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 July 25, 2012, the National Stock Exchange, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the 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

National Stock Exchange, Inc. (''NSX®'' or ''Exchange'') is proposing to amend its rules to extend a certain pilot program regarding trading pauses in individual securities due to extraordinary market volatility.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nsx.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 self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

With this rule change, the Exchange is proposing to extend a pilot program currently in effect regarding trading pauses in individual securities due to extraordinary market volatility under NSX Rule 11.20B. Currently, unless otherwise extended or approved permanently, this pilot program will expire on July 31, 2012. The instant rule filing proposes an extension to the pilot program until February 4, 2013.

NSX Rule 11.20B (Trading Pauses in Individual Securities Due to Extraordinary Market Volatility) was approved by the Securities and Exchange Commission (the ''Commission'') on June 10, 2010 on a pilot basis to end on December 10, 2010.[3] The pilot program end date was subsequently extended until April 11,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (SR–NSX–2010–05).

2011.[4] Similar rule changes were adopted by other markets in the national market system in a coordinated manner. As the Exchange noted in its filing to adopt NSX Rule 11.20B, during the pilot period, the Exchange, in conjunction with other markets in the national market system, would continue to assess whether additional securities need to be added and whether the parameters of the rule would need to be modified to accommodate trading characteristics of different securities. NSX Rule 11.20B was expanded to include additional exchange traded products on September 10, 2010.[5] The pilot program end date was further extended to August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted applies.[6] The pilot program was then again lengthened until January 31, 2012.[7] Finally, the date was extended until July 31, 2012.[8] The Exchange, in consultation with the Commission and other markets, is now proposing that this pilot program be extended until February 4, 2013 to coordinate with the implementation of a limit up/limit down mechanism to address extraordinary market volatility. Accordingly, pursuant to the instant rule filing, the expiration date of the pilot program referenced in Commentary .05 to Rule 11.20B is proposed to be changed from ''July 31, 2012'' to ''February 4, 2013.''

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) and Section 11A of the Securities Exchange Act of 1934 [9] (the ''Act''), in general, and Section 6(b)(5) of the Act,[10] in particular, in that it is designed, among other things, to promote clarity, transparency and full disclosure, in so doing, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to maintain fair and orderly markets and protect investors and the public interest. Moreover, the proposed rule change is not discriminatory in that it uniformly applies to all ETP Holders. The Exchange believes that the extension of the pilot program will promote uniformity among markets with respect to trading pauses and should continue uninterrupted until the February 4, 2013 implementation date of the marketwide limit up/limit down mechanism to address extraordinary market volatility.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden 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**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12] 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 [13] and Rule 19b–4(f)(6)(iii) thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6)[15] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii)[16] 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, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[17]

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 No. SR–NSX–2012–10 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–NSX–2012–10. 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 Commissions Internet Web site (*http://www.sec.gov/*

[4] *See* Securities Exchange Act Release No. 63512 (December 9, 2010), 75 FR 78786 (December 16, 2010) (SR–NSX–2010–17).

[5] *See* Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (SR–NSX–2010–08).

[6] *See* Securities and Exchange Act Release No. 34–64213 (April 6, 2011), 76 FR 20409 (April 12, 2011) (SR–NSX–2011–04).

[7] *See* Securities Exchange Act Release No. 34–65095 (August 10, 2011), 76 FR 50777 (August 16, 2011) (SR–NSX–2011–08).

[8] *See* Securities Exchange Act Release No. 34–66229 (January 24, 2012), 77 FR 4842 (January 31, 2012) (SR–NSX–2012–01).

[9] 15 U.S.C. 78f(b) and 15 U.S.C. 78k–1, respectively.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

*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. 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–NSX–2012–10 and should be submitted by August 29, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–19359 Filed 8–7–12; 8:45 am]

**BILLING CODE 8011–01–P**

[18] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67575; File No. SR–CBOE–2012–070]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to the Extension of a CBSX Clearly Erroneous Policy Pilot Program

August 2, 2012.

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 July 20, 2012, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the 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) thereunder.[4] 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).

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend a clearly erroneous policy pilot program pertaining to the CBOE Stock Exchange, LLC (''CBSX'', the CBOE's stock trading facility). This rule change simply seeks to extend the pilot. No other changes to the pilot are being proposed. The text of the proposed rule change is available on the Exchange's Web site (*www.cboe.org/Legal*), at the Exchange's Office of the Secretary and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

Certain amendments to Rule 52.4, *Clearly Erroneous Policy,* were approved by the Commission on September 10, 2010 on a pilot basis. The pilot is currently set to expire on July 31, 2012.[5] The clearly erroneous policy changes were developed in consultation with other markets and the Commission staff to provide for uniform treatment: (i) Of clearly erroneous execution reviews in Multi-Stock Events involving twenty or more securities; and (ii) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary market and subsequent transactions that occur before the trading pause is in effect on the Exchange. Additional changes were also made to Rule 52.4 that reduce the ability of the Exchange to deviate from the objective standards set forth in the Rule. As the duration of the pilot expires on July 31, 2012, the Exchange is proposing to extend the effectiveness of the clearly erroneous policy changes to Rule 52.4 to February 4, 2013. A February 4, 2013 extension date would coincide with the date on which the pilot National Market System Plan to Address Extraordinary Market Volatility (the ''Limit Up-Limit Down Plan'') becomes effective.[6]

2. Statutory Basis

Extension of the pilot period will allow the Exchange to continue to operate the pilot on an uninterrupted basis until the Limit Up-Down Plan pilot becomes effective. Accordingly, the Exchange believes the proposed rule change is consistent with Act[7] and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE 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.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposal.

[5] Securities Exchange Act Release Nos. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–CBOE–2010–056) (approval order establishing pilot through December 10, 2010); 63485 (December 9, 2010), 75 FR 78278 (December 15, 2010) (SR–CBOE–2010–113) (extension of pilot through April 11, 2011); 64227 (April 7, 2011), 76 FR 20796 (April 13, 2011) (SR–CBOE–2011–032) (extension of pilot through the earlier of August 11, 2011 or the date on which a limit up-limit down mechanism to address extraordinary market volatility, if adopted, applies to the Circuit Breaker Stocks as defined in Interpretation and Policy .03 of Rule 6.3C, *Individual Stock Trading Pause Due to Extraordinary Market Volatility*); 65060 (August 9, 2011), 76 FR 50532 (August 15, 2011) (SR–CBOE–2011–077) (extension of pilot through January 31, 2012) and 66167 (January 17, 2012), 77 FR 3310 (January 23, 2012) (SR–CBOE–2012–002) (extension of pilot through July 31, 2012).

[6] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012).

[7] 15 U.S.C. 78a *et seq.*

[8] 15 U.S.C. 78(f)(b).

[9] 15 U.S.C. 78(f)(b)(5).

### 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 [10] and Rule 19b–4(f)(6) thereunder.[11] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, 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 [12] and Rule 19b–4(f)(6)(iii) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6)[14] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii)[15] 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, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[16]

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 No. SR–CBOE–2012–070 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 No. SR–CBOE–2012–070. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CBOE–2012–070 and should be submitted on or before August 29, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–19357 Filed 8–7–12; 8:45 am]

**BILLING CODE 8011–01–P**

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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.

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67573; File No. SR–CHX–2012–12]**

## Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Program Relating to Individual Securities Circuit Breakers

August 2, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on July 27, 2012, the Chicago Stock Exchange, Inc. (''CHX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the CHX. CHX has filed this proposal pursuant to Exchange Act Rule 19b–4(f)(6) [3] which is effective upon filing with the Commission.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CHX proposes to amend its rules to extend the pilot program relating to individual securities circuit breakers. The text of this proposed rule change is available on the Exchange's Web site at (*www.chx.com*) and in 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 CHX included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

In June, 2010, CHX obtained Commission approval to amend Article 20, Rule 2 to create circuit breakers in individual securities on a pilot basis to end on December 10, 2010.[4] Shortly thereafter, in September, the Commission approved another amendment to Article 20, Rule 2 to add securities included in the Russell 1000® Index (''Russell 1000'') and certain specified Exchange Traded Products (''ETP'') to the pilot rule.[5] This program was subsequently extended until April 11, 2011 [6] and was again extended until August 11, 2011.[7] Then, in June, 2011, the Commission approved another amendment to Article 20, Rule 2 to add all NMS stocks to the pilot rule [8] and, subsequently, the pilot was extended to January 31, 2012.[9] The pilot was again extended to July 31, 2012.[10]

The proposed rule change merely extends the duration of the pilot program to February 4, 2013. Extending the pilot in this manner will allow the Commission more time to consider the impact of the pilot program.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Securities Exchange Act of 1934 (the ''Act''), which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1) of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes uniformity across markets concerning decisions to pause trading in a security when there are significant price movements. The Exchange believes that the extension of the pilot program will promote uniformity among markets as well as allow the Exchange additional time to further evaluate the Pilot's effect on the market.

*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.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12] 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 [13] and Rule 19b–4(f)(6)(iii) thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6) [15] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii) [16] 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, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[17]

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 No. SR–CHX–2012–12 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 No. SR–CHX–2012–12. 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

[4] *See* Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) approving SR–CHX–2010–10.

[5] *See* Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) approving SR–CHX–2010–14.

[6] *See* Securities Exchange Act Release No. 34–63498 (December 9, 2010), 75 FR 78310 December 15, 2010) approving SR–CHX–2010–24.

[7] *See* Securities Exchange Act Release No. 64203 (April 6, 2011), 76 FR 20393 April 12, 2011) approving SR–CHX–2011–05.

[8] *See* Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) approving SR–CHX–2011–09.

[9] *See* Securities Exchange Act Release No. 65080 (August 9, 2011), 76 FR 50784 (August 16, 2011) approving SR–CHX–2011–23.

[10] *See* Securities Exchange Act Release No. 34–66272 (January 30, 2012), 77 FR 5605 (February 3, 2012) approving SR–CHX–2012–03.

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CHX–2012–12 and should be submitted on or before August 29, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–19355 Filed 8–7–12; 8:45 am]

**BILLING CODE 8011–01–P**

[18] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67572; File No. SR–CHX–2012–11]**

## Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Program Relating to Clearly Erroneous Transactions

August 2, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on July 27, 2012, the Chicago Stock Exchange, Inc. (''CHX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the CHX. CHX has filed this proposal pursuant to Exchange Act Rule 19b–4(f)(6) [3] which is effective upon filing with the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CHX proposes to amend its rules to extend the pilot program relating to clearly erroneous transactions. The text of this proposed rule change is available on the Exchange's Web site at (*www.chx.com*) and in 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 CHX included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

In September, 2010, CHX obtained Commission approval of a filing amending its rules relating to clearly erroneous transactions on a pilot basis until December 10, 2010.[4] This program was subsequently extended until April 11, 2011,[5] extended again until August 11, 2011 [6] and then extended again until January 31, 2011.[7] The program was again extended until July 31, 2012.[8] The proposed rule change merely extends the duration of the pilot program to February 4, 2013. Extending the pilot in this manner will allow the Commission more time to consider the impact of the pilot program.

2. Statutory Basis

Approval of the rule change proposed in this submission 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.[9] In particular, the proposed change is consistent with Section 6(b)(5) of the Act,[10] because it would 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 proposed rule change is also designed to support the principles of Section 11A(a)(1) [11] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning reviews of potentially clearly erroneous executions in various contexts, including reviews in the context of a Multi-Stock Event involving twenty or more securities and reviews resulting from a Trigger Trade and any executions occurring immediately after a Trigger Trade but before a trading pause is in effect on the Exchange. Further, the Exchange believes that the proposed changes enhance the objectivity of decisions made by the Exchange with respect to clearly erroneous executions. Finally, extending the pilot will allow the Exchange to continue to evaluate the program and will promote uniformity among markets regarding clearly erroneous executions.

*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.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [12] and Rule 19b–4(f)(6) thereunder.[13] Because the proposed rule change does not: (i) Significantly affect the protection of

[4] *See* Securities Exchange Act Release No. 34–62886 (September 10, 2010), 75 FR 56613 September 16, 2010) approving SR–CHX–2010–13.

[5] *See* Securities Exchange Act Release No. 34–63487 (December 9, 2010), 75 FR 78279 December 15, 2010) regarding SR–CHX–2010–23.

[6] *See* Securities Exchange Act Release No. 64228 (April 7, 2011), 76 FR 20792 April 13, 2011) regarding SR–CHX–2011–06.

[7] *See* Securities Exchange Act Release No. 65078 (August 9, 2011), 76 FR 50524 August 15, 2011) regarding SR–CHX–2011–24.

[8] *See* Securities Exchange Act Release No. 34–66253 (January 26, 2012), 77 FR 5080 (February 1, 2012) approving SR–CHX–2012–04.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78k–1(a)(1).

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6).

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 [14] and Rule 19b–4(f)(6)(iii) thereunder.[15]

A proposed rule change filed under Rule 19b–4(f)(6) [16] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii) [17] 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, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[18]

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 No. SR–CHX–2012–11 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 No. SR–CHX–2012–11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CHX–2012–11 and should be submitted on or before August 29, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–19354 Filed 8–7–12; 8:45 am]

**BILLING CODE 8011–01–P**

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67559; File No. SR–NYSEArca–2012–57]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to the Listing and Trading of QAM Equity Hedge ETF Under NYSE Arca Equities Rule 8.600

August 1, 2012.

## I. Introduction

On June 1, 2012, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the QAM Equity Hedge ETF (''Fund'') under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal Register** on June 19, 2012.[3] The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

## II. Description of the Proposed Rule Change

The Exchange proposes to list and trade the Shares of the Fund pursuant to NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by AdvisorShares Trust (''Trust''), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[4] The investment adviser to the Fund is AdvisorShares Investments, LLC (''Adviser''). Commerce Asset Management serves as investment sub-adviser to the Fund (''Sub-Adviser'') and provides day-to-day portfolio management of the Fund. Foreside Fund Services, LLC is the principal underwriter and distributor of the Fund's Shares. The Bank of New York

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 67196 (June 13, 2012), 77 FR 36591 (''Notice'').

[4] The Trust is registered under the Investment Company Act of 1940 (''1940 Act''). On September 16, 2011, the Trust filed with the Commission an amendment to its registration statement on Form N–1A under the Securities Act of 1933 (''Securities Act'') and under the 1940 Act relating to the Fund (File Nos. 333–157876 and 811–22110) (''Registration Statement''). In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 28822 (July 20, 2009) (File No. 812–13488).

Mellon Corporation serves as administrator, custodian, and transfer agent for the Fund. The Exchange represents that, while the Adviser is not affiliated with a broker-dealer, the Sub-Adviser is affiliated with a broker-dealer and has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio.[5]

*Principal Investment Strategies*

The Fund seeks investment results that exceed the risk adjusted performance of approximately 50% of the long/short equity hedge fund universe as defined by the HFRI Equity Hedge (Total) Index (''HFRI Index'') constituents.[6] The Fund is a ''fund of funds'' that seeks to achieve its investment objective, under normal circumstances,[7] by investing at least 60% of its portfolio in both long and short positions in exchange-traded funds (''ETFs'')[8] and exchange-traded notes (''ETNs'')[9] that offer diversified exposure to global regions, countries, investment styles (*i.e.,* value, growth), sectors, and industries, as well as exchange-traded currency and commodity trusts (collectively, with ETFs and ETNs, ''Underlying ETPs''),[10] including Underlying ETPs that invest in short duration debt, cash, other cash equivalents, and other highly liquid instruments based on the Sub-Adviser's current analysis. The Sub-Adviser seeks to achieve the Fund's investment objective by taking long and short positions in Underlying ETPs that the Sub-Adviser believes, in the aggregate, will track the performance of a selected universe of long/short equity hedge funds.[11] The Underlying ETPs in which the Fund will invest will primarily be index-based ETFs that hold substantially all of their assets in securities that offer diversified exposure to global regions, countries, investment styles, sectors, and industries.

In managing the Fund's portfolio, among other proprietary analytics, the Sub-Adviser will utilize Markov Processes International, LLC's Dynamic Style Analysis (''DSA'') patented hedge fund analysis software to help select the Fund's investments and determine the allocation among such investments. The Sub-Adviser will identify approximately 50 market factors that track the aggregated exposure and approximate the returns of the selected universe of long/short equity hedge funds. The Sub-Adviser will use DSA and other proprietary analytics to define and track the various market factors and relative exposures and to adjust the Fund's portfolio as necessary. At any given time, such market factors may include country exposure, sector exposure, industry exposure, and currency exposure. In seeking to achieve its investment objective, the Fund will seek to remain invested at all times in securities or derivatives (as described below) that provide the desired exposures to market factors.

The Fund's portfolio typically will consist of up to 50 Underlying ETPs and other securities, as described below. Under normal circumstances, the Fund's largest or maximum investment in any single issuer will range between 5% and 10% of the Fund's portfolio.

The Fund, through its investment in Underlying ETPs, may invest in: (i) Closed-end funds, pooled investment vehicles that are registered under the 1940 Act and whose shares are listed and traded on U.S. national securities exchanges; (ii) equity securities of foreign issuers, including the securities of foreign issuers in emerging countries;[12] and (iii) shares of real estate investment trusts (REITs), which are pooled investment vehicles which invest primarily in real estate or real estate-related loans.

*Other Investment Practices and Strategies*

To respond to adverse market, economic, political, or other conditions, the Fund may invest 100% of its total assets, without limitation, in high-quality debt securities and money market instruments either directly or through Underlying ETPs. The Fund may be invested in this manner for extended periods depending on the Sub-Adviser's assessment of market conditions. Debt securities and money market instruments include shares of mutual funds, commercial paper, certificates of deposit, bankers' acceptances, U.S. Government securities, repurchase agreements, and bonds that are BBB or higher.

Under normal circumstances, the Fund may hold up to 40% of its portfolio in other investments. For example, on a day-to-day basis, the Fund may hold money market instruments, cash or cash equivalents, and/or Underlying ETPs that invest in these and other highly liquid instruments, to collateralize its derivative positions.

The Fund, or the Underlying ETPs in which it invests, may invest in U.S. Treasury zero-coupon bonds. These securities are U.S. Treasury bonds which have been stripped of their unmatured interest coupons, the coupons themselves, and receipts or certificates representing interests in such stripped debt obligations and coupons. Interest is not paid in cash during the term of these securities, but is accrued and paid at maturity.

The Fund or an Underlying ETP may invest in equity securities, which represent ownership interests in a

[5] *See* Commentary .06 to NYSE Arca Equities Rule 8.600. The Exchange represents that in the event (a) the Adviser or Sub-Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding such portfolio.

[6] The HFRI Index contains more than 2,400 funds. Instead of the Fund having an investment objective to outperform the HFRI Index, the Fund's investment objective is to outperform 50% of the constituents in the HFRI Index.

[7] The term ''under normal circumstances'' includes, but is not limited to, the absence of extreme volatility or trading halts in the equity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot, or labor disruption, or any similar intervening circumstance.

[8] For purposes of this proposed rule change, ETFs are securities registered under the 1940 Act such as those listed and traded on the Exchange under NYSE Arca Equities Rules 5.2(j)(3) (Investment Company Units), 8.100 (Portfolio Depositary Receipts), and 8.600 (Managed Fund Shares).

[9] For purposes of this proposed rule change, ETNs are securities that are registered pursuant to the Securities Act such as those listed and traded on the Exchange pursuant to NYSE Arca Equities Rule 5.2(j)(6).

[10] Underlying ETPs include, in addition to ETFs and ETNs, the following securities: Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); and closed-end funds. The Underlying ETPs all will be listed and traded in the U.S. on registered exchanges.

[11] Long/short equity hedge funds typically buy stocks, ETFs, ETNs, or currencies that the hedge fund managers expect will appreciate, and concurrently either sell short stocks, ETFs, ETNs, or currencies that the hedge fund managers expect will decline in value or to hedge market or sector exposures.

[12] The Exchange states that emerging or developing markets exist in countries that are considered to be in the initial stages of industrialization. The risks of investing in these markets are similar to the risks of international investing in general, although the risks are greater in emerging and developing markets. Countries with emerging or developing securities markets tend to have economic structures that are less stable than countries with developed securities markets, because their economies may be based on only a few industries, and their securities markets may trade a small number of securities. Prices on these exchanges tend to be volatile, and securities in these countries historically have offered greater potential for gain (as well as loss) than securities of companies located in developed countries.

company or partnership and consist of common stocks, preferred stocks, warrants to acquire common stock, securities convertible into common stock, and investments in master limited partnerships.

The Fund or an Underlying ETP may invest in American Depositary Receipts (''ADRs''), as well as Global Depositary Receipts (''GDRs,'' and together with ADRs, ''Depositary Receipts''), which are certificates evidencing ownership of shares of a foreign issuer. Depositary Receipts will be sponsored. These certificates are issued by depositary banks and generally trade on an established market in the United States or elsewhere. The underlying shares are held in trust by a custodian bank or similar financial institution in the issuer's home country. The depositary bank may not have physical custody of the underlying securities at all times and may charge fees for various services, including forwarding dividends and interest and corporate actions. Depositary Receipts are alternatives to directly purchasing the underlying foreign securities in their national markets and currencies. However, Depositary Receipts continue to be subject to many of the risks associated with investing directly in foreign securities.

The Fund, or the Underlying ETPs in which it invests, may invest in U.S. government securities. Securities issued or guaranteed by the U.S. government or its agencies or instrumentalities include U.S. Treasury securities, which are backed by the full faith and credit of the U.S. Treasury and which differ only in their interest rates, maturities, and times of issuance. U.S. Treasury bills have initial maturities of one-year or less; U.S. Treasury notes have initial maturities of one to ten years; and U.S. Treasury bonds generally have initial maturities of greater than ten years. Certain U.S. government securities are issued or guaranteed by agencies or instrumentalities of the U.S. government including, but not limited to, obligations of U.S. government agencies or instrumentalities such as Fannie Mae, Freddie Mac, the Government National Mortgage Association (Ginnie Mae), the Small Business Administration, the Federal Farm Credit Administration, the Federal Home Loan Banks, Banks for Cooperatives (including the Central Bank for Cooperatives), the Federal Land Banks, the Federal Intermediate Credit Banks, the Tennessee Valley Authority, the Export-Import Bank of the United States, the Commodity Credit Corporation, the Federal Financing Bank, the Student Loan Marketing Association, the National Credit Union Administration, and the Federal Agricultural Mortgage Corporation (Farmer Mac).

The Fund may not (i) with respect to 75% of its total assets, purchase securities of any issuer (except securities issued or guaranteed by the U.S. Government, its agencies or instrumentalities, or shares of investment companies) if, as a result, more than 5% of its total assets would be invested in the securities of such issuer; or (ii) acquire more than 10% of the outstanding voting securities of any one issuer. For purposes of this policy, the issuer of the underlying security will be deemed to be the issuer of any respective Depositary Receipt.

The Fund may not invest 25% or more of its total assets in the securities of one or more issuers conducting their principal business activities in the same industry or group of industries. This limitation does not apply to investments in securities issued or guaranteed by the U.S. Government, its agencies or instrumentalities, or shares of investment companies. The Fund will not invest 25% or more of its total assets in any investment company that so concentrates. For purposes of this policy, the issuer of the underlying security will be deemed to be the issuer of any respective Depositary Receipt.

While the Fund may invest up to 40% of its total assets in put and call options on indices (and enter into related closing transactions), exchange-listed futures contracts, and options on futures contracts, the Adviser expects that, under normal market conditions, the Fund will invest no more than 15% in such options and 15% in such futures on a daily basis.

The Fund may conduct foreign currency transactions on a spot (*i.e.,* cash) or forward basis (*i.e.,* by entering into forward contracts to purchase or sell foreign currencies up to 10% of its total assets). Currency transactions made on a spot basis are for cash at the spot rate prevailing in the currency exchange market for buying or selling currency.

The Fund may enter into repurchase agreements with financial institutions, which may be deemed to be loans. The Fund follows certain procedures designed to minimize the risks inherent in such agreements. These procedures include effecting repurchase transactions only with large, well-capitalized, and well-established financial institutions whose condition will be continually monitored by the Sub-Adviser. The Fund may enter into reverse repurchase agreements without limit as part of the Fund's investment strategy. Reverse repurchase agreements involve sales by the Fund of portfolio assets concurrently with an agreement by the Fund to repurchase the same assets at a later date at a fixed price.

The Fund may invest up to 15% of its total assets in swap agreements, including, but not limited to, total return swaps, index swaps, and interest rate swaps. The Fund may utilize swap agreements in an attempt to gain exposure to the securities in a market without actually purchasing those securities, or to hedge a position. In seeking to establish a long or short position in such instruments, the Fund may use swaps based on published indices, including international indices.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities and loan participation interests. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The Fund will seek to qualify for treatment as a Regulated Investment Company (RIC) under the Internal Revenue Code. Except for Underlying ETPs that may hold non-U.S. issues, the Fund will not otherwise invest in non-U.S.-registered issues. The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. That is, while the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.,* 2Xs and 3Xs) of the Fund's broad-based securities market index (as defined in Form N–1A).[13] The Fund will not invest in leveraged or inverse leveraged Underlying ETPs.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings, disclosure policies, distributions, and taxes, among other

[13] The Exchange states that the Fund's broad-based securities market index, which is to be determined, will be identified in an amendment to the Registration Statement.

things, can be found in the Notice and Registration Statement, as applicable.[14]

## III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act[15] and the rules and regulations thereunder applicable to a national securities exchange.[16] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[17] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Fund and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[18] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line. In addition, the Portfolio Indicative Value (''PIV''), as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session.[19] On each business day before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio, as defined in NYSE Arca Equities Rule 8.600(c)(2), that will form the basis for the Fund's calculation of the net asset value (''NAV'') at the end of the business day.[20] The Fund will calculate NAV once each business day as of the close of normal trading on the New York Stock Exchange (normally, 4:00 p.m. Eastern Time). In addition, information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. The Web site for the Fund will include a form of the prospectus for the Fund, additional data relating to NAV, and other applicable quantitative information. The intra-day, closing, and settlement prices of the portfolio investments (*e.g.,* Underlying ETPs, put and call options, futures contracts, forward contracts, money market funds, and options on futures contracts) will also be readily available from the national securities exchanges trading such securities, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. Further, a basket composition file, which includes the security names and share quantities required to be delivered in exchange for the Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the New York Stock Exchange via the National Securities Clearing Corporation. The basket represents one ''Creation Unit'' of the Fund.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.[21] In addition, the Exchange will halt trading in the Shares under the specific circumstances set forth in NYSE Arca Equities Rule 8.600(d)(2)(D), and may halt trading in the Shares if trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund, or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[22] The Exchange will consider the suspension of trading in or removal from listing of the Shares if the PIV is no longer calculated or available or the Disclosed Portfolio is not made available to all market participants at the same time.[23] The Exchange represents that the Adviser is not affiliated with a broker-dealer. The Exchange further represents that the Sub-Adviser is affiliated with a broker-dealer and has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio.[24] The Commission notes that Adviser and Sub-Adviser personnel who make decisions on the Fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-

[14] *See* Notice and Registration Statement, *supra* notes 3 and 4, respectively.

[15] 15 U.S.C. 78f.

[16] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[19] According to the Exchange, several major market data vendors widely disseminate PIVs taken from CTA or other data feeds.

[20] On a daily basis, the Adviser will disclose for each portfolio security and other financial instrument of the Fund the following information on the Fund's Web site: ticker symbol (if applicable), name of security and financial instrument, number of shares or dollar value of each security and financial instrument held in the portfolio, and percentage weighting of the security and financial instrument in the portfolio. The Web site information will be publicly available at no charge.

[21] *See* NYSE Arca Equities Rule 8.600(d)(1)(B).

[22] With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

[23] *See* NYSE Arca Equities Rule 8.600(d)(2)(C)(ii).

[24] *See supra* note 5 and accompanying text. The Commission notes that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser, the Sub-Adviser, and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

public information regarding the Fund's portfolio.[25] Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.[26] The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Commission also notes that the Exchange would be able to obtain surveillance information from all securities exchanges listing and/or trading the securities held by the Fund, including information from the U.S. exchanges, all of which are ISG members, on which the Underlying ETPs, Depositary Receipts, futures, options, and other applicable portfolio securities are listed and traded.

The Exchange further represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange's surveillance procedures applicable to derivative products, which include Managed Fund Shares, are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(4) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (d) how information regarding the PIV is disseminated; (e) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(5) For initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 under the Act,[27] as provided by NYSE Arca Equities Rule 5.3.

(6) The Fund may not hold more than an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities and loan participation interests.

(7) Except for Underlying ETPs that may hold non-U.S. issues, the Fund will not otherwise invest in non-U.S.-registered issues. Options, futures, and options on futures contracts in which the Fund invests will be U.S. exchange-listed. The Fund will invest no more than 15% of total assets in such options and 15% of total assets in such futures on a daily basis. The Fund may invest up to 15% of its total assets in swap agreements, including, but not limited to, total return swaps, index swaps, and interest rate swaps.

(8) The Fund will not invest in leveraged or inverse leveraged *Underlying ETPs.* The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

(9) The Exchange would be able to obtain surveillance information from all securities exchanges listing and/or trading the securities held by the Fund, including information from the U.S. exchanges, all of which are ISG members, on which the Underlying ETPs, Depositary Receipts, futures, options, and other applicable portfolio securities are listed and traded.

(10) A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange.

This approval order is based on the Exchange's representations and description of the Fund, including those set forth above and in the Notice.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[28] and the rules and regulations thereunder applicable to a national securities exchange.

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[29] that the proposed rule change (SR–NYSEArca–2012–57) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–19351 Filed 8–7–12; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67570; File No. SR–BX–2012–056]**

## Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Period of Amendments to the Clearly Erroneous Rule

August 2, 2012.

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 July 24, 2012, NASDAQ OMX BX, Inc. (''Exchange''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot period of recent amendments to Rule 11890, concerning clearly erroneous transactions, so that the pilot will now expire on February 4, 2013.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

**11890. Clearly Erroneous Transactions**

The provisions of paragraphs (C), (c)(1), (b)(i), and (b)(ii) of this Rule, as amended on September 10, 2010, shall be in effect during a pilot period set to end on *February 4, 2013* [July 31, 2012]. If the pilot is not either extended or approved permanent by *February 4, 2013*[July 31, 2012], the prior

[25] *See* Commentary .06 to NYSE Arca Equities Rule 8.600.

[26] *See* NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

[27] *See* 17 CFR 240.10A–3.

[28] 15 U.S.C. 78f(b)(5).

[29] 15 U.S.C. 78s(b)(2).

[30] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

versions of paragraphs (C), (c)(1), and (b) shall be in effect.

(a)–(f) No change.

* * * * *

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

On September 10, 2010, the Commission approved, for a pilot period to end December 10, 2010, a proposed rule change submitted by the Exchange, together with related rule changes of the BATS Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., International Securities Exchange LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE MKT LLC (formerly, NYSE Amex LLC), NYSE Arca, Inc., and National Stock Exchange, Inc., to amend certain of their respective rules to set forth clearer standards and curtail discretion with respect to breaking erroneous trades.[3] The changes were adopted to address concerns that the lack of clear guidelines for dealing with clearly erroneous transactions may have added to the confusion and uncertainty faced by investors on May 6, 2010. On December 7, 2010, the Exchange filed an immediately effective filing to extend the existing pilot program for four months, so that the pilot would expire on April 11, 2011.[4] On March 31, 2011, the Exchange filed an immediately effective filing to extend the existing pilot program for four months, so that the pilot would expire on the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies.[5] On August 5, 2011, the Exchange filed an immediately effective filing that removed language from the rule that tied the expiration of the pilot to the adoption of a limit up/limit down mechanism to address extraordinary market volatility, and further extended the pilot period, so that the pilot would expire on January 31, 2012.[6] On August 8, 2011, the Exchange filed an immediately effective filing to amend Rule 11890 so that it would continue to operate in the same manner after changes to the single stock trading pause process became effective.[7] On January 12, 2012, the Exchange filed an immediately effective filing that extended the pilot to July 31, 2012.[8]

On May 31, 2012, the Commission approved, on a pilot basis, the National Market System Plan to Address Extraordinary Market Volatility.[9] This plan creates a market-wide limit up-limit down mechanism that is intended to address extraordinary market volatility in NMS Stocks, which will be implemented on February 4, 2013. Once implemented, the plan will prevent execution of trades outside of certain trading bands, thus eliminating clearly erroneous transactions. The Exchange believes that the pilot program has been successful in providing greater transparency and certainty to the process of breaking erroneous trades. The Exchange also believes that an additional extension of the pilot is warranted so that it may continue to monitor the effects of the pilot on the markets and investors, and consider appropriate adjustments, as necessary. Extending the pilot to February 4, 2013, the implementation date of the market-wide limit up-limit down mechanism will permit the Exchange to continue to provide clear standards and curtail discretion with respect to breaking erroneous trades until the limit up/limit down mechanism, which is designed to prevent clearly erroneous transactions from occurring, is implemented.

Accordingly, the Exchange is filing to further extend the pilot program until February 4, 2013.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 (the ''Act''),[10] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[11] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning decisions to break erroneous trades. In addition, the Exchange believes extending the pilot to February 4, 2013 is consistent with the requirement to protect investors because it will permit the pilot to continue to provide clearer standards and curtail discretion with respect to breaking erroneous trades until the limit up/limit down mechanism is implemented, thus eliminating need for the pilot.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13] 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

[3] Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010).

[4] Securities Exchange Act Release No. 63490 (December 9, 2010), 75 FR 78299 (December 15, 2010) (SR–BX–2010–086).

[5] Securities Exchange Act Release No. 64240 (April 7, 2011), 76 FR 20732 (April 13, 2011) (SR–BX–2011–019).

[6] Securities Exchange Act Release No. 65059 (August 9, 2011), 76 FR 50522 (August 15, 2011) (SR–BX–2011–054).

[7] Securities Exchange Act Release No. 65105 (August 11, 2011), 76 FR 51108 (August 17, 2011) (SR–BX–2011–056).

[8] Securities Exchange Act Release No. 66226 (January 24, 2012), 77 FR 4611 (January 30, 2012) (SR–BX–2012–004).

[9] Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78k–1(a)(1).

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6).

proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and Rule 19b–4(f)(6)(iii) thereunder.[15]

A proposed rule change filed under Rule 19b–4(f)(6) [16] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii) [17] 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, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[18]

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 No. SR–BX–2012–056 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 No. SR–BX–2012–056. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BX–2012–056 and should be submitted on or before August 29, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–19352 Filed 8–7–12; 8:45 am]

**BILLING CODE 8011–01–P**

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #13156 and #13157]**

### Wisconsin Disaster #WI–00032

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the State of WISCONSIN dated 07/27/2012.

*Incident:* Severe Storms and Flooding.

*Incident Period:* 06/19/2012 through 06/20/2012.

*Effective Date:* 07/27/2012.

*Physical Loan Application Deadline Date:* 09/25/2012.

*Economic Injury (EIDL) Loan Application Deadline Date:* 04/29/2013.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Douglas.

*Contiguous Counties:*

Wisconsin: Bayfield, Burnett, Sawyer, Washburn.

Minnesota: Carlton, Pine, Saint Louis.

The Interest Rates are:

| | Percent |
|---|---|
| *For Physical Damage:* | |
| Homeowners With Credit Available Elsewhere | 3.875 |
| Homeowners Without Credit Available Elsewhere | 1.938 |
| Businesses With Credit Available Elsewhere | 6.000 |
| Businesses Without Credit Available Elsewhere | 4.000 |
| Non-Profit Organizations With Credit Available Elsewhere | 3.125 |
| Non-Profit Organizations Without Credit Available Elsewhere | 3.000 |
| *For Economic Injury:* | |
| Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere | 4.000 |
| Non-Profit Organizations Without Credit Available Elsewhere | 3.000 |

The number assigned to this disaster for physical damage is 131566 and for economic injury is 131570.

The States which received an EIDL Declaration # are Wisconsin, Minnesota.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: July 27, 2012.

**Karen G. Mills,**

*Administrator.*

[FR Doc. 2012–19341 Filed 8–7–12; 8:45 am]

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## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #13168 and #13169]**

### Virginia Disaster #VA–00048

**AGENCY:** Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Virginia (FEMA–4072–DR), dated 07/27/2012.

*Incident:* Severe Storms and Straight-line Winds.

*Incident Period:* 06/29/2012 through 07/01/2012.

**DATES:** *Effective Date:* 07/27/2012.

*Physical Loan Application Deadline Date:* 09/25/2012.

*Economic Injury (EIDL) Loan Application Deadline Date:* 04/29/2013.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 07/27/2012, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Albemarle, Alleghany, Amelia, Amherst, Appomattox, Arlington, Augusta, Bath, Bedford, Bedford City, Bland, Botetourt Buckingham, Campbell, Carroll, Charlotte Charlottesville City, Clarke, Covington City, Craig, Culpeper, Cumberland, Danville City Dinwiddie, Fairfax, Fauquier, Floyd, Fluvanna, Frederick, Fredericksburg City, Giles, Greene, Halifax, Highland Lexington City, Louisa, Lunenburg, Lynchburg City Madison, Manassas Park City, Martinsville City, Nelson, New Kent, Nottoway, Orange, Page, Pittsylvania, Powhatan, Prince Edward Pulaski, Radford, Rappahannock, Roanoke Roanoke City, Rockbridge, Rockingham, Salem Shenandoah, Staunton City, Tazewell, Warren Winchester City.

The Interest Rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| Non-Profit Organizations With Credit Available Elsewhere ... | 3.125 |
| Non-Profit Organizations Without Credit Available Elsewhere ..... | 3.000 |
| For Economic Injury: | |
| Non-Profit Organizations Without Credit Available Elsewhere ..... | 3.000 |

The number assigned to this disaster for physical damage is 13168B and for economic injury is 13169B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2012–19338 Filed 8–7–12; 8:45 am]

BILLING CODE 8025–01–P

## SOCIAL SECURITY ADMINISTRATION

**[Docket No. SSA–2012–0049]**

### Notice of Senior Executive Service Performance Review Board Membership

**AGENCY:** Social Security Administration.

**ACTION:** Notice of Senior Executive Service Performance Review Board Membership.

Title 5, U.S. Code, 4314(c)(4), requires that the appointment of Performance Review Board members be published in the **Federal Register** before service on said Board begins.

The following persons will serve on the Performance Review Board which oversees the evaluation of performance appraisals of Senior Executive Service members of the Social Security Administration:

Sean Brune
Brad Flick
Gwenda Jones Kelley
James Julian *
Van Nguyen
Thomas Parrott
Steven Patrick
DeBorah Russell
Vance Teel
Daryl Wise

* New Member

Dated: August 1, 2012.

**Reginald F. Wells,**

*Deputy Commissioner for Human Resources.*

[FR Doc. 2012–19328 Filed 8–7–12; 8:45 am]

BILLING CODE 4191–02–P

## DEPARTMENT OF STATE

**[Public Notice 7969]**

### 30-Day Notice of Proposed Information Collection: Form DS–4213, PEPFAR Program Expenditures; OMB Control Number 1405–XXXX

**ACTION:** Notice of request for public comment and submission to OMB of proposed collection of information.

**SUMMARY:** The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* PEPFAR Program Expenditures.
- *OMB Control Number:* None.
- *Type of Request:* New Collection.
- *Originating Office:* Office of the Global AIDS Coordinator (S/GAC)
- *Form Number:* DS–4213.
- *Respondents:* Recipients of US government funds appropriated to carry out the President's Emergency Plan for AIDS Relief (PEPFAR).
- *Estimated Number of Respondents:* 1,583.
- *Estimated Number of Responses:* 1,583.
- *Average Hours per Response:* 24.
- *Total Estimated Burden:* 37,992 hours.
- *Frequency:* Annually.
- *Obligation to Respond:* Mandatory.

**DATES:** The Department will accept comments from the public up to 30 days from August 8, 2012.

**ADDRESSES:** You may submit comments by any of the following methods:

- *Web:* Persons with access to the Internet may view and comment on this notice by going to the Federal regulations Web site at *www.regulations.gov.* You can search for the document by: selecting ''Notice'' under Document Type, entering the Public Notice number as the ''Keyword or ID'', checking the ''Open for Comment'' box, and then click ''Search''. If necessary, use the ''Narrow by Agency'' option on the Results page.
- *Email: duboisa@state.gov.*
- *Mail (paper, or CD submissions):* Dr. Amy DuBois, Office of the US Global AIDS Coordinator (S/GAC), US Department of State, SA–29, 2nd Floor, Washington, DC 20522–2920, 202–663–2440.

- *Fax:* 202–663–2979.
- *Hand Delivery or Courier:* Dr. Amy DuBois, Office of the US Global AIDS Coordinator, 2100 Pennsylvania Ave. NW.; Suite 200, Washington, DC 20037.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Dr. Amy DuBois, Office of the US Global AIDS Coordinator, who may be reached on 202–663–2440 or at *duboisa@state.gov.*

**SUPPLEMENTARY INFORMATION:** We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

**Abstract of Proposed Collection**

The US President's Emergency Plan for AIDS Relief (PEPFAR) was established through enactment of the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 (Pub. L. 108–25), as amended by the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008 (Pub. L. 110–293) (HIV/AIDS Leadership Act) to support the global response to HIV/AIDS. In order to improve program monitoring, the PEPFAR Finance and Economics Work Group proposes to add reporting of expenditures by program area to the current routine reporting of program results for the annual report. Data will be collected from implementing partners in countries with PEPFAR programs using a standard tool (DS–4213) via an electronic interface. These data will then be analyzed to produce mean and range in expenditures by partner per result/achievement for all PEPFAR program areas. These analyses then feed into partner and program reviews at the country level for monitoring and evaluation on an ongoing basis. Summaries of these data provide key information about program costs under PEPFAR on a global level. Applying expenditure results will improve strategic budgeting, identification of efficient means of delivering services, accuracy in defining program targets, and will inform allocation of resources to ensure the program is accountable and using public funds for maximum impact.

**Methods**

Data will be collected in a standard electronic template available to all partners receiving funds under PEPFAR. To minimize the respondents' reporting burden and need for information technology investment, a new module capturing expenditure data will be added to an already functional system. This approach will minimize US Government start up costs for the technology and ensure data collection processes are as efficient as possible.

Dated: July 27, 2012.

**Julia Martin,**

*Chief Operating Officer, Office of the US Global AIDS Coordinator, Department of State.*

[FR Doc. 2012–19405 Filed 8–7–12; 8:45 am]

**BILLING CODE 4710–10–P**

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## DEPARTMENT OF STATE

**[Public Notice 7973]**

## Shipping Coordinating Committee; Notice of Committee Meeting

The Shipping Coordinating Committee (SHC) will conduct open meetings at 9:30 a.m. on Thursday September 20, 2012; Thursday November 01, 2012; Thursday December 20, 2012; and Thursday January 10, 2013, in suite 1060 of the Radio Technical Commission for Maritime Services (RTCM), 1800 North Kent Street, Arlington, VA 22209. The primary purpose of the meeting is to prepare for the seventeenth Session of the International Maritime Organization's (IMO) Sub-Committee on Radiocommunications Search and Rescue to be held at the IMO Headquarters, United Kingdom, January 21–25, 2013.

The agenda items to be considered include:

—Adoption of the agenda
—Decisions of other IMO bodies
—Global Maritime Distress and Safety System (GMDSS):
  —Review and modernization of the GMDSS
  —Further development of the GMDSS master plan on shore-based facilities
  —Consideration of operational and technical coordination provisions of maritime safety information (MSI) services, including the development and review of the related documents
—ITU maritime radiocommunication matters:
  —Consideration of radiocommunication ITU–R Study Group matters
  —Consideration of ITU World Radiocommunication Conference matters
—Consideration of developments in Inmarsat and Cospas-Sarsat
—Search and Rescue (SAR):
  —Development of guidelines on harmonized aeronautical and maritime search and rescue procedures, including SAR training matters
  —Further development of the Global SAR Plan for the provision of maritime
—SAR services, including procedures for routeing distress information in the GMDSS
—Developments in maritime radiocommunication systems and technology
—Development of amendments to the IAMSAR Manual
—Development of measures to avoid false distress alerts
—Development of measures to protect the safety of persons rescued at sea
—Development of an e-navigation strategy implementation plan
—Consideration of LRIT-related matters
—Development of a mandatory Code for ships operating in polar waters
—Biennial agenda and provisional agenda for COMSAR 18
—Election of Chairman and Vice-Chairman for 2014
—Any other business
—Report to the Maritime Safety Committee

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, Russell Levin, by email at *russell.s.levin@uscg.mil,* by phone at (202) 475–3555, by fax at (202) 475–3927, or in writing at Commandant (CG–652), U.S. Coast Guard, 2100 2nd Street SW., Stop 7101, Washington, DC 20593–7101 not later than 7 days prior to the meeting. Requests made after that date might not be able to be accommodated. The RTCM 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: August 1, 2012.

**Brian Robinson,**

*Executive Secretary, Shipping Coordinating Committee, Department of State.*

[FR Doc. 2012–19402 Filed 8–7–12; 8:45 am]

**BILLING CODE 4710–09–P**

## DEPARTMENT OF STATE

**[Public Notice 7972]**

### Shipping Coordinating Committee; Notice of Committee Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 10 a.m. on Wednesday, September 5, 2012, in Room 1303 of the United States Coast Guard Headquarters Building, 2100 Second Street, SW., Washington, DC 20593–0001. The primary purpose of the meeting is to prepare for the seventeenth Session of the International Maritime Organization's (IMO) Sub-Committee on Dangerous Goods, Solid Cargoes and Containers (DSC 17) to be held at the IMO Headquarters, United Kingdom, September 17–21.

The agenda items to be considered include:

—Adoption of the agenda
—Decisions of other IMO bodies
—Amendment 37–14 to the International Maritime Dangerous Goods (IMDG) Code and supplements, including harmonization with the United Nations (UN) Recommendations on the transport of dangerous goods
—Amendment 02–13 to the International Maritime Solid Bulk Cargoes (IMSBC) Code and supplements
—Amendments to SOLAS to mandate enclosed space entry and rescue drills
—Revision of the guidelines for packing of cargo transport units
—Development of measures to prevent loss of containers
—Development of guidance for Approved Continuous Examination Programmes
—Development of criteria for the evaluation of environmentally hazardous solid bulk cargoes in relation to the revised MARPOL Annex V
—Amendments to the International Convention for Safe Containers, 1972, and associated circulars
—Stowage of water-reactive materials
—Guidance on protective clothing
—Casualty and incident reports and analysis
—Biennial agenda and provisional agenda for DSC 18
—Election of Chairman and Vice-Chairman for 2013
—Any other business
—Report to the Maritime Safety Committee

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, Ms. Amy Parker, by email at Amy.M.Parker@uscg.mil, by phone at (202) 372–1423, by fax at (202) 372–1426, or in writing at Commandant (CG–ENG–5), U.S. Coast Guard, 2100 2nd Street, SW., Stop 7126, Washington, DC 20593–7126 not later than August 29, 2012, 7 days prior to the meeting. Requests made after August 29, 2012 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: August 1, 2012.

**Brian Robinson,**

*Executive Secretary, Shipping Coordinating Committee, Department of State.*

[FR Doc. 2012–19404 Filed 8–7–12; 8:45 am]

**BILLING CODE 4710–09–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Flight Simulation Device Initial and Continuing Qualification and Use

**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 **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 18, 2012, 77 FR 29748. The collection of this information is necessary to ensure safety of flight by ensuring complete and adequate training, testing, checking, and experience is obtained and maintained by those who conduct flight simulation training.

**DATES:** Written comments should be submitted by September 7, 2012.

**FOR FURTHER INFORMATION CONTACT:** Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 2120–0680.

*Title:* Flight Simulation Device Initial and Continuing Qualification and Use.

*Form Numbers:* There are no FAA forms associated with this collection.

*Type of Review:* Renewal of an information collection.

*Background:* This request reflects requirements necessary under Title 14 CFR parts 61, 63, 91, 121, 135, 141, and 142, to ensure safety-of-flight by ensuring that complete and adequate training, testing, checking, and experience is obtained and maintained by those who operate under these parts of the regulation and use flight simulation in lieu of aircraft for these functions. The FAA uses the information it collects and reviews to ensure compliance and adherence to regulations and, where necessary, to take enforcement action on violators of the regulations.

*Respondents:* 46 flight simulation device operators.

*Frequency:* Information is collected on occasion.

*Estimated Average Burden per Response:* 88 hours.

*Estimated Total Annual Burden:* 66,840 hours.

**ADDRESSES:** Interested persons are invited to 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 attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov*, or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

*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 August 1, 2012.

**Albert R. Spence,**

*FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.*

[FR Doc. 2012–19449 Filed 8–7–12; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Agency Information Collection Activities: Requests for Comments; Clearance of a New Approval of Information Collection: FAA Customer Service Surveys

**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 for a new information collection. This is a new generic clearance for the purpose of gathering customer satisfaction data directly from customers for a wide variety of services.

**DATES:** Written comments should be submitted by October 9, 2012.

**FOR FURTHER INFORMATION CONTACT:** Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 2120–XXXX.

*Title:* FAA Customer Service Surveys.

*Form Numbers:* There are no FAA forms associated with this generic collection.

*Type of Review:* New generic information collection.

*Background:* Executive Order 12862, Setting Customer Service Standards, requires that Federal agencies provide the highest quality service to our customers by identifying them and determining what they think about our existing services and products. The surveys covered in the generic clearance will provide the FAA with a means to gather this data directly from our customers.

The information obtained from the surveys will be used to assist in evaluating service delivery and processes. The responses to the surveys will be voluntary and will not involve information that is required by regulations. There will be no direct cost to the respondents other than their time. The FAA plans to provide an electronic means for responding to the majority of the surveys via the World Wide Web.

*Respondents:* State and local governments, aviation industry organizations, and the general public.

*Frequency:* Information will be collected on occasion.

*Estimated Average Burden per Response:* The burden time will vary for each survey. Generally we estimate an average burden of 15 minutes per response.

*Estimated Total Annual Burden:* We estimate that FAA will survey approximately 55,000 respondents annually during the next three years. Therefore, the estimated total annual burden is 13,750 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 August 1, 2012.

**Albert R. Spence,**

*FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.*

[FR Doc. 2012–19450 Filed 8–7–12; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Thirteenth Meeting: RTCA Special Committee 217, Terrain and Airport Mapping Databases, Joint With EUROCAE WG–44

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

**ACTION:** Meeting Notice of RTCA Special Committee 217, Terrain and Airport Mapping Databases, Joint with EUROCAE WG–44.

**SUMMARY:** The FAA is issuing this notice to advise the public of the thirteenth meeting of RTCA Special Committee 217, Terrain and Airport Mapping Databases, Joint with EUROCAE WG–44.

**DATES:** The meeting will be held September 10–14, 2012, from 9:00 a.m.–5:00 p.m.

**ADDRESSES:** The meeting will be held at Honeywell Prague Facility, V parku 16, 148 00 Prague 4, Czech Republic.

**FOR FURTHER INFORMATION CONTACT:** The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC, 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.* For more information on this meeting contact: John Kasten, *john.kasten@jeppesen.com,* telephone (303) 328–4535 or mobile telephone (303) 260–9652. Stephane Dubet, *stephane.dubet@aviation-civile.gouv.fr,* telephone, 33–5 57 92 57 81, mobile telephone, 33–6 10 74 56 00. Honeywell's Prague facility must screen visitors at least one week in advance of the meeting, please contact Allan Hart at *allan.hart@honeywell.com* if you plan to attend.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 217. The agenda will include the following:

**September 10–14, 2012**

- Open Plenary Session
- Chairmen's remarks and introductions
- Housekeeping
- Approve minutes from previous meeting
- Review and approve meeting agenda
- Schedule for this week
- Finalize Draft DO–xxx/ED–xxx for FRAC
- Finalize Draft Guidance Material ER–xxx

- Re-Author Action Item Listings
- Review ToR Presentation
- Full Committee Working Group ASRN V&V Document (DO–xxx/ED–xxx)
- Guidance Material Working Group
- Re-authority the various Action Item Listings
- Review Results of ToR presentation to PMC
- Any other business
- Plenary Session Adjourned

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 1, 2012.

**Kathy Hitt,**

*Management Analyst, Business Operations Branch, Federal Aviation Administration.*

[FR Doc. 2012–19448 Filed 8–7–12; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Executive Committee of the Aviation Rulemaking Advisory Committee; Meeting

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of the Executive Committee of the Aviation Rulemaking Advisory Committee.

**DATES:** The meeting will be held on August 30, 2012, at 1:30 p.m.

**ADDRESSES:** The meeting will take place at the Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, 10th floor, MacCracken Room.

**FOR FURTHER INFORMATION CONTACT:** Renee Butner, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–5093; fax (202) 267–5075; email *Renee.Butner@faa.gov.*

**SUPPLEMENTARY INFORMATION:** Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), we are giving notice of a meeting of the Executive Committee of the Aviation Rulemaking Advisory Committee taking place on August 30, 2012, at the Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC, 20591. The Agenda includes:

1. ARAC Restructure
2. ARAC Tasking: Airman Testing Standards and Training Working Group
3. Status Report from the Rulemaking Prioritization Working Group (RPWG)
4. Status Reports from Assistant Chairs
5. Remarks from EXCOM members

Attendance is open to the interested public but limited to the space available. The FAA will arrange teleconference service for individuals wishing to join in by teleconference if we receive notice by August 21. Arrangements to participate by teleconference can be made by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Callers outside the Washington metropolitan area are responsible for paying long-distance charges.

The public must arrange by August 21 to present oral statements at the meeting. The public may present written statements to the executive committee by providing 25 copies to the Executive Director, or by bringing the copies to the meeting.

If you are in need of assistance or require a reasonable accommodation for this meeting, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on August 2, 2012.

**Lirio Liu,**

*Acting Director, Office of Rulemaking.*

[FR Doc. 2012–19413 Filed 8–7–12; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[Docket No. FD 35649]**

### DMH Trust fbo Martha M. Head—Acquisition of Control Exemption—Red River Valley & Western Railroad and Rutland Line, Inc.

DMH Trust fbo Martha M. Head (the Trust), a noncarrier, has filed a verified notice of exemption to acquire control of Red River Valley & Western Railroad (RRVW) and Rutland Line, Inc. (RLI),[1] both Class III rail carriers.

According to the Trust, Douglas M. Head owned all of the controlling shares of voting stock of RRVW and indirectly controlled RLI. Upon his death in February 2011, RRVW's stock continued to be held by Mr. Head's estate until it was distributed to the Trust on January 3, 2012. The Trust did not file its verified notice of exemption with the Board until July 23, 2012. Thus, the effective date of the exemption is August 22, 2012 (30 days after the verified notice of exemption was filed).[2]

The Trust represents that: (1) RRVW and RLI will not connect with any rail lines owned or controlled by the Trust; (2) the transaction is not part of a series of anticipated transactions that would connect any railroad owned or controlled by the Trust with RRVW or RLI, or that would provide an additional connection between RRVW or RLI; and (3) the transaction does not involve a Class I rail carrier. The proposed transaction is therefore exempt from the prior approval requirements of 49 U.S.C. 11323 pursuant to 49 CFR 1180.2(d)(2). The Trust states that the purpose of the transaction was to distribute the RRVW shares from the estate of Mr. Head to the Trust in compliance with the order of the Hennepin County District Court, allowing the completion of the probate of the estate.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than August 15, 2012 (at least seven days before the exemption becomes effective).

An original and ten copies of all pleadings, referring to Docket No. FD 35649, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Rose-Michele Nardi, Weiner Brodsky Sidman Kider PC, 1300 19th Street NW., Fifth Floor, Washington, DC 20036.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: August 2, 2012.

[1] RLI is a wholly owned subsidiary of RRVW.

[2] The class exemption invoked by the Trust does not provide for retroactive effectiveness.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Raina S. White,**

*Clearance Clerk.*

[FR Doc. 2012–19321 Filed 8–7–12; 8:45 am]

**BILLING CODE 4915–01–P**

# FEDERAL REGISTER

Vol. 77 Wednesday,

No. 153 August 8, 2012


Part II

## Department of Education

34 CFR Chapter III

Final Priority; Technical Assistance on State Data Collection, Analysis, and Reporting—National IDEA Technical Assistance Center on Early Childhood Longitudinal Data Systems; Rule

## DEPARTMENT OF EDUCATION

### 34 CFR Chapter III

**[CFDA Number 84.373Z]**

## Final Priority; Technical Assistance on State Data Collection, Analysis, and Reporting—National IDEA Technical Assistance Center on Early Childhood Longitudinal Data Systems

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

**ACTION:** Final Priority.

**SUMMARY:** The Assistant Secretary for Special Education and Rehabilitative Services announces a priority under the Technical Assistance on State Data Collection program. The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2012 and later years. We take this action to focus attention on an identified national need to provide technical assistance (TA) to States to improve their capacity to meet the Individuals with Disabilities Education Act (IDEA) data collection, analysis, and reporting requirements.

We intend this priority to establish a TA center to assist States in developing or enhancing statewide early childhood longitudinal data systems, by which we mean data systems that include child-level data for infants, toddlers, and young children with disabilities (birth through age 5) served through early childhood programs under IDEA Part C and Part B preschool programs. These statewide early childhood longitudinal data systems would be part of a coordinated early learning data system, by which we mean data systems that vertically and horizontally link child, program, and workforce data elements related to children (birth through age 5). This TA will build States' capacity to report high-quality data to meet IDEA reporting requirements.

**DATES:** *Effective Date:* This priority is effective September 7, 2012.

**FOR FURTHER INFORMATION CONTACT:** Meredith Miceli, U.S. Department of Education, 400 Maryland Avenue SW., Room 4069, Potomac Center Plaza (PCP), Washington, DC 20202–2600. Telephone: (202) 245–6028 or by email: *meredith.miceli@ed.gov.*

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

**SUPPLEMENTARY INFORMATION:**

*Purpose of Program:* The purpose of the Technical Assistance on State Data Collection program is to improve the capacity of States to meet IDEA data collection and reporting requirements. Funding for the program is authorized under section 611(c)(1) of IDEA, which gives the Secretary the authority to reserve funds appropriated under Part B to provide TA activities authorized under section 616(i). Section 616(i) requires the Secretary to review the data collection and analysis capacity of States to ensure that data and information determined necessary for implementation of section 616 of IDEA are collected, analyzed, and accurately reported. It also requires the Secretary to provide TA, where needed, to improve the capacity of States to meet the data collection requirements under IDEA.

**Program Authority:** 20 U.S.C. 1411(c), 1416(i), and 1418(c).

*Applicable Program Regulations:* 34 CFR 300.702.

We published a notice of proposed priority (NPP) for this competition in the **Federal Register** on May 4, 2012 (77 FR 26522). That notice contained background information and our reasons for proposing the particular priority.

There are no differences between the proposed priority and this final priority.

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

### Final Priority

*National IDEA Technical Assistance Center on Early Childhood Longitudinal Data Systems*

The purpose of this priority is to fund a cooperative agreement to support the establishment and operation of a National IDEA Technical Assistance Center on Early Childhood Longitudinal Data Systems (Center). This Center will provide TA to States on the development and enhancement of statewide early childhood longitudinal data systems to improve the States' capacity to collect, analyze, and report high-quality data required under sections 616 and 618 of IDEA. This Center must provide TA to States on developing or enhancing statewide early childhood longitudinal data systems that horizontally link child-level data on infants, toddlers, and young children with disabilities (birth through age 5) from one data system to child-level data in other early learning data systems (including those developed with funding provided by the Department's Race to the Top—Early Learning Challenge program), vertically link these child-level data to statewide longitudinal data systems (SLDS) for school-aged children (including those developed with funding provided by the Department's SLDS program), and meet the data system capabilities and elements described under paragraph (b) in the *Technical Assistance and Dissemination Activities* section of this notice. These statewide early childhood longitudinal data systems should allow States to: (1) Accurately and efficiently respond to IDEA-related data submission requirements (e.g., IDEA sections 616 and 618 requirements); (2) continuously improve processes for defining, acquiring, and validating the data; and (3) comply with applicable Federal, State, and local privacy laws, including the requirements of the Family Educational Rights and Privacy Act and privacy requirements in IDEA. This TA must be focused on building the State's capacity to report high-quality data to meet IDEA reporting requirements and must be conducted in coordination with other SLDS work being conducted in the State.

To be considered for funding under this absolute priority, applicants must meet the application requirements contained in this priority. Any project funded under this priority also must meet the programmatic and administrative requirements specified in the priority.

*Application Requirements.* An applicant must include in its application—

(a) A logic model that depicts, at a minimum, the goals, activities, outputs, and outcomes of the proposed project. A logic model communicates how a project will achieve its outcomes and provides a framework for both the formative and summative evaluations of the project; **Note:** The following Web sites provide more information on logic models: *www.researchutilization.org/matrix/logicmodel_resource3c.html* and *www.tadnet.org/model_and_performance.*

(b) A plan to implement the activities described in the *Project Activities* section of this priority;

(c) A plan, linked to the proposed project's logic model, for a formative evaluation of the proposed project's activities. The plan must describe how the formative evaluation will use clear performance objectives to ensure continuous improvement in the operation of the proposed project, including objective measures of progress in implementing the project and ensuring the quality of products and services;

(d) A plan for recruiting and selecting a minimum of 10 States to receive intensive TA on developing or enhancing their statewide early childhood longitudinal data systems to improve the States' capacity to collect

and report high-quality data required under sections 616 and 618 of IDEA. This TA may include supporting each State in developing a statewide early childhood longitudinal data system that links to other statewide data systems (i.e., other statewide early learning data systems and statewide longitudinal education data systems) in order to accurately and efficiently respond to all of a State's IDEA-related data submission requirements for infants, toddlers, and young children (birth through age 5) with disabilities. The intensive TA may also include enhancing an existing statewide data system (e.g., SLDS) by including the child-level data on infants, toddlers, and young children (birth through age 5) with disabilities that are needed to meet the IDEA reporting requirements. To ensure that the Center provides TA to support States in overcoming the additional challenge of sharing early childhood data between State agencies (e.g., State Department of Health and State Department of Education), when selecting States for intensive TA, a preference must be given to States that have IDEA Part C lead agencies (LAs) that are not the State educational agency (SEA).

**Note:** The Center must obtain approval from OSEP on the final selection of intensive TA States.

(e) To prevent duplication of TA efforts around early childhood data systems, a plan for, and description of, how the Center will collaborate with the SLDS program (including SLDS TA efforts [1]), the Race to the Top—Early Learning Challenge program, the Common Education Data Standards initiative, the Privacy Technical Assistance Center,[2] and, as appropriate, other Federal programs that provide TA in the area of early childhood data (e.g., Comprehensive Centers program [3]);

(f) A budget for a summative evaluation to be conducted by an independent third party;

(g) A budget for attendance at the following:

(1) A one and one-half day kick-off meeting to be held in Washington, DC, after receipt of the award, and an annual planning meeting held in Washington, DC, with the OSEP Project Officer and other relevant staff during each subsequent year of the project period.

**Note:** Within 30 days of the award a post-award teleconference must be held between the OSEP Project Officer and grantee's project director or other authorized representative.

(2) A three-day Project Directors' Conference in Washington, DC, during each year of the project period.

(3) A two-day Leveraging Resources Conference in Washington, DC, during each year of the project period.

(4) Two two-day trips annually to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP; and

(h) A line item in the proposed budget for an annual set-aside of five percent of the grant amount to support emerging needs that are consistent with the proposed project's activities, as those needs are identified in consultation with OSEP.

**Note:** With approval from the OSEP Project Officer, the Center must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period.

*Project Activities.* To meet the requirements of this priority, the Center, at a minimum, must conduct the following activities:

**Knowledge Development Activities**

(a) Conduct a survey of all 56 Part C LAs and 56 IDEA Part B preschool programs administered by SEAs in the first year to assess their capacity to collect, analyze, and report high-quality data required under sections 616 and 618 of IDEA and identify the policies and practices that facilitate or hinder a statewide early childhood longitudinal data system to link to other early learning data systems and the statewide longitudinal educational data system for school-aged children (e.g., SLDS). Additionally, review State information from sources such as SPPs and APRs to assess State data system and data quality needs for the 56 LAs that have IDEA Part C programs and 56 SEAs that have IDEA Part B preschool programs. The Center must analyze the information from the surveys, SPPs/APRs, and other sources, as appropriate, and prepare papers that summarize the findings that can be disseminated according to a dissemination plan described in paragraph (f) of the *Technical Assistance and Dissemination Activities* section of this priority. These findings must be used in the selection of States for intensive TA.

(b) Using the findings from the survey described in paragraph (a), identify a minimum of four States to partner with to develop a statewide early childhood longitudinal data system framework (see paragraph (c)). This framework will be a TA resource for other States trying to develop or enhance statewide early childhood longitudinal data systems. Each partnering State must have commitments from its IDEA Part C early intervention and Part B preschool programs to participate in the activities of the Center. Additionally, the partnering States must be a combination of States with Department of Education LAs and non-Department of Education LAs (e.g., State Departments of Health, State Departments of Developmental Services). Factors for consideration in selecting these States could include the demographic and geographic characteristics of the State, the history of data system development in the State, and the collection and analysis of high-quality data required under sections 616 and 618 of IDEA. There may be overlap between these partnering States and those States selected to receive intensive TA. The Center must obtain approval from OSEP on the final selection of partnering States.

**Note:** To fulfill the requirements of paragraph (b) of the *Application Requirements* section of this priority, applicants must describe the methods and criteria they propose to use to recruit and select the four partnering States.

(c) Within the first year of the project period, partner with the States identified in paragraph (b) of this section to develop, implement, and evaluate a statewide early childhood longitudinal data system framework for IDEA Part C early intervention and Part B preschool programs. In developing this framework, the Center must work with the partner States to identify, describe, and document the components

[1] More information on the SLDS TA efforts is available at *http://nces.ed.gov/programs/slds/pdf/TechAssistance.pdf.*

[2] The Privacy Technical Assistance Center is one component of the Department's comprehensive privacy initiatives. It offers technical assistance to State education agencies, local education agencies, and institutions of higher education related to the Privacy, Security, and Confidentiality of student records. For the Privacy Technical Assistance Center Help Desk, email *PrivacyTA@ed.gov* or call, toll free, 855–249–3072. For more information, see *http://www2.ed.gov/policy/gen/guid/ptac/index.html.*

[3] The Comprehensive Center program ''supports 21 comprehensive centers to help increase state capacity to assist districts and schools meet their student achievement goals. The 16 regional centers provide services primarily to State Education Agencies (SEAs) to enable them to assist school districts and schools, especially low performing schools. At a minimum, each regional center provides training and technical assistance in the implementation and administration of programs authorized under the Elementary and Secondary Education Act (ESEA) and the use of research-based information and strategies. The five content centers focus on specific areas, with one center in each of five areas: Assessment and accountability, instruction, teacher quality, innovation and improvement, and high schools. These centers supply much of the research-based information and products in the specific area that regional centers use when working with SEAs.'' U.S. Department of Education. Comprehensive Centers Program. Retrieved April 17, 2012 from: *http://www2.ed.gov/programs/newccp/index.html.*

and processes needed to develop or enhance a statewide early childhood longitudinal data system that provides data necessary to accurately and efficiently respond to reporting requirements under sections 616 and 618 of IDEA and addresses the data system requirements and capabilities listed under paragraph (b) of the *Technical Assistance and Dissemination Activities* section of this priority. Through this work, the Center must develop guidance and exemplar tools and processes that any State can use to develop or enhance and implement a statewide early childhood longitudinal data system framework within its unique setting.

(d) Develop documents and resources on best practices and lessons learned that can be used to improve States' capacity to develop or enhance their statewide early childhood longitudinal data systems for the purposes of collecting high-quality data required under sections 616 and 618 of IDEA.

**Technical Assistance and Dissemination Activities**

(a) Provide intensive TA to a minimum of 10 States to develop and implement a project management and data governance plan with the goal of a fully implemented statewide early childhood longitudinal data system, as described in paragraph (b) of this section. The intensive TA will be based on the statewide early childhood longitudinal data system framework described in paragraph (b) of the *Knowledge Development Activities* section of this priority.

**Note:** To fulfill the requirements in paragraph (a) in the *Technical Assistance and Dissemination Activities* section of this priority, applicants must describe the methods and criteria they will use to recruit and select States. The Center must obtain approval from OSEP on the final selection of intensive TA States.

(b) The statewide early childhood longitudinal data system must meet the following requirements:

(1) Have the following specific data system capabilities:

(i) Enable the State staff to efficiently respond to all IDEA-related data submission requirements (e.g., sections 616 and 618 data) with accurate and valid IDEA data by—

(A) Improving the quality of IDEA data related to child find, child count, settings, and educational environments data; and Indicators C2, C5, C6, and B6, which are included in Appendices A and B to this notice, by linking early childhood IDEA Part C and Part B preschool child-level data horizontally to other statewide early learning data systems when available (e.g., child care, home visiting programs, Head Start, Early Head Start, and publicly-funded State preschool programs and services);

(B) Improving the quality of the IDEA data related to early childhood and preschool outcomes; and Indicators C3, C8, B7, and B12 by linking early childhood IDEA Part C and Part B preschool child-level data vertically to other statewide longitudinal education data systems, including those funded under the Department's SLDS grants (e.g., P–12 systems, K–12 systems, P–20 systems, and K–20 systems);

(C) Improving the quality of the IDEA personnel data by linking child-level early childhood IDEA Part C and Part B preschool data with early intervention and preschool service providers so that an individual child may be matched with the particular providers primarily responsible for providing services to that child; and

(D) Improving the quality of the data about personnel providing services under IDEA Part B by linking early intervention and preschool service providers with data on their qualifications, certification, and preparation programs, including the institutions at which providers received their training;

(ii) Enable the State to improve the accuracy of the IDEA data through validity and reliability checks (e.g., data verification) and to provide access to the information needed to analyze and explain progress or slippage in the Parts B and C indicators;

(iii) Enable the State to examine progress in the implementation of IDEA (e.g., improving transitions from Part C to Part B IDEA services) and the outcomes (e.g., social-emotional skills, the use of appropriate behaviors to meet needs, and the acquisition and use of knowledge and skills) over time of infants, toddlers, and young children receiving services under IDEA and ensure data are easily generated for analysis and decision-making, including timely reporting to various IDEA Part C and preschool service providers across the State on the progress of infants, toddlers, and young children receiving services under IDEA; and

(iv) Ensure the quality (i.e., validity and reliability) of all data.

(2) In order to improve the State's capacity to collect and analyze high-quality data, have the following data system elements:

(i) A unique statewide child identifier accepted by, and aligned with, the State's P–20/P–12 unique identifier that does not permit a child to be individually identified by users of the system (except as allowed by Federal and State law).

(ii) An early intervention and preschool service provider identifier system with the ability to match early intervention and preschool service providers to children;

(iii) Child-level enrollment, demographic, and program participation data.

(iv) Child-level data on the identification of the child under IDEA (including data on the timeliness of the child's evaluation and assessment) and services identified as needed and received, including timeliness of services and service settings.

(v) Child and family outcome [4] data.

(vi) Child-level data about the points at which children start and stop receiving early intervention services or preschool special education services (including reasons for exiting).

(vii) Child-level data about the extent to which children receive timely transition planning to support their movement to preschool and other appropriate community services by their third birthday.

(viii) A State data audit system to assess data quality (i.e., reliability and validity).

(3) Have a data system interoperability plan that—

(i) Allows for linking the statewide early childhood longitudinal data systems to other statewide longitudinal education data systems and other statewide early learning data systems; and

(ii) Complies with applicable Federal, State, and local privacy laws, including the requirements of FERPA and the privacy requirements in IDEA.

(c) Develop and coordinate a national TA network comprised of a cadre of experts that the Center will use to provide TA to States to assist them in developing or enhancing statewide early childhood longitudinal data systems to improve States' capacity to collect and report high-quality data required under sections 616 and 618 of IDEA, which may include the development of open source data system software that addresses the unique needs of each State. General TA will be provided to all States and intensive TA will be provided to a minimum of 10 States.

(d) Provide a continuum of general TA and dissemination activities (e.g.,

[4] An outcome is formed by the impact that services and supports have on the functioning of children and families. Early Childhood Outcome Center. Outcomes 101: ECO Q&A. Available at: *www.fpg.unc.edu/~eco/pages/faqs_view_item.cfm?id=7*. For further information on early childhood child and family outcomes, see the Early Childhood Outcomes (ECO) Center Web site (*www.fpg.unc.edu/~eco/index.cfm*).

managing Web sites, listservs, and communities of practice, and holding conferences and training institutes) on best practices that promote the efficient collection of accurate and valid data required under sections 616 and 618 of IDEA to improve the educational results and functional outcomes of all children with disabilities.

(e) Maintain a Web site that meets government or industry-recognized standards for accessibility and that links to the Web site operated by the Technical Assistance Coordination Center (TACC).[5]

(f) Prepare and disseminate reports, documents, and other materials on statewide early childhood longitudinal data systems, and related topics as requested by OSEP for specific audiences including IDEA Part C LAs, SEAs, policymakers, local educational agencies, service providers, and teachers. In consultation with the OSEP Project Officer, make selected reports, documents, and other materials available for Part C LAs, SEAs, policymakers, local educational agencies, service providers, and teachers in both English and Spanish.

(g) Develop materials and guidance for States and provide targeted TA related to the performance and compliance indicator(s) on their APRs and SPPs, as requested by OSEP.

**Leadership and Coordination Activities**

(a) Establish and maintain an advisory committee to review the activities and outcomes of the Center and provide programmatic support and advice throughout the project period. At a minimum, the advisory committee must meet annually in Washington, DC, and consist of representatives of IDEA Part C LAs, representatives of SEAs, individuals with disabilities, other TA providers, parents of individuals with disabilities, data system experts, representatives of other early learning and development programs, representatives of other Federal offices working to improve State data systems, and software developers with expertise in statewide longitudinal data systems and interoperability. The Center must submit the names of proposed members of the advisory committee to OSEP for approval within eight weeks after receipt of the award.

(b) Communicate and collaborate, on an ongoing basis, with OSEP-funded projects and other relevant Federal-funded projects, including the SLDS program, SLDS TA efforts,[6] the Race to the Top—Early Learning Challenge program, the Common Education Data Standards initiative,[7] the Privacy Technical Assistance Center, and, as appropriate, other Federal programs that provide TA in the area of early childhood data (e.g., Comprehensive Centers program). This collaboration could include the joint development of products, the coordination of TA services, and the planning and carrying out of TA meetings and events.

(c) Participate in, organize, or facilitate communities of practice if they align with the needs of the project's target audience. Communities of practice should align with the project's objectives to support discussions and collaboration among key stakeholders. The following Web site provides more information on communities of practice: *www.tadnet.org/communities*.

(d) Prior to developing any new product, submit a proposal for the product to the TACC database for approval from the OSEP Project Officer. The development of new products should be consistent with the product definition and guidelines posted on the TACC Web site (*www.tadnet.org*).

(e) Contribute, on an ongoing basis, updated information on the Center's approved and finalized products and services to a database at the TACC.

(f) Coordinate with the National Dissemination Center for Individuals with Disabilities to develop an efficient and high-quality dissemination strategy that reaches broad audiences. The Center must report to the OSEP Project Officer the outcomes of these coordination efforts.

(g) Maintain ongoing communication with the OSEP Project Officer through monthly phone conversations and email communication.

**Fourth and Fifth Years of the Project**

In deciding whether to continue funding the Center for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of a review team consisting of experts selected by the Secretary. This review will be conducted during a one-day intensive meeting in Washington, DC, that will be held during the last half of the second year of the project period. The Center must budget for travel expenses associated with this one-day intensive review;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Center; and

(c) The quality, relevance, and usefulness of the Center's activities and products and the degree to which the Center's activities and products have contributed to changed practice and improved the States' capacity to collect and report high-quality data required under sections 616 and 618 of IDEA by developing and enhancing of statewide early childhood longitudinal data systems.

**Types of Priorities**

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

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

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

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

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements. OSEP is under no obligation to make an award for this priority. The decision to make an award will be based on the quality of applications received and available funding.

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

*Executive Orders 12866 and 13563:* Under Executive Order 12866, the

[5] For more information regarding the TACC products and services database, please see: *www.tadnet.org*.

[6] More information on the SLDS TA efforts is available at *http://nces.ed.gov/programs/slds/pdf/TechAssistance.pdf*.

[7] "The Common Education Data Standards is a specified set of the most commonly used education data elements to support the effective exchange of data within and across States, as students transition between educational sectors and levels, and for federal reporting." National Center for Education Statistics. Common Education Data Standards. Retrieved February 8, 2012 from: *http://nces.ed.gov/programs/ceds/*. For more information, see *http://ceds.ed.gov/Default.aspx*.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive Order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

*Accessible Format:* Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

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

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

Dated: August 2, 2012.

**Alexa Posny,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 2012–19478 Filed 8–7–12; 8:45 am]

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Part III

## Department of Education

Applications for New Awards; Technical Assistance on State Data Collection, Analysis, and Reporting—National IDEA Technical Assistance Center on Early Childhood Longitudinal Data Systems; Notice

## DEPARTMENT OF EDUCATION

## Applications for New Awards; Technical Assistance on State Data Collection, Analysis, and Reporting—National IDEA Technical Assistance Center on Early Childhood Longitudinal Data Systems

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

**ACTION:** Notice.

### Overview Information

*Technical Assistance on State Data Collection, Analysis, and Reporting—National IDEA Technical Assistance Center on Early Childhood Longitudinal Data Systems*

Notice inviting applications for new awards for fiscal year (FY) 2012.

*Catalog of Federal Domestic Assistance (CFDA) Number:* 84.373Z.

**DATES:** *Applications Available:* August 8, 2012.

*Deadline for Transmittal of Applications:* September 7, 2012.

### Full Text of Announcement

### I. Funding Opportunity Description

*Purpose of Program:* The purpose of the Technical Assistance on State Data Collection program is to improve the capacity of States to meet the Individuals with Disabilities Education Act (IDEA) data collection and reporting requirements. Funding for the program is authorized under section 611(c)(1) of IDEA, which gives the Secretary the authority to reserve funds appropriated under Part B to provide technical assistance (TA) activities authorized under section 616(i). Section 616(i) requires the Secretary to review the data collection and analysis capacity of States to ensure that data and information determined necessary for implementation of section 616 of IDEA are collected, analyzed, and accurately reported. It also requires the Secretary to provide TA, where needed, to improve the capacity of States to meet the data collection requirements under IDEA.

*Priority:* This priority is from the notice of final priorities for this program, published elsewhere in this issue of the **Federal Register**.

*Absolute Priority:* For FY 2012 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

The priority is:

*National IDEA Technical Assistance Center on Early Childhood Longitudinal Data Systems*

The purpose of this priority is to fund a cooperative agreement to support the establishment and operation of a National IDEA Technical Assistance Center on Early Childhood Longitudinal Data Systems (Center). This Center will provide TA to States on the development and enhancement of statewide early childhood longitudinal data systems to improve the States' capacity to collect, analyze, and report high-quality data required under sections 616 and 618 of IDEA. This Center must provide TA to States on developing or enhancing statewide early childhood longitudinal data systems that horizontally link child-level data on infants, toddlers, and young children with disabilities (birth through age 5) from one data system to child-level data in other early learning data systems (including those developed with funding provided by the Department's Race to the Top—Early Learning Challenge program), vertically link these child-level data to statewide longitudinal data systems (SLDS) for school-aged children (including those developed with funding provided by the Department's SLDS program), and meet the data system capabilities and elements described under paragraph (b) in the *Technical Assistance and Dissemination Activities* section of this priority. These statewide early childhood longitudinal data systems should allow States to: (1) Accurately and efficiently respond to IDEA-related data submission requirements (e.g., IDEA sections 616 and 618 requirements); (2) continuously improve processes for defining, acquiring, and validating the data; and (3) comply with applicable Federal, State, and local privacy laws, including the requirements of the Family Educational Rights and Privacy Act and privacy requirements in IDEA. This TA must be focused on building the State's capacity to report high-quality data to meet IDEA reporting requirements and must be conducted in coordination with other SLDS work being conducted in the State.

To be considered for funding under this absolute priority, applicants must meet the application requirements contained in this priority. Any project funded under this priority also must meet the programmatic and administrative requirements specified in the priority.

*Application Requirements.* An applicant must include in its application—

(a) A logic model that depicts, at a minimum, the goals, activities, outputs, and outcomes of the proposed project. A logic model communicates how a project will achieve its outcomes and provides a framework for both the formative and summative evaluations of the project;

**Note:** The following Web sites provide more information on logic models: *www.researchutilization.org/matrix/logicmodel_resource3c.html* and *www.tadnet.org/model_and_performance.*

(b) A plan to implement the activities described in the *Project Activities* section of this priority;

(c) A plan, linked to the proposed project's logic model, for a formative evaluation of the proposed project's activities. The plan must describe how the formative evaluation will use clear performance objectives to ensure continuous improvement in the operation of the proposed project, including objective measures of progress in implementing the project and ensuring the quality of products and services;

(d) A plan for recruiting and selecting a minimum of 10 States to receive intensive TA on developing or enhancing their statewide early childhood longitudinal data systems to improve the States' capacity to collect and report high-quality data required under sections 616 and 618 of IDEA. This TA may include supporting each State in developing a statewide early childhood longitudinal data system that links to other statewide data systems (i.e., other statewide early learning data systems and statewide longitudinal education data systems) in order to accurately and efficiently respond to all of a State's IDEA-related data submission requirements for infants, toddlers, and young children (birth through age 5) with disabilities. The intensive TA may also include enhancing an existing statewide data system (e.g., SLDS) by including the child-level data on infants, toddlers, and young children (birth through age 5) with disabilities that are needed to meet the IDEA reporting requirements. To ensure that the Center provides TA to support States in overcoming the additional challenge of sharing early childhood data between State agencies (e.g., State Department of Health and State Department of Education), when selecting States for intensive TA, a preference must be given to States that have IDEA Part C lead agencies (LAs) that are not the State educational agency (SEA).

**Note:** The Center must obtain approval from OSEP on the final selection of intensive TA States.

(e) To prevent duplication of TA efforts around early childhood data systems, a plan for, and description of, how the Center will collaborate with the SLDS program (including SLDS TA efforts [1]), the Race to the Top—Early Learning Challenge program, the Common Education Data Standards initiative, the Privacy Technical Assistance Center,[2] and, as appropriate, other Federal programs that provide TA in the area of early childhood data (e.g., Comprehensive Centers program [3]);

(f) A budget for a summative evaluation to be conducted by an independent third party;

(g) A budget for attendance at the following:

(1) A one and one-half day kick-off meeting to be held in Washington, DC, after receipt of the award, and an annual planning meeting held in Washington, DC, with the OSEP Project Officer and other relevant staff during each subsequent year of the project period.

**Note:** Within 30 days of the award a post-award teleconference must be held between the OSEP Project Officer and grantee's project director or other authorized representative.

(2) A three-day Project Directors' Conference in Washington, DC, during each year of the project period.

(3) A two-day Leveraging Resources Conference in Washington, DC, during each year of the project period.

(4) Two two-day trips annually to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP; and

(h) A line item in the proposed budget for an annual set-aside of five percent of the grant amount to support emerging needs that are consistent with the proposed project's activities, as those needs are identified in consultation with OSEP.

**Note:** With approval from the OSEP Project Officer, the Center must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period.

*Project Activities.* To meet the requirements of this priority, the Center, at a minimum, must conduct the following activities:

*Knowledge Development Activities*

(a) Conduct a survey of all 56 Part C LAs and 56 IDEA Part B preschool programs administered by SEAs in the first year to assess their capacity to collect, analyze, and report high-quality data required under sections 616 and 618 of IDEA and identify the policies and practices that facilitate or hinder a statewide early childhood longitudinal data system to link to other early learning data systems and the statewide longitudinal educational data system for school-aged children (e.g., SLDS). Additionally, review State information from sources such as SPPs and APRs to assess State data system and data quality needs for the 56 LAs that have IDEA Part C programs and 56 SEAs that have IDEA Part B preschool programs. The Center must analyze the information from the surveys, SPPs/APRs, and other sources, as appropriate, and prepare papers that summarize the findings that can be disseminated according to a dissemination plan described in paragraph (f) of the *Technical Assistance and Dissemination Activities* section of this priority. These findings must be used in the selection of States for intensive TA.

(b) Using the findings from the survey described in paragraph (a), identify a minimum of four States to partner with to develop a statewide early childhood longitudinal data system framework (see paragraph (c)). This framework will be a TA resource for other States trying to develop or enhance statewide early childhood longitudinal data systems. Each partnering State must have commitments from its IDEA Part C early intervention and Part B preschool programs to participate in the activities of the Center. Additionally, the partnering States must be a combination of States with Department of Education LAs and non-Department of Education LAs (e.g., State Departments of Health, State Departments of Developmental Services). Factors for consideration in selecting these States could include the demographic and geographic characteristics of the State, the history of data system development in the State, and the collection and analysis of high-quality data required under sections 616 and 618 of IDEA. There may be overlap between these partnering States and those States selected to receive intensive TA. The Center must obtain approval from OSEP on the final selection of partnering States.

**Note:** To fulfill the requirements of paragraph (b) of the *Application Requirements* section of this priority, applicants must describe the methods and criteria they propose to use to recruit and select the four partnering States.

(c) Within the first year of the project period, partner with the States identified in paragraph (b) of this section to develop, implement, and evaluate a statewide early childhood longitudinal data system framework for IDEA Part C early intervention and Part B preschool programs. In developing this framework, the Center must work with the partner States to identify, describe, and document the components and processes needed to develop or enhance a statewide early childhood longitudinal data system that provides data necessary to accurately and efficiently respond to reporting requirements under sections 616 and 618 of IDEA and addresses the data system requirements and capabilities listed under paragraph (b) of the *Technical Assistance and Dissemination Activities* section of this priority. Through this work, the Center must develop guidance and exemplar tools and processes that any State can use to develop or enhance and implement a statewide early childhood longitudinal data system framework within its unique setting.

(d) Develop documents and resources on best practices and lessons learned that can be used to improve States' capacity to develop or enhance their statewide early childhood longitudinal data systems for the purposes of collecting high-quality data required under sections 616 and 618 of IDEA.

*Technical Assistance and Dissemination Activities*

(a) Provide intensive TA to a minimum of 10 States to develop and implement a project management and data governance plan with the goal of a fully implemented statewide early childhood longitudinal data system, as

[1] More information on the SLDS TA efforts is available at *http://nces.ed.gov/programs/slds/pdf/TechAssistance.pdf.*

[2] The Privacy Technical Assistance Center is one component of the Department's comprehensive privacy initiatives. It offers technical assistance to State education agencies, local education agencies, and institutions of higher education related to the Privacy, Security, and Confidentiality of student records. For the Privacy Technical Assistance Center Help Desk, email *PrivacyTA@ed.gov* or call, toll free, 855–249–3072. For more information, see *http://www2.ed.gov/policy/gen/guid/ptac/index.html.*

[3] The Comprehensive Center program ''supports 21 comprehensive centers to help increase state capacity to assist districts and schools meet their student achievement goals. The 16 regional centers provide services primarily to State Education Agencies (SEAs) to enable them to assist school districts and schools, especially low performing schools. At a minimum, each regional center provides training and technical assistance in the implementation and administration of programs authorized under the Elementary and Secondary Education Act (ESEA) and the use of research-based information and strategies. The five content centers focus on specific areas, with one center in each of five areas: assessment and accountability, instruction, teacher quality, innovation and improvement, and high schools. These centers supply much of the research-based information and products in the specific area that regional centers use when working with SEAs.'' US Department of Education. Comprehensive Centers Program. Retrieved April 17, 2012 from: *http://www2.ed.gov/programs/newccp/index.html.*

described in paragraph (b) of this section. The intensive TA will be based on the statewide early childhood longitudinal data system framework described in paragraph (b) of the *Knowledge Development Activities* section of this priority.

**Note:** To fulfill the requirements in paragraph (a) in the *Technical Assistance and Dissemination Activities* section of this priority, applicants must describe the methods and criteria they will use to recruit and select States. The Center must obtain approval from OSEP on the final selection of intensive TA States.

(b) The statewide early childhood longitudinal data system must meet the following requirements:

(1) Have the following specific data system capabilities:

(i) Enable the State staff to efficiently respond to all IDEA-related data submission requirements (e.g., sections 616 and 618 data) with accurate and valid IDEA data by—

(A) Improving the quality of IDEA data related to child find, child count, settings, and educational environments data; and Indicators C2, C5, C6, and B6, which are included in Appendices A and B to this notice, by linking early childhood IDEA Part C and Part B preschool child-level data horizontally to other statewide early learning data systems when available (e.g., child care, home visiting programs, Head Start, Early Head Start, and publicly-funded State preschool programs and services);

(B) Improving the quality of the IDEA data related to early childhood and preschool outcomes; and Indicators C3, C8, B7, and B12 by linking early childhood IDEA Part C and Part B preschool child-level data vertically to other statewide longitudinal education data systems, including those funded under the Department's SLDS grants (e.g., P–12 systems, K–12 systems, P–20 systems, and K–20 systems);

(C) Improving the quality of the IDEA personnel data by linking child-level early childhood IDEA Part C and Part B preschool data with early intervention and preschool service providers so that an individual child may be matched with the particular providers primarily responsible for providing services to that child; and

(D) Improving the quality of the data about personnel providing services under IDEA Part B by linking early intervention and preschool service providers with data on their qualifications, certification, and preparation programs, including the institutions at which providers received their training;

(ii) Enable the State to improve the accuracy of the IDEA data through validity and reliability checks (e.g., data verification) and to provide access to the information needed to analyze and explain progress or slippage in the Parts B and C indicators;

(iii) Enable the State to examine progress in the implementation of IDEA (e.g., improving transitions from Part C to Part B IDEA services) and the outcomes (e.g., social-emotional skills, the use of appropriate behaviors to meet needs, and the acquisition and use of knowledge and skills) over time of infants, toddlers, and young children receiving services under IDEA and ensure data are easily generated for analysis and decision-making, including timely reporting to various IDEA Part C and preschool service providers across the State on the progress of infants, toddlers, and young children receiving services under IDEA; and

(iv) Ensure the quality (i.e., validity and reliability) of all data.

(2) In order to improve the State's capacity to collect and analyze high-quality data, have the following data system elements:

(i) A unique statewide child identifier accepted by, and aligned with, the State's P–20/P–12 unique identifier that does not permit a child to be individually identified by users of the system (except as allowed by Federal and State law).

(ii) An early intervention and preschool service provider identifier system with the ability to match early intervention and preschool service providers to children;

(iii) Child-level enrollment, demographic, and program participation data.

(iv) Child-level data on the identification of the child under IDEA (including data on the timeliness of the child's evaluation and assessment) and services identified as needed and received, including timeliness of services and service settings.

(v) Child and family outcome [4] data.

(vi) Child-level data about the points at which children start and stop receiving early intervention services or preschool special education services (including reasons for exiting).

(vii) Child-level data about the extent to which children receive timely transition planning to support their movement to preschool and other appropriate community services by their third birthday.

(viii) A State data audit system to assess data quality (i.e., reliability and validity).

(3) Have a data system interoperability plan that—

(i) Allows for linking the statewide early childhood longitudinal data systems to other statewide longitudinal education data systems and other statewide early learning data systems; and

(ii) Complies with applicable Federal, State, and local privacy laws, including the requirements of FERPA and the privacy requirements in IDEA.

(c) Develop and coordinate a national TA network comprised of a cadre of experts that the Center will use to provide TA to States to assist them in developing or enhancing statewide early childhood longitudinal data systems to improve States' capacity to collect and report high-quality data required under sections 616 and 618 of IDEA, which may include the development of open source data system software that addresses the unique needs of each State. General TA will be provided to all States and intensive TA will be provided to a minimum of 10 States.

(d) Provide a continuum of general TA and dissemination activities (e.g., managing Web sites, listservs, and communities of practice, and holding conferences and training institutes) on best practices that promote the efficient collection of accurate and valid data required under sections 616 and 618 of IDEA to improve the educational results and functional outcomes of all children with disabilities.

(e) Maintain a Web site that meets government or industry-recognized standards for accessibility and that links to the Web site operated by the Technical Assistance Coordination Center (TACC).[5]

(f) Prepare and disseminate reports, documents, and other materials on statewide early childhood longitudinal data systems, and related topics as requested by OSEP for specific audiences including IDEA Part C LAs, SEAs, policymakers, local educational agencies, service providers, and teachers. In consultation with the OSEP Project Officer, make selected reports, documents, and other materials available for Part C LAs, SEAs, policymakers, local educational agencies, service providers, and teachers in both English and Spanish.

(g) Develop materials and guidance for States and provide targeted TA

[4] An outcome is formed by the impact that services and supports have on the functioning of children and families. Early Childhood Outcome Center. Outcomes 101: ECO Q&A. Available at: *www.fpg.unc.edu/~eco/pages/faqs_view_item.cfm?id=7*. For further information on early childhood child and family outcomes, see the Early Childhood Outcomes (ECO) Center Web site (*www.fpg.unc.edu/~eco/index.cfm*).

[5] For more information regarding the TACC products and services database, please see: *www.tadnet.org*.

related to the performance and compliance indicator(s) on their APRs and SPPs, as requested by OSEP.

*Leadership and Coordination Activities*

(a) Establish and maintain an advisory committee to review the activities and outcomes of the Center and provide programmatic support and advice throughout the project period. At a minimum, the advisory committee must meet annually in Washington, DC, and consist of representatives of IDEA Part C LAs, representatives of SEAs, individuals with disabilities, other TA providers, parents of individuals with disabilities, data system experts, representatives of other early learning and development programs, representatives of other Federal offices working to improve State data systems, and software developers with expertise in statewide longitudinal data systems and interoperability. The Center must submit the names of proposed members of the advisory committee to OSEP for approval within eight weeks after receipt of the award.

(b) Communicate and collaborate, on an ongoing basis, with OSEP-funded projects and other relevant Federal-funded projects, including the SLDS program, SLDS TA efforts,[6] the Race to the Top—Early Learning Challenge program, the Common Education Data Standards initiative,[7] the Privacy Technical Assistance Center, and, as appropriate, other Federal programs that provide TA in the area of early childhood data (e.g., Comprehensive Centers program). This collaboration could include the joint development of products, the coordination of TA services, and the planning and carrying out of TA meetings and events.

(c) Participate in, organize, or facilitate communities of practice if they align with the needs of the project's target audience. Communities of practice should align with the project's objectives to support discussions and collaboration among key stakeholders. The following Web site provides more information on communities of practice: *www.tadnet.org/communities*.

(d) Prior to developing any new product, submit a proposal for the product to the TACC database for approval from the OSEP Project Officer. The development of new products should be consistent with the product definition and guidelines posted on the TACC Web site (*www.tadnet.org*).

(e) Contribute, on an ongoing basis, updated information on the Center's approved and finalized products and services to a database at the TACC.

(f) Coordinate with the National Dissemination Center for Individuals with Disabilities to develop an efficient and high-quality dissemination strategy that reaches broad audiences. The Center must report to the OSEP Project Officer the outcomes of these coordination efforts.

(g) Maintain ongoing communication with the OSEP Project Officer through monthly phone conversations and email communication.

*Fourth and Fifth Years of the Project*

In deciding whether to continue funding the Center for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of a review team consisting of experts selected by the Secretary. This review will be conducted during a one-day intensive meeting in Washington, DC, that will be held during the last half of the second year of the project period. The Center must budget for travel expenses associated with this one-day intensive review;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Center; and

(c) The quality, relevance, and usefulness of the Center's activities and products and the degree to which the Center's activities and products have contributed to changed practice and improved the States' capacity to collect and report high-quality data required under sections 616 and 618 of IDEA by developing and enhancing of statewide early childhood longitudinal data systems.

**Program Authority:** 20 U.S.C. 1411(c), 1416(i), and 1418(c).

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 86, 97, 98, and 99. (b) The Education Department debarment and suspension regulations in 2 CFR part 3485. (c) The regulations in 34 CFR part 300.702. (d) The notice of final priorities for this program, published elsewhere in this issue of the **Federal Register**.

**Note:** The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

**Note:** The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

## II. Award Information

*Type of Award:* Cooperative agreement.

*Estimated Available Funds:* $6,500,000.

*Maximum Award:* We will reject any application that proposes a budget exceeding $6,500,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

*Estimated Number of Awards:* 1.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 36 months with an optional additional 24 months based on performance. Applications must include plans for both the 36-month award and the 24-month extension.

## III. Eligibility Information

1. *Eligible Applicants:* State educational agencies (SEAs); local educational agencies (LEAs), including public charter schools that are considered LEAs under State law; IDEA Part C State lead agencies; IHEs; other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or Tribal organizations; and for-profit organizations.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Other: General Requirements*—The project funded under this program must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

## IV. Application and Submission Information

1. *Address To Request Application Package:* You can obtain an application package via the Internet, from the Education Publications Center (ED Pubs), or from the program office.

To obtain a copy via the Internet, use the following address: *www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf

[6] More information on the SLDS TA efforts is available at *http://nces.ed.gov/programs/slds/pdf/TechAssistance.pdf.*

[7] ''The Common Education Data Standards is a specified set of the most commonly used education data elements to support the effective exchange of data within and across States, as students transition between educational sectors and levels, and for federal reporting.'' National Center for Education Statistics. Common Education Data Standards. Retrieved February 8, 2012 from: *http://nces.ed.gov/programs/ceds/*. For more information, see *http://ceds.ed.gov/Default.aspx*.

(TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.373Z.

To obtain a copy from the program office, contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 100 pages, using the following standards:

• A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section (Part III).

We will reject your application if you exceed the page limit; or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

*Applications Available:* August 8, 2012.

*Deadline for Transmittal of Applications:* September 7, 2012.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV.7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR)—and, after July 24, 2012, with the System for Award Management (SAM), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR of SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR or SAM registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration annually. This may take three or more business days to complete. Information about SAM is available at SAM.gov.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/applicants/get_registered.jsp.*

7. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

*a. Electronic Submission of Applications*

We are participating as a partner in the Governmentwide Grants.gov Apply site. The National IDEA Technical Assistance Center on Early Childhood Longitudinal Data Systems competition, CFDA number 84.373Z, is included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

You may access the electronic grant application for the National IDEA Technical Assistance Center on Early Childhood Longitudinal Data Systems competition at *www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.373, not 84.373Z).

Please note the following:

• Your participation in Grants.gov is voluntary.

• When you enter the Grants.gov site, you will find information about submitting an application electronically

through the site, as well as the hours of operation.

• Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *www.G5.gov.*

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

• If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• If you submit your application electronically, you must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

*Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System:* If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

**Note:** The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

*b. Submission of Paper Applications by Mail*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.373Z),
LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

**Note:** The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

*c. Submission of Paper Applications by Hand Delivery*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.373Z),
550 12th Street SW., Room 7041,
Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington,

DC time, except Saturdays, Sundays, and Federal holidays.

**Note for Mail or Hand Delivery of Paper Applications:** If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

## V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Additional Review and Selection Process Factors:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The Standing Panel requirements under section 682(b) of IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that, for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers, by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications. However, if the Department decides to select an equal number of applications in each group for funding, this may result in different cut-off points for fundable applications in each group.

4. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR part 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

## VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program. We are proposing to use the measures established for the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program to assess the performance of the Technical Assistance on State Data Collection, Analysis, and Reporting program. The Department will use these measures to assess the extent to which this program provides high-quality products and services, the relevance of project products and services to educational and early intervention policy and practice, and the usefulness of products and services to improve educational and early intervention policy and practice. Grantees will be required to report information on their project's performance in annual reports to the Department (34 CFR 75.590).

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

## VII. Agency Contact

*For Further Information Contact:* Meredith Miceli, U.S. Department of Education, 400 Maryland Avenue SW., room 4069, Potomac Center Plaza (PCP), Washington, DC 20202–2600. Telephone: (202) 245–6028 or by email: *meredith.miceli@ed.gov.*

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

**VIII. Other Information**

*Accessible Format:* Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

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Dated: August 2, 2012.

**Alexa Posny,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 2012–19479 Filed 8–7–12; 8:45 am]

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